

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No.: 500-11-063165-233

SUPERIOR COURT
(Commercial Division)

**IN THE MATTER OF THE COMPANIES'
CREDITORS ARRANGEMENT ACT, R.S.C.
1985, c. C-36, AS AMENDED:**

POST ROAD GROUP, a corporation having
a place of business at 1 Landmark Sq Suite
2200, Stamford, CT 06901, United States

Creditor/Applicant

- and -

15695651 CANADA INC.

and

15695724 CANADA INC.

Debtors

- and -

KPMG INC.

Monitor

**APPLICATION FOR THE AUTHORIZATION TO FILE A PROOF OF CLAIM AFTER
THE CLAIMS BAR DATE**

**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN
THE COMMERCIAL DIVISION, IN AND FOR THE DISTRICT OF MONTREAL, THE
APPLICANT DECLARES THE FOLLOWING:**

INTRODUCTION

1. MBL Administrative Agent II LLC (“**MBL**”) is owed an aggregate amount of US\$16,700,507.59 (inclusive of principal and interest and expenses) as at July 15, 2024 from the Trade X Group of Companies Inc. (“**Trade X Parent**”) and its affiliates (collectively with Trade X Parent, the “**Trade X Group**”).
2. Post Road Group (“**PRG**”) and MBL seek the authorization of the Quebec Superior Court (Commercial Division), district of Montreal (the “**Court**”) to file a proof of claim against 15695651 Canada Inc. and 15695724 Canada Inc. (the “**Debtors**”) for the amounts of USD\$4,000,000 and CAD\$2,150,000 after the Claims Bar Date (as defined below).

BACKGROUND

Intercreditor Agreement

3. PRG is the parent company of MBL. MBL is the administrative agent under credit facilities (the “**Credit Facilities**”) made available by Post Road Specialty Lending Fund II LP and Post Road Specialty Lending Fund (UMINN) LP (the “**Lenders**”) to TX OPS Funding II LLC, Techlantic Ltd. (“**Techlantic**”) and TX OPS Global Funding I (collectively, the “**Borrowers**”).
4. The Borrowers are direct and indirect subsidiaries of Trade X Parent as it appears from the Credit Facilities, communicated herewith, *en liasse*, as **Exhibit R-1**.
5. Under the Credit Facilities, the Lenders extended advances to the Borrowers to facilitate the purchase and sale of vehicles by certain members of the Trade X Group for sale between Canada and the United States and globally. Similarly, Highcrest Lending Corporation (“**Highcrest**”) provided funding to TX OPS Funding I LLC, a member of the Trade X Group, to facilitate the purchase of other vehicles for resale in Canada.
6. On February 5, 2021, Highcrest, MBL, TX OPS Funding I LLC, TX OPS Funding II LLC, TX OPS Indiana Limited (“**TX Indiana**”) and TX OPS Canada Corporation (“**TX Canada**”) entered into an Intercreditor Agreement (the “**2021 Intercreditor Agreement**”), pursuant to which Highcrest and MBL agreed that (a) Highcrest would have first-ranking security in the vehicles and related purchase agreements that it had financed, and (b) MBL would have first-ranking security in the vehicles and related purchase agreements that the Lenders financed, as it appears from the 2021 Intercreditor Agreement, communicated herewith as **Exhibit R-2**.

7. In 2022, MBL, Highcrest and the Trade X Group entered into a loan restructuring transaction (the “**2022 Loan Restructuring**”), pursuant to which, among other things:
 - (a) Highcrest was granted security on substantially all the assets of 13517985 Canada Inc. (d.b.a. Wholesale Express) (“**Wholesale Express**”) and its shares (the “**Highcrest Collateral**”); and
 - (b) MBL was granted security on substantially all of the assets of the members of the Trade X Group, with the exception of the assets of Wholesale Express and TX Canada (who was already a guarantor of the Credit Facilities) (collectively, the “**MBL Collateral**”). MBL has a security interest over the shares of Wholesale Express, but not its assets, by virtue of its security interest in all of the assets of Trade X Parent.
8. The 2022 Loan Restructuring was reflected, in part, in the Master Amended and Restated Loan and Security Agreement dated as of December 23, 2022, between Highcrest, as lender, Wholesale Express as borrower and Trade X Parent as guarantor (the “**Highcrest Loan and Security Agreement**”) pursuant to which Trade X Parent pledged its interests in the equity of Wholesale Express and Wholesale Express granted a security interest in all of its property to Highcrest, as it appears from the Highcrest Loan and Security Agreement, communicated herewith as **Exhibit R-3**.
9. As part of the 2022 Loan Restructuring, Trade X Parent issued an amended and restated secured convertible note in favour of Aimia Inc. (“**Aimia**”) in the principal amount of USD\$25,000,000 dated December 23, 2022 (the “**Aimia Note**”) and granted Aimia a subordinated security interest in all of its present and future property (the “**Aimia Collateral**”) including the shares of Wholesale Express. Prior to the 2022 Loan Restructuring, Aimia was an unsecured creditor of Trade X Parent.
10. On December 23, 2022, Aimia, Highcrest, MBL, the Borrowers (with the exception of Techlantic), TX Indiana, TX Canada, Trade X Parent and Wholesale Express entered into an amended and restated Intercreditor Agreement (as amended and restated, the “**Intercreditor Agreement**”), as it appears from the Intercreditor Agreement, communicated herewith as **Exhibit R-4**.
11. Pursuant to the Intercreditor Agreement, among other things:
 - (a) The parties agreed that (i) Highcrest has a priority security interest in the Highcrest Collateral, (ii) MBL has a priority security interest in the MBL

Collateral, and (iii) Aimia subordinated its lien and security interest over the Aimia Collateral to MBL and Highcrest for so long as any obligations to MBL or Highcrest remain outstanding;

- (b) Trade X Parent was not permitted to pay Aimia on account of the Aimia Note unless it met certain liquidity tests;
- (c) Aimia agreed to release its lien and security interest in respect of the sale of any collateral, including Aimia Collateral, Highcrest Collateral or MBL Collateral; and
- (d) If an event of default occurred under the Credit Facilities, MBL was permitted to block the making and acceptance of all payments to Aimia by giving notice to Aimia.

Sale of Wholesale Express

- 12. At the same time the parties were negotiating the Intercreditor Agreement, there were concurrent negotiations in respect of a sale of Wholesale Express or its assets (the “**Sale Transaction**”). As noted above, Highcrest held senior security over the assets of Wholesale Express, and MBL held senior security over the equity of Wholesale Express held by Trade X Parent.
- 13. All parties to the Intercreditor Agreement understood and agreed that upon the closing of any Sale Transaction, the following payment waterfall would apply:
 - (a) First, Highcrest would be paid in full;
 - (b) Second, amounts would be paid to MBL by virtue of its first priority security interest in Trade X Parent and payment priority in Wholesale Express;
 - (c) Third, if available funds remained, Trade X Parent was required to meet a liquidity test by holding no less than USD\$7,500,000 in a bank account controlled by MBL; and
 - (d) Finally, any remaining funds would be used to pay Aimia.
- 14. As a result, the Intercreditor Agreement provides as follows:
 - (a) Aimia agreed that, among other things, Aimia shall not receive payments from Trade X Parent and/or from the Highcrest Collateral prior to the date that all obligations to MBL under the Credit Facilities and related security are paid in full in cash; and
 - (b) Aimia agreed not to hinder the pursuit of a Sale Transaction and agreed to release its lien and security in connection with a Sale Transaction

regardless of whether the proceeds therefrom are sufficient to discharge in full the obligations owing to Aimia.

Bridge Loans

15. The Intercreditor Agreement provides that if Wholesale Express entered into a bridge loan with any party, then Wholesale Express would cause such bridge lender to become a party of the Intercreditor Agreement by way of execution of a joinder agreement (the “**Joinder**”).
16. Pursuant to section 21 of the Intercreditor Agreement, Wholesale Express was required to give notice and a copy of the proposed Joinder to MBL at least 10 days prior to the occurrence of any bridge loan by Wholesale Express. Wholesale Express undertook to:
 - (a) incorporate all revisions to the Joinder and bridge loan documents as MBL shall recommend; and
 - (b) provide MBL with a fully executed copy of the Joinder.
17. At the time the parties executed the Intercreditor Agreement, MBL understood that none of the members of the Trade X Group had entered into a bridge loan.
18. The intention of the parties at the time of negotiating the Intercreditor Agreement was that any bridge loans made to Wholesale Express would not be in addition to the loans made by Highcrest, but rather the proceeds from such loans would be used to reduce the indebtedness owing to Highcrest on a dollar-for-dollar basis.
19. This was reflected in the Intercreditor Agreement. For example, “Bridge Loan Collateral” is described as “any portion of the Highcrest Collateral that is pledged to a Bridge Lender”.
20. Thus, any bridge loans made in the future would not impact MBL’s rights as the amount of debt taken on by Wholesale Express would remain the same, except spread across Highcrest and any additional bridge lender. MBL understood that any future bridge lender would execute a Joinder to the Intercreditor Agreement just as Aimia had, and be subject to the same subordination provisions as Aimia. The failure of the Debtors to abide by the terms of the Intercreditor Agreement therefore damages MBL directly by depriving it of the terms for which it bargained, and upon which it relied in granting the concessions and terms that were part of the 2022 Loan Restructuring.

21. Section 21 of the Intercreditor Agreement was designed to, among other things, ensure that MBL had the opportunity to review and provide comments on any bridge loan documents to ensure they reflected this intention or, in the alternative, permit MBL to request clear subordination language in respect of any bridge loans.

Reasons for Filing the Proof of Claim After the Claims Bar Date

22. On December 20, 2023, Highcrest sought and obtained a First Day Initial Order under the *Companies' Creditors Arrangement Act* (the "**CCA**") from this Court in respect of Wholesale Express, which was further amended and restated on December 28, 2023, as it appears from the Amended and Restated Initial Order, communicated herewith as **Exhibit R-5**.
23. Pursuant to the Amended and Restated Initial Order, KPMG Inc. was appointed to act as monitor to Wholesale Express in the CCA proceedings (the "**Monitor**"), as it appears from **Exhibit R-5**.
24. On December 22, 2023, pursuant to an order of the Ontario Superior Court of Justice (Commercial List), FTI Consulting Canada Inc. ("**FTI**") was appointed as receiver and manager of the Trade X Group (other than Wholesale Express) (the "**Receivership Order**"), as it appears from the Receivership Order, communicated herewith as **Exhibit R-6**.
25. On January 23, 2024, Wholesale Express was sold pursuant to an Approval and Reverse Vesting Order and Highcrest was paid in full, as it appears from the Approval and Reverse Vesting Order, communicated herewith as **Exhibit R-7**.
26. The assets and liabilities of Wholesale Express not otherwise assumed as part of the transaction were transferred to the Debtors, which have replaced Wholesale Express as debtors in the CCA proceedings.
27. On February 23, 2024, this Court rendered an order establishing a procedure to identify, adjudicate and bar claims which may have existed against Wholesale Express prior to January 12, 2024, and which are now claims against the Debtors (the "**Claims Process Order**"), as it appears from the Claims Process Order, communicated herewith as **Exhibit R-8**.
28. Pursuant to the Claims Process Order, unless otherwise authorized by this Court, a creditor who does not file its proof of claim by the latest of 5:00 p.m. (Montreal time) on March 25, 2024 (the "**Claims Bar Date**"), shall, *inter alia*, be barred from

advancing a Claim against Wholesale Express or the Debtors or their directors and officers, as it appears from **Exhibit R-8**.

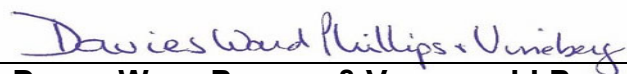
29. On the date of the Claims Process Order, MBL was not aware of any parties claiming to be creditors of Wholesale Express in their capacity as bridge lenders.
30. In late March 2024, FTI made MBL aware that certain parties had purported to advance bridge loans to Wholesale Express between February and April 2023.
31. On or around April 23, 2024, the Monitor filed its third report, pursuant to which it listed the proofs of claims that had been filed against Wholesale Express, including claims by purported bridge lenders. The Monitor advised that it was reviewing the proofs of claims and that they had not been accepted or rejected.
32. On or around June 7, 2024, the Monitor filed its fourth report (the "**Fourth Report**"), pursuant to which it indicated that it had accepted claims by parties claiming to have advanced bridge loans to Wholesale Express, as it appears from the Fourth Report, communicated herewith as **Exhibit R-9**.
33. It was not until the Fourth Report that MBL became aware of the acceptance of the claims and the breaches described hereafter and detailed further in PRG's proof of claim.
34. Wholesale Express breached the Intercreditor Agreement by failing to (a) provide MBL prior (or any) notice of the bridge loans, (b) require any of the bridge lenders to execute a Joinder, and (c) provide MBL with the opportunity to review and provide recommendations on the documents and security and request clear subordination language in respect of any bridge loans.
35. If MBL had received the appropriate notice regarding the bridge loans, it would have taken measures to prevent Wholesale Express from entering into those agreements. Alternatively, MBL would have ensured that the Joinder and the loan and security documents related to the bridge loans, as well as the Intercreditor Agreement, clearly reflected MBL's payment priority in the event of any sale of Wholesale Express.
36. MBL will suffer damages to the extent the bridge loans are permitted to be paid in priority to the indebtedness owing to MBL.
37. On July 16th, 2024, PRG filed a proof of claim notably for the above reasons, as it appears from PRG's proof of claim, communicated herewith as **Exhibit R-10**.

38. On August 16, 2024, through its counsel, the Monitor scheduled a meeting with PRG's counsel for August 20, 2024, to discuss PRG's proof of claim.
39. On August 20, 2024, during the meeting between the Monitor's counsel and PRG's counsel, the Monitor's counsel confirmed receipt of PRG's proof of claim but indicated to PRG's counsel that it will need to request the authorization of this Court for the filing of its proof of claim after the Claims Bar Date.
40. Considering the foregoing, PRG requests this Court to authorize its proof of claim's filing after the Claims Bar Date.
41. The Monitor supports the present application and does not contest it.
42. This *Application to File a Proof of Claim After the Claims Bar Date* is well founded.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

- [A] GRANT** Post Road Group *Application to File a Proof of Claim After the Claims Bar Date*;
- [B] AUTHORIZE** Post Road Group to file its proof of claim after the Claims Bar Date as such terms is defined in the Claims Process Order dated February 23, 2024;
- [C] THE WHOLE** without costs, save in the event of contestation.

Montreal, September 11, 2024



DAVIES WARD PHILLIPS & VINEBERG LLP
Attorneys for Post Road Group

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No.: 500-11-063165-233

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(Commercial Division)

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**LIST OF EXHIBITS IN SUPPORT OF THE APPLICATION FOR THE AUTHORIZATION
TO FILE A PROOF OF CLAIM AFTER THE CLAIMS BAR DATE**

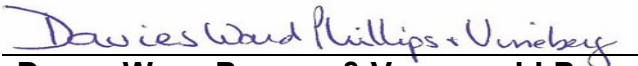
Exhibit R-1 : Senior Secured Revolving Credit Agreement dated February 5, 2021 and
Senior Secured Revolving Credit Agreement dated September 27, 2021,
en liasse;

Exhibit R-2 : Intercreditor Agreement dated February 5, 2021;

Exhibit R-3 : Master Amended and Restated Loan and Security Agreement dated
December 23, 2022;

- Exhibit R-4** : Amended and Restated Intercreditor Agreement dated December 23, 2022;
- Exhibit R-5** : Amended and Restated Initial Order dated December 28, 2023;
- Exhibit R-6** : Receivership Order (Appointing Receiver) dated December 22, 2023;
- Exhibit R-7** : Approval and Reverse Vesting Order dated January 12, 2024;
- Exhibit R-8** : Claims Process Order dated February 23, 2024;
- Exhibit R-9** : Fourth Report of the Monitor dated June 7, 2024;
- Exhibit R-10** : PRG's Proof of Claim dated July 16, 2024.

Montreal, September 11, 2024


DAVIES WARD PHILLIPS & VINEBERG LLP
Attorneys for Post Road Group

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PROVINCE OF QUEBEC
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and

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Debtors

- and -

KPMG INC.

Monitor

AFFIDAVIT OF WESTIN LOVY

I, the undersigned, Westin Lovy, Managing Director of Post Road Group, having a place of business at having a place of business at 1 Landmark Sq Suite 2200, Stamford, CT 06901, United States, solemnly declare:

1. I am a representative of Post Road Group;
2. I have read the attached *Application for the Authorization to File a Proof of Claim after the Claims Bar Date* and all of the facts alleged therein are true and to my personal knowledge.

AND I HAVE SIGNED:

DocuSigned by:

Westin Lovy
Westin Lovy

SOLEMNLY AFFIRMED before me in Ste-Anne-de-Bellevue, province of Québec, Canada, this 11th day of September 2024 by Westin Lovy, whose oath was taken in New Canaan, Connecticut, United States of America and received in Ste-Anne-de-Bellevue, province of Québec, Canada, the whole by technology means and in accordance with the memorandum of the Québec Ministry of Justice dated March 20,

2020. Signé par :

Laurene Lessard-Bolduc
Commissioner for Oaths for the Province of Québec and outside the Province of Québec

