

CANADA  
District of Ontario

Financial Transport Inc.  
Division No. 07 – Hamilton  
Court No: 32-1330124  
Estate No: 32-1330124

Freightliner of Kingston Inc.  
Division No. 12 - Ottawa  
Court No: 33-1330192  
Estate No: 33-1330192

IN THE MATTER OF THE BANKRUPTCIES OF

FINANCIAL TRANSPORT INC.  
OF THE CITY OF MISSISSAUGA

and

FREIGHTLINER OF KINGSTON INC.  
OF THE CITY OF BELLEVILLE,

IN THE PROVINCE OF ONTARIO

TRUSTEE'S REPORT ON ITS PRELIMINARY ADMINISTRATION

**BACKGROUND**

Financial Transport Inc. ("FTI") is an Ontario corporation incorporated in 1995 that leases and sells new and used vehicles to operators in Canada and the United States. FTI operated from premises located at 7280 Dixie Rd. Mississauga, Ontario (the "Dixie Location") which it leases from a related company. FTI is wholly owned by 6145086 Canada Inc., which itself is owned in equal shares by Eric Jain ("Eric") and Chanderkant Jain ("Chanderkant"), who are brothers.

Freightliner of Kingston Inc. ("FKI") is an Ontario corporation and operates Jain Truck Centres from leased premises located at 21 Enterprise Drive, Belleville, Ontario (the "Belleville Location"). The Belleville Location is owned by a related company. FKI was a retail dealer of Freightliners brand trucks and trailers as well as a service centre offering service and parts sales. FKI's franchise agreement with Freightliner was terminated by Freightliner at the beginning of January 2010. FTI is owned by Eric (20%) and Chanderkant (80%).

Causes of Insolvency

The Bank of Montreal (the "Bank") is a secured creditor and lender to FTI and FKI (the "Bankrupts"). The Bank became concerned that the Bankrupts and their related companies had been engaging in a practice known as cheque kiting between the bank accounts of the related companies. As a result of charge backs resulting from this activity, the operating loans of the Bankrupts and operating loans and unauthorized overdrafts in the accounts of its related companies exceeded their collective approved credit limits by approximately \$2 million.

On February 1, 2010, the Bank made application to the Ontario Superior Court of Justice (Commercial List) (the "Court") for the appointment of Deloitte & Touche Inc. as Receiver of all of the assets, undertakings, and properties of the Bankrupts and their related companies Jain Truck Lease Ltd., Global Transport Insurance Brokers Inc., 6181732 Canada Inc., and 2105810 Ontario Inc. (collectively the "Companies"). The Companies sought an adjournment of the Bank's motion to appoint a receiver in light of the short notice and a perceived need to cross examine. A two day adjournment was granted by Honourable Madame Justice Pepall with several conditions, including that Deloitte & Touche Inc. be appointed as monitor (the "Monitor") on an interim basis to monitor the affairs of the Companies and their receipts and disbursements. On February 4, 2010, upon the filing of the Monitor's report, the Companies consented to the appointment of the Receiver.

On March 5, 2010, the Receiver, on behalf of FTI and FKI filed assignments in bankruptcy and the Office of the Superintendent of Bankruptcy subsequently issued a certificate naming Deloitte & Touche Inc. as trustee in bankruptcy of the estates of FTI and FKI.

### CONSERVATORY AND PROTECTIVE MEASURES

Upon its appointment on February 4, 2010, the Receiver attended at the Dixie Location and the Belleville Location, to take possession and control of the property of the Bankrupts. For further details with respect to the administration of the receivership, please refer to the First and Second Reports of the Receiver to the Court dated February 23, 2010 and March 15, 2010. (Copies are available on the Receiver's webpage at [www.deloitte.com/ca/insolvencies](http://www.deloitte.com/ca/insolvencies).)

Deloitte & Touche Inc., in its capacity as Trustee, has no assets to preserve and protect.

### REALIZABLE ASSETS

At the beginning of February, the realizable assets of the Bankrupts consisted primarily of the following:

	<i>FTI Net Book Value *</i>	<i>FTI Estimated Realizations</i>	<i>FKI Net Book Value *</i>	<i>FKI Estimated Realizations</i>
Accounts receivable	\$908,227	\$9,000	218,308	83,000
Inventory, equipment & vehicles	1,049,612	500,000	2,079,010	130,000
Lease Portfolio	<u>9,130,881</u>	<u>1,000,000</u>	<u>NIL</u>	<u>Nil</u>
	<u>\$11,088,720</u>	<u>\$1,509,000</u>	<u>\$2,297,318</u>	<u>\$213,000</u>

*\*Net book value according to Management's internal books and records.*

### FTI

#### *Class I: Stock of Merchandise*

FTI's inventory is comprised of tractors/trailers available for lease or sale. The Receiver has found 42 vehicles belonging to FTI or FKI at the Dixie Location and 26 vehicles belonging to FTI or FKI at the Belleville Location. According to a report obtained from the Ministry of Transportation ("MTO"), it appears that many other vehicles registered to FTI are missing, as they were not located on site or included in FTI's lease portfolio.

*Class II: Fixed Assets, Office Equipment, etc.*

The Dixie Location was occupied by several related party tenants, including companies who were not subject to the receivership order. Office equipment and resources were shared with the other related companies. Management has advised that FTI did not own any of the office equipment or furniture.

*Class III: Buildings and Real Estate*

FTI operated from leased premises and does not appear to own any real estate.

*Class IV: Books and Records*

The Receiver took possession of FTI's books and records. FTI's books and records do not appear to be adequate in the circumstances, as the Receiver noted that the company's records dealing with its lease portfolio were not up-to-date or complete.

*Class V: Other Assets*

1) Cash

At the date of the Receiver's appointment, FTI had an overdraft position in its operating account with the Bank.

2) Accounts Receivable

As at February 9, 2010, FTI's accounts receivable sub-ledger had an outstanding balance of \$908,227, of which 35% was over 90 days old. Management has advised that the majority of the accounts receivable are comprised of overdue lease payments.

3) Lease Portfolio

The Receiver obtained from Management a copy of the most current listing of FTI's lease portfolio (the "**FTI Portfolio**") dated December 31, 2009. The December listing indicated that FTI had 175 vehicles on lease on terms ranging from 6 to 72 months, and that the value of the future monthly lease payments was \$8.5 million.

It appears that the actual value of the FTI Portfolio will be significantly lower than \$8.5 million. FTI's books and records indicate that there were 205 vehicles in FTI's lease portfolio; however, lease payments are only being made on twenty-three of these vehicles, a substantial number of the vehicles are subject to the security of one or more secured creditors, and several vehicles are missing.

The Receiver has found a number of registration irregularities with the MTO as several vehicles that various lenders had financed under lease to companies related to the Bankrupts had been registered under FTI's name with the MTO, and were included in the FTI Portfolio. As well, several lessees have advised the Receiver that they had returned vehicles to FTI, but the vehicles were not located at the Dixie Location or the Belleville Location upon the Receiver's appointment.

Since all of FTI's assets were subject to the security of the Bank and other secured lenders, no assets vested in the Trustee.

### **FKI**

#### *Class I: Stock of Merchandise*

FKI's inventory consists of its Freightliner parts inventory which has a book value of approximately \$149,000 of which approximately \$90,000 is believed to be obsolete based on discussions with former FKI parts and service staff.

Also located at the Belleville Location were various trailers, trucks and cargo vans.

#### *Class II: Fixed Assets, Office Equipment, etc.*

Management has advised that the office equipment and furniture are the property of a related company.

Other fixed assets consisted of tools, shop equipment, tanks, cabinets, tires, pump trucks, etc.

#### *Class III: Buildings and Real Estate*

FTI operated from leased premises and does not appear to own any real estate.

#### *Class IV: Books and Records*

The Receiver took possession of FKI's books and records. Based on the Receiver's preliminary review, it appears that FKI's books and records were adequate in the circumstances.

#### *Class V: Other Assets*

##### 1) Cash

At the date of the Receiver's appointment, FKI had an overdraft position in its operating account with the Bank.

##### 2) Accounts Receivable

As of February 4, 2010, FKI had an outstanding receivable of \$218,308. The Receiver has sent statements to all customers and made phone calls to customers with outstanding accounts.

### **REALIZATION STRATEGY**

1. The Receiver solicited offers from auctioneers to bid on the parts inventory and fixed assets at the Belleville location and these assets have been sold.
2. The Receiver continues to collect lease payments from lessees and to pursue the collection of outstanding accounts receivable. The Receiver is taking steps to verify the location of vehicles

reported to be out on lease and to make arrangements to repossess the vehicles where the account is outstanding and in arrears.

- The Receiver solicited offers from auctioneers to bid on the truck and trailer inventories of FTI and FKI. The Receiver has accepted an offer, subject to the Court's approval, and is making application to Court for approval of the offer.

### LEGAL OPINION

The Trustee has relied upon a written legal opinion from Aird & Berlis LLP dated March 2, 2010 with respect to the validity and enforceability of the security registered by the Bank. The opinion received indicates that the Bank's security is valid and enforceable as against the Trustee.

### SUMMARY OF PROVABLE CLAIMS

The Trustee is not aware of any material changes in the nature of liabilities from that shown on the list of creditors circulated with the notice of the First Meeting of Creditors.

	FTI Claims Per <u>Statement of Affairs</u>	FTI Claims Received To <u>March 18, 2010</u>	FKI Claims Per <u>Statement of Affairs</u>	FKI Claims Received To <u>March 18, 2010</u>
Secured	\$1,509,000	\$1,590,385	\$213,000	\$213,000
Preferred	NIL	NIL	NIL	NIL
Unsecured	<u>\$5,333,591</u>	<u>\$5,211,410</u>	<u>\$5,045,215</u>	<u>\$2,413,023</u>
Total	<u>\$6,842,591</u>	<u>\$6,801,795</u>	<u>\$5,258,215</u>	<u>\$2,626,023</u>

### SECURED CREDITORS AND TRUST CLAIMS

A list of the creditors that appear to have a registered security interest against the assets, property and undertakings of the companies was provided as List "B" to the Statement of Affairs. The following represent the most significant of the known claims:

FTI	Bank of Montreal	\$6,183,092
FKI	Bank of Montreal	\$1,733,800
	Business Development Bank of Canada	\$3,300,000

Claims that rank in priority to secured creditors include claims of Canada Revenue Agency with respect to unremitted source deductions estimated at \$12,000 for FTI, and employee wage claims pursuant to S.81.4 of the *Bankruptcy and Insolvency Act* ("BIA") estimated at \$8,800 for FTI and \$33,000 for FKI.

### LEGAL PROCEEDINGS

The Trustee is not involved in any legal proceedings at this time.

## **ASSET REALIZATION AND PROJECTED DISTRIBUTION**

The Trustee is of the view that the proceeds of realization from the Bankrupts' assets will likely not exceed the secured claims against those assets and the costs of the receivership administration. Consequently, it is expected that there will be no funds available for distribution to the unsecured creditors of the estate.

## **REVIEWABLE TRANSACTIONS AND PREFERENCE PAYMENTS**

We have been advised that ownership of a vehicle (2003 BMW 530i) that had been registered in the name of FKI was transferred to Chanderkant on February 2, 2010. This vehicle was in the possession of FKI's general manager. The general manager has returned the vehicle to the Belleville Location and it remains in the possession of the Receiver at this time.

We have also identified another vehicle (2004 Volvo) that had been registered in the name of FKI that was transferred to a related company, TruckDepot Expedite Inc., on February 2, 2010. This vehicle is currently in the Receiver's possession.

The Trustee is of the view that these transactions may be open to challenge by the Trustee pursuant to Sections 100 and 101 of the BIA.

## **TRUSTEE'S FEES**

The Receiver has agreed to pay for the reasonable professional fees and disbursements of Deloitte & Touche Inc. for the administration of the bankruptcy estate.

Dated at Toronto, in the Province of Ontario, this 19<sup>th</sup> day of March, 2010.

## **DELOITTE & TOUCHE INC.**

In its capacity as Trustee of the Estates of Financial Transport Inc.,  
Freightliner of Kingston Inc., the bankrupts,  
and not in its personal capacity



Robert J. Bougie, CA • CIRP  
Senior Vice President