

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

FACTUM OF THE RECEIVER, FTI CONSULTING CANADA INC.
(Motion for Settlement and Fee Approval, returnable September 17, 2026)

September 11, 2026

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TO: **THE SERVICE LIST**

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I. OVERVIEW¹

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

2. The Receiver seeks an Order (the “**Settlement Approval Order**”), *inter alia*, approving a partial settlement (the “**Settlement**”) on the terms and conditions set out in the unredacted minutes of settlement (the “**Minutes of Settlement**”) attached as Confidential Appendices “A”, “B” and “C” to the Twelfth Report (the “**Confidential Appendices**”), and sealing such Confidential Appendices.

3. The Settlement is the result of long and complex, multiparty negotiations with certain of the defendants to the Trade X Action (as defined below) brought by the Receiver, on behalf of the Debtors, and certain of the defendants to the Secured Lenders’ Action (as defined below) brought by the Applicant, the Debtors’ senior secured lender. The Settlement provides for the payment of certain settlement amounts to the Receiver, on behalf of the Debtors, and the Applicant and, in exchange, the Debtors and the Applicant will discontinue their respective actions against the settling defendants and grant them releases. The actions will continue against the remaining defendants. The Settlement is conditional on approval by this Court in these receivership proceedings.

¹ Unless otherwise stated herein, capitalized terms used and not otherwise defined herein have the meaning given to such terms in the Twelfth Report of the Receiver dated September 8, 2026 (the “**Twelfth Report**”).

4. The Receiver respectfully submits that the Settlement is fair and reasonable, will provide substantial benefits to the Debtors' stakeholders, and ought to be approved by this Court.

5. The Receiver also seeks an order (the "**Fee Approval Order**"), *inter alia*, approving:

(a) the Seventh Report of the Receiver dated October 22, 2024 ("**Seventh Report**"), the Eighth Report of the Receiver dated December 16, 2024 (the "**Eighth Report**"), the Ninth Report of the Receiver dated June 10, 2025 (the "**Ninth Report**"), the Tenth Report of the Receiver dated December 4, 2025 ("**Tenth Report**"), the Eleventh Report of the Receiver dated June 1, 2026 (the "**Eleventh Report**") and the Twelfth Report (collectively, the "**Receiver's Reports**") and the activities and conduct of the Receiver described therein; and

(b) the fees and disbursements of the Receiver and its counsel.

6. The Receiver respectfully submits that its fees and disbursements, and those of its counsel, are fair and reasonable, and that it is appropriate for the Court to grant the requested Fee Approval Order.

II. FACTS

A. Partial Settlement of the Trade X Claim

(i) *The Receiver's Investigation Efforts*

7. Since its appointment, the Receiver has worked diligently to understand the Debtors' affairs and realize on the Debtors' assets for the benefit of the Debtors' stakeholders. These efforts have been complicated by, among other things, the Debtors' complex accounting records, extensive dealings with non-arm's length parties, and the refusal by certain key individuals with

knowledge of the Debtors' affairs to speak with the Receiver to help it understand the underlying facts.²

8. To address this issue, in late March 2024, the Receiver brought a motion seeking an Order, among other things, granting the Receiver enhanced investigative powers, including the right to examine persons with relevant information under oath and compel the production of relevant documents (the “**Investigative Powers Order**”). On April 3, 2024, the Court granted the Investigative Powers Order with respect to the individuals specified in such Order, which included certain former directors, officers and employees of the Debtors.³

9. Following the granting of the Investigative Powers Order, in connection with the Receiver's ongoing investigations and forensic review efforts, the Receiver identified additional individuals (the “**Additional Examined Persons**”) who the Receiver believed may have relevant information in respect of the Debtors and their business, including certain additional former directors, officers, employees and customers of the Debtors. The Receiver sought and obtained a further Order (the “**Additional Examination Order**”), on substantially the same terms as the Investigative Powers Order, to grant the Receiver the same rights to examine the Additional Examined Persons under oath. The Additional Examination Order was granted on November 1, 2024, with respect to the Additional Examined Persons specified in such Order.⁴

² Twelfth Report at para. 9, MR, Tab 4, p. 31 [[CC E5528](#)].

³ Twelfth Report at para. 10, MR, Tab 4, p. 31 [[CC E5528](#)].

⁴ Twelfth Report at para. 11, MR, Tab 4, p. 31 [[CC E5528](#)].

10. The investigations, examinations and forensic review that have been advanced by the Receiver since the commencement of the Receivership are discussed further in the Receiver's Reports.

(ii) *The Trade X Action and the Secured Lenders' Action*

11. Based on the Receiver's review and investigation, and the evidence obtained through the examinations conducted pursuant to the Investigative Powers Order and the Additional Examination Order, the Receiver, in consultation with the Applicant, commenced an action (the "**Trade X Action**") on behalf of the Debtors in respect of claims (the "**Trade X Claim**") against Ryan Davidson, Eric Gosselin, Eric Van Essen, Luciano Butera, Patrick Leung, Brent Sawadsky and The CFO Centre Limited (collectively, the "**Trade X Defendants**") by Statement of Claim issued April 7, 2025 (the "**Trade X Statement of Claim**"). The Trade X Statement of Claim seeks damages of \$20,000,000, or an amount to be proven at trial. The individual Trade X Defendants are former officers and/or directors of one or more of the Debtors.⁵

12. On April 30, 2025, the Applicant issued a Statement of Claim (the "**Secured Lenders' Statement of Claim**") commencing an action (the "**Secured Lenders' Action**") in respect of claims (the "**Secured Lenders' Claim**") against Ryan Davidson, Luciano Butera, 1254382 Ontario Ltd., Eric Gosselin, Patrick Leung, Eric Van Essen, Wouter Van Essen, 1309767 Ontario Ltd., 2601658 Ontario Ltd., Philip Mittleman, Brent Sawadsky, The CFO Centre Limited, and

⁵ Twelfth Report at para. 13, MR, Tab 4, p. 32 [[CC E5529](#)].

Lakshmi Suresh (collectively, the “**Secured Lenders’ Defendants**”). The Secured Lenders’ Statement of Claim seeks damages of USD \$17,000,000, or an amount to be proven at trial.⁶

13. The Trade X Action and the Secured Lenders’ Action (together, the “**Actions**”) are being case managed together at the Commercial List given the substantially overlapping subject matters, facts and parties.⁷

(iii) Partial Settlement of the Actions

14. On or about February 19, 2026, the Receiver and the Applicant (together, in their respective capacities as plaintiffs in the Trade X Action and the Secured Lenders’ Action, the “**Plaintiffs**”) reached a partial settlement in principle of the Trade X Action and the Secured Lenders’ Action with defendants Eric Gosselin, Eric Van Essen, Luciano Butera, Patrick Leung, Brent Sawadsky, The CFO Centre Limited, Philip Mittleman, Lakshmi Suresh and Wouter Van Essen (collectively, the “**Settling Defendants**”)⁸

15. Following their agreement in principle, the Receiver and the Applicant worked with the Settling Defendants to finalize the detailed terms of the Settlement and the documentation in respect thereof. The parties ultimately entered into the Minutes of Settlement.⁹

⁶ Twelfth Report at para. 14, MR, Tab 4, p. 33 [[CC E5530](#)].

⁷ Twelfth Report at para. 15, MR, Tab 4, p. 33 [[CC E5530](#)].

⁸ Twelfth Report at para. 16, MR, Tab 4, p. 33. For clarity, Philip Mittleman, Lakshmi Suresh and Wouter Van Essen are only Secured Lenders’ Defendants and not Trade X Defendants [[CC E5530](#)].

⁹ Twelfth Report at para. 18, MR, Tab 4, p. 34 [[CC E5531](#)].

16. The key terms of the Settlement are as follows:

- (a) AIG Insurance Company of Canada, in its capacity as insurer under Trade X's directors' and officers' insurance policy (the "**D&O Policy**"), will pay an agreed settlement amount (the "**Insurer Settlement Amount**") to the Plaintiffs,
- (b) Eric Gosselin will pay an agreed settlement amount (the "**Gosselin Settlement Amount**") to the Plaintiffs;
- (c) The CFO Centre Limited will pay an agreed settlement amount (the "**CFO Centre Settlement Amount**") and collectively with the Insurer Settlement Amount and the Gosselin Settlement Amount, the "**Settlement Amounts**") to the Plaintiffs;
- (d) the Plaintiffs shall have the right to allocate the Settlement Amounts between them in their sole discretion;
- (e) the Plaintiffs shall bring motions to amend their respective Statements of Claim to reflect the contents of the Minutes of Settlement;
- (f) the Plaintiffs and the Settling Defendants shall execute full and final mutual releases in the form contemplated by the Minutes of Settlement; and
- (g) the Settlement in respect of the Trade X Action is subject to this Court's approval in these proceedings.¹⁰

¹⁰ Twelfth Report at para. 19, MR, Tab 4, p. 35 [[CC E5532](#)].

17. The Trade X Action and the Secured Lenders' Action will continue as against Ryan Davidson, and the Secured Lenders' Action will continue as against the other remaining Secured Lenders' Defendants that are not Settling Defendants (the "**Remaining Defendants**").¹¹

18. The Receiver and the Applicant have agreed to allocate 50% of the Settlement Amounts in respect of the Trade X Claim and 50% in respect of the Secured Lenders' Claim.¹²

19. The Receiver believes that the Settlement is in the best interests of the Debtors and their stakeholders, for whom it provides significant value, and that it is reasonable in the circumstances having regard to the roles of the Settling Defendants at Trade X.¹³

20. The Applicant, which is the Debtors' senior secured creditor, actively participated in the negotiation of, and is a party to, the Settlement. The Applicant has executed the Minutes of Settlement and supports the Settlement.¹⁴

B. Fees and Disbursements of the Receiver and its Counsel

21. The proposed Fee Approval Order provides for the approval of the fees and disbursements of the Receiver and its counsel incurred during the period from September 1, 2024 to August 31, 2026 (the "**Period**").¹⁵

¹¹ Twelfth Report at para. 20, MR, Tab 4, p. 35 [[CC E5532](#)].

¹² Twelfth Report at para. 21, MR, Tab 4, p. 36 [[CC E5533](#)].

¹³ Twelfth Report at para. 22, MR, Tab 4, p. 36 [[CC E5533](#)].

¹⁴ Twelfth Report at para. 23, MR, Tab 4, p. 36 [[CC E5533](#)].

¹⁵ Twelfth Report at para. 35, MR, Tab 4, p. 38 [[CC E5535](#)].

22. In support of this motion, the Receiver delivered its Twelfth Report, which provides a detailed summary of the Receiver's and its counsel's fees and disbursements.¹⁶ The Receiver's Reports that were filed during the Period also provide a detailed summary of the activities of the Receiver during the Period.¹⁷

23. In addition, affidavits from representatives of the Receiver and each of its counsel provide a comprehensive listing of the accounts sought to be passed, including each account date and amount, along with summary tables identifying the individual professionals who have worked on the matter, average hourly billing rates, total number of hours worked and total associated professional fees, among other information. Some accounts have been redacted to protect privileged and confidential information.¹⁸

24. The Receiver and its counsel billed amounts at standard hourly rates consistent with the relevant market, and the Receiver considers such fees to be fair and reasonable in the circumstances of these proceedings.¹⁹

¹⁶ See the Twelfth Report, MR, Tab 4, p. 27 [[CC E5524](#)].

¹⁷ The Receiver's [Sixth](#) Report, [Seventh](#) Report, [Eighth](#) Report, [Ninth](#) Report, [Tenth](#) Report and [Eleventh](#) Report, each of which was filed with the Court during the Period, are available on the Receiver's website.

¹⁸ See the Affidavit of Paul Bishop (FTI Consulting Canada Inc.) sworn September 8, 2026 ("**Bishop Affidavit**"), MR, Tab 4.G, p. 187 [[CC E5684](#)]; Affidavit of Caroline Descours (Goodmans LLP) sworn September 2, 2026 ("**Descours Affidavit**"), MR, Tab 4.H, p. 260 [[CC E5757](#)]; Affidavit of Louis Sévéno (Woods LLP) sworn September 1, 2026 ("**Sévénno Affidavit**"), MR, Tab 4.I, p. 381 [[CC E5878](#)].

¹⁹ Bishop Affidavit at para. 8, MR, Tab 4.G, p. 189 [[CC E5686](#)]; Descours Affidavit at para. 6, MR, Tab 4.H, p. 262 [[CC E5759](#)]; Sévéno Affidavit at para. 6, MR, Tab 4.I, p. 383 [[CC E5880](#)].

III. ISSUES AND LAW

A. The Settlement Should be Approved

(i) The Receiver is Authorized to Enter into the Minutes of Settlement

25. Paragraphs 3(h) and (j) of the Receivership Order grant the Receiver the authority to settle any indebtedness owing to the Debtors and to settle or compromise any proceeding:²⁰

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:

[...]

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

[...]

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

26. The Receiver agreed to the Settlement pursuant to these powers. Pursuant to the Minutes of Settlement, the Court's approval is a condition of the Settlement. The Receiver has provided

²⁰ [Receivership Order dated December 22, 2023.](#)

notice of the Settlement to all parties on the service list in these proceedings²¹ and is seeking Court approval of the Settlement.

(ii) *The Test for Settlement Approval is Met*

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

- (a) whether the settlement is fair and reasonable;
- (b) whether it provides substantial benefits to other stakeholders; and
- (c) whether it is consistent with the purpose and spirit of the relevant insolvency legislation.²²

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

- (a) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;
- (b) whether the interests of all parties have been considered;

²¹ The Receiver has also provided notice of the Settlement to the Defendants in the Actions pursuant to Rule 49.14 of the *Rules of Civil Procedure*. Twelfth Report at paras. 17 [[CC E5531](#)] and 18 [[CC E5531](#)], MR, Tab 4, p. 34.

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

- (c) the efficacy and integrity of the process by which offers were obtained; and
- (d) whether there has been unfairness in the working out of the process.²³

29. The Court has held that in connection with a settlement, a receiver must consider the available information and use its expertise to determine how to maximize the value of the rights subject to the settlement, and that in seeking to settle a claim, the receiver can meet its obligations where the proposed compromise is commercially reasonable.²⁴

30. It is also appropriate for Courts to take into account the business judgment of the court officer that was involved in the negotiation of the settlement where that settlement raises complex issues or where the receiver is otherwise in a better position to evaluate the merits of the settlement.²⁵ That is, with respect, the case here. The Receiver engaged in extensive negotiations with respect to the Settlement, is experienced in insolvency matters, and had the benefit of experienced counsel (Goodmans LLP). The Receiver was in a good position to assess the Settlement and its judgment should carry significant weight.

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

²³ *Royal Bank of Canada v. Soundair Corp.*, [1991 CanLII 2727](#) (ON CA) [*Soundair*]. Examples of this Court applying the *Soundair* factors in settlement approval motions brought in receivership proceedings include *Bakemates International Inc., Re*, [2003 CanLII 41385](#) (ON SC) at [paras. 13-19](#), affirmed [2004 CanLII 59994](#) (ON CA) [*Bakemates*] and *IWHL Inc., Re*, [2011 ONSC 5672](#) (CanLII) (Commercial List) at [paras. 4-5](#).

²⁴ *IWHL Inc., Re*, [2011 ONSC 5672](#) (CanLII) (Commercial List) at [para. 6](#).

²⁵ *Maple Bank GmbH, Re*, 2016 ONSC 7218 ([CanLII](#)) at [para. 9](#); *Nortel Networks Corp., Re*, 2010 ONSC 1096 ([CanLII](#)) (Commercial List) at [paras. 34-35](#). See also *Crown Trust Co. et al. v. Rosenberg et al.*, [1986 CanLII 2760](#) (ON HCJ) at [paras. 83-85](#) addressing the importance of the Receiver's role and business judgment in the context of a sale approval motion.

(a) **Sufficient effort was made to obtain the best price:** The Receiver, in consultation with the Applicant, engaged in extensive negotiations over an extended period of time with the Settling Defendants and their insurer under Trade X's D&O Policy. The Settlement provides significant value for the benefit of the Debtors' stakeholders in the near term and avoids the costs and risks associated with further litigation with respect to the Settling Defendants. The Receiver does not believe that further negotiations would have produced a better outcome, and believes that the Receiver together with the Applicant achieved the best available settlement with the Settling Defendants in the circumstances. In addition, the maximum amount payable under the D&O Policy, in respect of both defence costs and judgment, is \$4 million (the "**D&O Policy Limits**"). The Receiver understands that defence costs of the Settling Defendants to date total more than \$600,000, although the Actions remain at the pleading stage. Absent a settlement, it is likely that the D&O Policy Limits would be exhausted by defence costs and the D&O Policy would not be available to pay any judgments obtained in the Actions. Accordingly, a settlement at this stage is likely the best approach to maximize recoveries from the D&O Policy.²⁶

(b) **The interests of all parties have been considered:** The Receiver consulted with the Applicant, and the Applicant actively participated in the negotiation of, and is a party to, the Settlement. The Applicant is the Debtors' senior secured creditor and is currently owed over \$18 million. The Applicant is unlikely to recover this amount in full unless the Receiver and/or the Applicant are entirely (or almost entirely) successful in the Trade X

²⁶ Twelfth Report, MR, Tab 4, p. 36 [[CC E5533](#)].

Action and/or the Secured Lenders' Action and any judgment awarded in either or both of the Actions is collected in full. No other creditors will be affected by the Settlement.²⁷

(c) **The settlement negotiations were conducted with integrity:** The settlement negotiations were conducted with integrity and due diligence and in good faith. There is no suggestion that they were not. The Receiver has not received any objections or concerns regarding the Settlement.

(d) **There was no unfairness:** In the Receiver's view, there has been no unfairness in the conduct of the settlement negotiations. The negotiations were robust and achieved favourable results for the benefit of the Debtors and their stakeholders.²⁸

32. Moreover, Ontario courts have held that Pierringer agreements should be approved where possible because there are benefits not only to the settling parties, but also "systemic benefits to the justice system as a whole".²⁹

33. The Receiver believes that the Settlement is in the best interests of the Debtors and their stakeholders. It provides significant value for the benefit of the Debtors' stakeholders in the near term, and a resolution of the dispute among the Receiver, the Applicant and the Settling Defendants on terms and conditions that the Receiver believes are fair and reasonable in the circumstances.³⁰

34. The Receiver respectfully recommends that this Court approve the Settlement.

²⁷ Twelfth Report, MR, Tab 4, p. 36 [[CC E5533](#)].

²⁸ Twelfth Report, MR, Tab 4, p. 36 [[CC E5533](#)].

²⁹ *Singh et al. v. Mann et al.*, 2021 ONSC 8249 ([CanLII](#)) at [para. 22](#) citing *Allianz Global Risk US Insurance Co. v. Canada*, [2017 ONSC 4484](#) at para. [11](#).

³⁰ Twelfth Report at paras. 22 [[CC E5533](#)] and 25 [[CC E5534](#)], MR, Tab 4, pp. 36-37.

B. It is Appropriate to Seal the Confidential Settlement Amounts

35. Each of the Minutes of Settlement require the parties to keep confidential the Settlement Amounts³¹

36. The Receiver has publicly filed copies of the Minutes of Settlement with the Settlement Amounts redacted, and seeks an order sealing the unredacted copies of the Minutes of Settlement that contain the Settlement Amounts.

37. This Court has discretion pursuant to [Section 137\(2\)](#) of the *Courts of Justice Act* to order that any document filed in a civil proceeding be treated as confidential, sealed and not form part of the public record where (a) disclosure would pose a serious risk to an important public interest; (b) a sealing order is necessary to prevent this risk because reasonably available alternative measures would not prevent the risk; and (c) the benefits of sealing outweigh any negative effects.³²

38. As a starting point, the Supreme Court of Canada has held that a Pierringer agreement, including the negotiated settlement amount, is protected by settlement privilege.³³ Forcing settling parties to reveal the terms of settlement to non-settling parties conflicts with the important public policy in favour of promoting settlements.³⁴

39. While the terms of a Pierringer agreement are required to be disclosed, maintaining the confidentiality of the financial terms until after the trial of the action as against non-settling

³¹ Twelfth Report at para. 27, MR, Tab 4, p. 37 [[CC E5534](#)].

³² *Sherman Estate v. Donovan*, 2021 SCC 25 ([CanLII](#)) at para [38](#).

³³ *Sable Offshore Energy Inc. v. Ameron International Corp.*, 2013 SCC 37 ([CanLII](#)) at [para. 18](#).

³⁴ *Sable Offshore Energy Inc. v. Ameron International Corp.*, 2013 SCC 37 ([CanLII](#)) at [para. 20](#).

defendants has been held to be the correct approach.³⁵ Here, the Remaining Defendants have been provided with all non-financial terms of the Minutes of Settlement.³⁶

40. As noted above, the Trade X Claim and the Secured Lenders' Claim will continue as against the Remaining Defendants, and disclosure of the Settlement Amounts could be prejudicial to the ongoing Actions.³⁷

41. The Receiver is not aware of any party that will be prejudiced if the information is sealed and is of the view that the salutary effects of sealing such information from the public record outweigh the deleterious effects of doing so under the circumstances.³⁸

42. As such, the Receiver respectfully requests that the privilege over the Settlement Amounts be maintained, and that an order be granted permitting the sealing of the unredacted copies of the Minutes of Settlement.

C. The Receiver's Reports, Activities and Fees Ought to be Approved

(i) Approval of the Receiver's Reports and Activities

43. This Court held in *Laurentian University of Sudbury*, in the context of the approval of a CCAA monitor's reports and activities, that there are good policy and practical reasons for approving a court officer's reports and activities, including that Court approval:

- (a) allows the court officer to move forward with next steps in the proceeding;

³⁵ *Allianz Global Risk US Insurance Co. v. Canada*, [2017 ONSC 4484](#) at para. [31](#).

³⁶ Twelfth Report at paras. 17 [[CC E5531](#)] and 18 [[CC E5531](#)], MR, Tab 4, p. 34.

³⁷ Twelfth Report at para. 28, MR, Tab 4, p. 37 [[CC E5534](#)].

³⁸ Twelfth Report at para. 31, MR, Tab 4, p. 38 [[CC E5535](#)].

- (b) brings the court officer's activities before the court;
- (c) allows an opportunity for the concerns of the stakeholders to be addressed, and any problems to be rectified;
- (d) enables the Court to satisfy itself that the court officer's activities have been conducted in a prudent and diligent manner;
- (e) provides protection for the court officer not otherwise provided by the applicable legislation; and
- (f) protects the creditors from the delay and disruption that would be caused by: (i) re-litigation of steps taken to date, and (ii) potential indemnity claims by the court officer.³⁹

44. In these proceedings, the Receiver previously obtained approval for its reports and activities up to and including the Sixth Report of the Receiver dated September 20, 2024 (the "**Sixth Report**").⁴⁰ It now seeks approval for the Seventh Report to Twelfth Report and the activities and conduct described therein.

45. The Receiver submits that it is appropriate to approve the Receiver's Reports and the activities and conduct described therein because:

³⁹ *Laurentian University of Sudbury*, [2022 ONSC 2927](#) [*Laurentian*] at [paras. 13-14](#), *Target Canada Co. (Re)*, [2015 ONSC 7574](#) ([CanLII](#)) at [para. 22](#).

⁴⁰ [Fee Approval Order dated October 2, 2024](#) at para. 2.

(a) the Receiver's activities were necessary and undertaken in good faith pursuant to the Receiver's duties and powers set out in Orders of this Court granted in these proceedings;

(b) the Receiver's activities were undertaken in the best interests of the Debtors' stakeholders;

(c) the Receiver has actively consulted with the Applicant throughout these proceedings in respect of the Receiver's activities; and

(d) the Receiver's Reports were served on the service list in these proceedings and posted on the Receiver's website for review by the Debtors' creditors and other stakeholders.

(ii) Approval of the Accounts of the Receiver and its Counsel

46. The Receivership Order directs that the Receiver and its counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are referred to a judge of the Commercial List of the Ontario Superior Court of Justice.⁴¹

47. The Receiver previously obtained approval of its accounts for the period from the date of the Receivership Order up to and including August 31, 2024.⁴² The Receiver now seeks approval for the accounts up to and including August 31, 2026.

⁴¹ [Receivership Order](#) at para. 19.

⁴² [Fee Approval Order dated October 2, 2024](#) at para. 2.

48. On a motion to pass accounts of a court officer and its counsel, the court is to consider the “overriding principle of reasonableness”, with the predominant consideration in such assessment being the overall value contributed by the court officer and its counsel. As stated by this Court in *Laurentian*, “the Court does not engage in a docket-by-docket or line-by-line assessment of the accounts as minute details of each element of a professional service may not be instructive when looked at in isolation.”⁴³ The focus “should be on what was accomplished, and not how much time it took.”⁴⁴

49. As described above, the Receiver and its counsel charged standard hourly rates that are consistent with relevant market rates.⁴⁵ Although this does not oust the need for the court to consider whether the fees claimed are fair and reasonable, it has been held that where standard rates have been charged under an order so directing, this is a relevant consideration supporting approval.⁴⁶

50. The Court has held that the following non-exhaustive list of factors assist courts in evaluating the fairness and reasonableness of a court-appointed officer’s fees and those of its counsel: (a) the nature, extent and value of the assets being handled; (b) the complications and difficulties encountered; (c) the degree of assistance provided by the company, its officers or its employees; (d) the time spent; (e) the Receiver’s knowledge, experience and skill; (f) the diligence

⁴³ *Laurentian University of Sudbury*, [2022 ONSC 2927](#) at [para. 9](#).

⁴⁴ *Bank of Nova Scotia v. Deimer*, 2014 ONCA 851 ([CanLII](#)) at [para. 45](#).

⁴⁵ Bishop Affidavit at para. 8, MR, Tab 4.G, p. 189 [[CC E5686](#)]; Descours Affidavit at para. 6, MR, Tab 4.H, p. 262 [[CC E5759](#)]; Sévéno Affidavit at para. 6, MR, Tab 4.I, p. 383 [[CC E5880](#)].

⁴⁶ *Confectionately Yours Inc (Re)*, [2002 CanLII 45059](#) (ON CA) at [paras. 52-54](#).

and thoroughness displayed; (g) the responsibilities assumed; (h) the results achieved; and (i) the cost of comparable services when performed in a prudent and economical manner.⁴⁷

51. Applying these factors to this case, the accounts should be approved because:

(a) **The nature, extent and value of the assets being handled:** As discussed in the Receiver's Reports, the Receiver's efforts in these proceedings have included taking control of the Property and winding down the Debtors' business. This has included realization efforts involving funds, receivables, inventory (primarily vehicles) and other assets across domestic and various foreign jurisdictions.⁴⁸ Since the Sixth Report was filed on September 20, 2024, the Receiver has continued to advance its asset realization efforts, including by, among other things, continuing to work with the CRA with regard to the filing of HST returns and the collection of applicable HST refunds,⁴⁹ disposing of remaining IT equipment⁵⁰ and advancing its investigation and litigation efforts, including the Trade X Action.⁵¹

(b) **The complications and difficulties encountered:** The Receiver has worked diligently to understand the Debtors' affairs and realize on the Debtors' assets for the benefit of the Debtors' stakeholders. As discussed in the Receiver's Reports, these efforts have been complicated by, among other things, the Debtors' complex accounting records,

⁴⁷ *Laurentian University of Sudbury*, 2022 ONSC 2927 at para. 10; *Confectionately Yours Inc (Re)*, 2002 CanLII 45059 (ON CA) at paras. 44-45.

⁴⁸ Seventh Report at paras. 9-10 [CC E6105]; See also [Fourth Report](#) of the Receiver dated June 18, 2024 at paras. 10 and 43.

⁴⁹ [Ninth Report](#) at para. 10(a) [CC E5955].

⁵⁰ [Ninth Report](#) at para. 10(c) [CC E5955].

⁵¹ Twelfth Report at para. 13, MR, Tab 4, p. 33 [CC E5529].

extensive dealings with non-arm's length parties, and the refusal by certain key individuals with knowledge of the Debtors' affairs to speak with the Receiver to help it understand the underlying facts.⁵²

Those difficulties persisted following the Sixth Report, requiring the Receiver to bring a motion for the Additional Examination Order, on substantially the same terms as the Investigative Powers Order (each as discussed above), to grant the Receiver the same rights to examine certain additional former directors, officers, employees and customers of the Debtors under oath.⁵³

As discussed above, the Receiver's investigation efforts ultimately revealed significant issues with the Debtors' business and management, which findings formed the basis on which the Receiver commenced the Trade X Action.⁵⁴

(c) **The time spent:** Since the Sixth Report, the Receiver and its counsel have devoted substantial time to investigation and litigation steps in respect of the Debtors, including, among others: (i) bringing the motion for the Additional Examination Order; (ii) conducting several examinations of key parties under oath pursuant to the Additional Examination Order; (iii) investigating, commencing and advancing the Trade X Action; and (iv) negotiating and finalizing certain settlements, including the Groupe Grégor

⁵² Twelfth Report at para. 9, MR, Tab 4, p. 31 [\[CC E5528\]](#).

⁵³ Twelfth Report at para. 11, MR, Tab 4, p. 31 [\[CC E5528\]](#).

⁵⁴ See the Trade X Statement of Claim at paras. 2-8 [\[CC E5969\]](#), being Appendix "A" to the [Ninth Report](#).

Settlement (discussed further below) and the Settlement that is the subject of the within motion.⁵⁵

(d) **The degree of assistance provided by the company, its officers or its employees:**

As described in the Receiver's Reports, due to a lack of cooperation from certain key individuals with knowledge of the Debtors' affairs, the Receiver needed to bring motions seeking enhanced investigatory powers, including the right to examine certain individuals under oath. In addition, the Receiver received conflicting information from the Debtors and other parties about significant transactions involving the Debtors, which added to the challenges in these proceedings.⁵⁶

(e) **The Receiver's knowledge, experience and skill:** The Receiver and its counsel are experienced restructuring professionals who have been integral in these receivership proceedings.

(f) **The diligence and thoroughness displayed:** The Receiver and its counsel have at all times demonstrated diligence and thoroughness.

(g) **The results achieved:** The Receiver has advanced significant work and achieved positive results in these proceedings to date, including winding down the Debtors' business, securing and collecting various funds and receivables, and selling the Debtors'

⁵⁵ Twelfth Report at paras. 11-13, MR, Tab 4, p. 31 [[CC E5528](#)]; [Eleventh Report](#) at paras. 24-25 [[CC E6080](#)].

⁵⁶ [Seventh Report](#) at paras. 15-20 [[CC E6107](#)]; [Ninth Report](#) at paras. 13-17 [[CC E5956](#)].

remaining inventory. In addition, in the period since the Sixth Report, the Receiver has negotiated two settlements (including the Settlement that is subject of the within motion):

(i) Groupe Grégor Settlement: As described in the Eighth Report, the Receiver negotiated a settlement of its litigation with the Court-appointed monitor (the “**Wholesale Express Monitor**”) in the *Companies’ Creditors Arrangement Act* (the “**CCAA**”) proceedings of the Debtors’ former subsidiary, 13517985 Canada Inc. o/a Wholesale Express (“**Wholesale Express**”), regarding the ownership of a receivable of approximately \$7.9 million (the “**Groupe Grégor Claim**”) owing by Groupe Grégor Inc. (“**Groupe Grégor**”). Under the resulting settlement (the “**Groupe Grégor Settlement**”), any recovery on the Groupe Grégor Claim will be applied first to repay the parties’ funded litigation costs in respect of the Groupe Grégor Claim on a *pro rata* basis, and thereafter distributed 70% to the estate of Wholesale Express and 30% to the Debtors’ estate. The Groupe Grégor Settlement was approved by both this Court and the Superior Court of Quebec in the Wholesale Express CCAA proceedings.⁵⁷ Since the approval of the Groupe Grégor Settlement, the Receiver and its counsel have consulted with the Wholesale Express Monitor and its counsel in connection with advancing the Groupe Grégor Claim against Groupe Grégor. As described in the Eleventh Report, the litigation against Groupe Grégor in respect of the Groupe Grégor Claim is ongoing.⁵⁸

⁵⁷ [Eighth Report](#) at paras. 25 [[CC E5927](#)], 29-30 [[CC E5928](#)] and 33 [[CC E5930](#)]; [Ninth Report](#) at para. 22 [[CC E5959](#)].

⁵⁸ [Eleventh Report](#) at paras. 26-28 [[CC E6080](#)].

(ii) Trade X Action Partial Settlement: As described above, the Receiver, together with the Applicant, negotiated a partial settlement of the Actions. This was a complex, multi-party negotiation that required significant involvement from the Receiver and its counsel. The Receiver and the Applicant have agreed to allocate 50% of the Settlements Amounts payable pursuant to the Settlement in respect of the Trade X Claim and 50% in respect of the Secured Lenders' Claim.

The Trade X Action will continue against Ryan Davidson, which may result in further recovery for the benefit of the Debtors' stakeholders.⁵⁹

52. For the reasons set out above, a consideration of the applicable factors supports the approval of the accounts of the Receiver and its counsel as being fair and reasonable.

IV. ORDER SOUGHT

53. The Receiver respectfully submits that it is appropriate for this Court to approve the Settlement and seal the Confidential Appendices pursuant to the proposed Settlement Approval Order, and to approve the fees and activities of the Receiver and the fees of the Receiver's counsel pursuant to the proposed Fee Approval Order.

All of which is respectfully submitted this 11th day of September, 2026.

Per:



GOODMANS LLP

⁵⁹ [Eleventh Report](#) at paras. 17-21 [[CC E6078](#)]; Twelfth Report at para. 20, MR, Tab 4, p. 35 [[CC E5532](#)].

Lawyers for the Receiver,
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SCHEDULE A LIST OF AUTHORITIES

1.	<i>Bakemates International Inc., Re</i> , 2003 CanLII 41385 (ON SC) at paras. 13-19 , affirmed 2004 CanLII 59994 (ON CA)
2.	<i>Crown Trust Co. et al. v Rosenberg et al.</i> , 1986 CanLII 2760 (ON HCJ)
3.	<i>IWHL Inc., Re</i> , 2011 ONSC 5672 (CanLII) (Commercial List)
4.	<i>Labourers' Pension Fund of Central and Eastern Canada v. Sino-Forest Corp.</i> , 2013 ONSC 1078 (CanLII)
5.	<i>Maple Bank GmbH, Re</i> , 2016 ONSC 7218 (CanLII)
6.	<i>Nortel Networks Corp., Re</i> , 2010 ONSC 1096 (CanLII) (Commercial List)
7.	<i>Robertson v. ProQuest Information & Learning Co.</i> , 2011 ONSC 1647 (CanLII)
8.	<i>Royal Bank of Canada v. Soundair Corp.</i> , 1991 CanLII 2727 (ON CA)
9.	<i>Sherman Estate v. Donovan</i> , 2021 SCC 25 (CanLII)
10.	<i>Sable Offshore Energy Inc. v. Ameron International Corp.</i> , 2013 SCC 37 (CanLII)
11.	<i>Singh et al. v. Mann et al.</i> , 2021 ONSC 8249 (CanLII)
12.	<i>Allianz Global Risk US Insurance Co. v. Canada</i> , 2017 ONSC 4484 (CanLII)
13.	<i>Bank of Nova Scotia v. Deimer</i> , 2014 ONCA 851 (CanLII)
14.	<i>Confectionately Yours Inc (Re)</i> , 2002 CanLII 45059 (ON CA)
15.	<i>Laurentian University of Sudbury</i> , 2022 ONSC 2927
16.	<i>Target Canada Co. (Re)</i> , 2015 ONSC 7574 (CanLII)

Lawyer's Statement (Rule 4.06.1(2.1)):

I certify that I am satisfied as to the authenticity of every authority cited in the factum, and I further certify that I am satisfied that any quotations from an authority that appear in this factum accurately reproduce the text of the authority.



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SCHEDULE B STATUTORY REFERENCES

Rules of Civil Procedure, R.R.O. 1990, Reg. 194

Partial Settlement Agreements

49.14 (1) In this rule,

“partial settlement agreement” means a settlement agreement in a proceeding, whether written or unwritten, where,

- (a) at least one plaintiff and at least one defendant are parties to the agreement,
- (b) at least one defendant is not a party to the agreement,
- (c) the agreement does not settle the proceeding in its entirety, although it may be settled in its entirety as between some parties, and the parties to the agreement intend that the proceeding will continue to some extent, and
- (d) the agreement is binding on the parties to the agreement, subject to the requirement for judicial approval under rule 7.08 if applicable.

Application

(2) The requirements of this rule apply except to the extent that a statute or a court order provides otherwise.

(3) Despite rule 49.01.1, this rule does not apply to applications for judicial review under Rule 68.

Obligation to Promptly Disclose

(4) Subject to subrule (8), a plaintiff who is a party to a partial settlement agreement shall disclose the terms of the agreement, other than the monetary value of the settlement, if any, to every other plaintiff and defendant who is not a party to the agreement,

- (a) immediately after the agreement is reached, if the hearing of the proceeding has commenced; or
- (b) if the hearing of the proceeding has not commenced, no later than the earlier of,
 - (i) seven days after the agreement is reached, and
 - (ii) the taking of any further step in the proceeding by any party to the agreement.

(5) Subject to subrule (8), as soon as possible after the disclosure, and in any event no later than seven days before the next date on which the parties are scheduled to appear in court, the plaintiff shall,

- (a) record the terms of the partial settlement agreement, other than the monetary value of the settlement, if any, in Form 49E; and

- (b) serve a copy of Form 49E on every other party to the proceeding and file it, with proof of service.

(6) The disclosure obligations in subrules (4) and (5) prevail over any agreement respecting confidentiality or non-disclosure between the parties to the partial settlement agreement.

(7) If a plaintiff fails to comply with subrule (4) or (5), the court may, on any other party's motion,

- (a) make an order for costs, regardless of the outcome of the proceeding;

- (b) order or permit further examinations for discovery, to be conducted at the plaintiff's expense;

- (c) order additional disclosure or production of documents;

- (d) strike out all or part of a party's evidence, including any affidavit made by the party;

- (e) adjourn a hearing or other step that permits or requires the attendance of the parties;

- (f) stay the proceeding; or

- (g) make such other order as is just.

...

No Effect on Requirement to Disclose Settlement Amount

(9) For greater certainty, where no party to a partial settlement agreement is under disability, nothing in this rule limits any requirement of a party to disclose the monetary value of the settlement for any purpose, including to avoid double recovery.

Courts of Justice Act, R.S.O. 1990, c. C.43

Sealing documents

137 (2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

MBL ADMINISTRATIVE AGENT II -and- TRADE X GROUP OF COMPANIES
LLC INC. *et al.*

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

Applicant

Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced at Toronto

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