

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

KSV RESTRUCTURING INC. in its capacity as court-appointed receiver and manager of
PRODUCTIVITY MEDIA INC. AND PRODUCTIVITY MEDIA INCOME FUND LP, and not
in its personal capacity

Plaintiff

and

MNP LLP

Defendant

CASE CONFERENCE MEMORANDUM OF APEX FUND SERVICES (CANADA) LTD.
(Case Conference dated January 15, 2026)

January 12, 2026

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Overview

1. This action arises out of a highly sophisticated and complicated fraud perpetrated by one or more directors and officers of Productivity Media Inc. (“**PMI**”) and Productivity Media Income Fund LP (the “**Canadian Fund**”). The fraud spanned almost a decade. It involved a complex web of phony corporations, fraudulent financial transactions and funds transfers, and impersonations. According to PwC, almost one hundred million dollars was misappropriated.
2. The fraud was discovered in summer 2024. PwC investigated the fraud on behalf of PMI. The investigation took 6 months, culminating in a lengthy affidavit (over 2,500 pages) detailing the fraud. The affidavit was based on PwC’s review of one million records. PwC did not interview any of the witnesses or individuals referred to in the affidavit. PMI filed the affidavit in November 2024, in support of an *ex parte* motion for *Mareva* relief against William Santor and various companies. The relief requested by PMI was granted by this Court on December 2, 2024.
3. On November 19, 2024, at the request of PMI’s creditor, Two Shores, this Court appointed KSV as the Receiver of PMI and the Canadian Fund. It took six months for the Receiver to deliver its statement of claim against PMI’s auditor, MNP, and then another six months to deliver its proposed amended claim to add Apex Fund Services (Canada) Ltd. (“**Apex Canada**”) as a defendant.
4. In its proposed amended claim, the Receiver alleges that Apex Canada breached its duties and obligations owed to PMI and the Canadian Fund in connection with certain administration services it performed pursuant to an Administration Agreement dated May 1, 2012.
5. The Receiver also advances allegations in respect of an investment fund, known as Jersey Productivity Media Lending Fund Limited (the “**Jersey Fund**”), regulated by the Jersey

Financial Services Commission. Certain employees of Apex Fund and Corporate Services (Jersey) Limited (“**Apex Jersey**”) acted as directors of the Jersey Fund. The Receiver alleges, without asserting any claim, that they breached their duties to the Jersey Fund and “by extension” to PMI and the Canadian Fund.

6. The Apex Jersey directors were not directors of PMI or the Canadian Fund. The Jersey Fund is not a party to this action and the Receiver has confirmed that it is not seeking recovery of any losses that may have been suffered by the Jersey Fund. The relevance of these allegations to the claims asserted against Apex Canada is questionable.

7. Against this background, and as detailed further below, Apex Canada’s positions on the issues raised by the Receiver are as follows:

- (a) **Proposed amended claim:** Apex Canada does not oppose the proposed amended claim, subject to a possible motion to strike the allegations related to Apex Jersey;
- (b) **Timetable:** Apex Canada objects to the Receiver’s proposed timetable, which is neither realistic nor reasonable given the complexity of the fraud, the high volume of documentary evidence, third party claims against certain parties residing outside Ontario, and crossclaims as between MNP and Apex Canada; and
- (c) **Security for Costs:** The receivership estate does not have sufficient available assets or liquidity to satisfy any future cost orders. Apex Canada requests a hearing date for a motion for security for costs.

Proposed Amended Statement of Claim

8. Apex Canada does not oppose the proposed amended claim but reserves its right to bring a motion to strike the allegations related to the Jersey Fund.

The Receiver's Proposed Timetable

9. Apex Canada objects to the Receiver's proposed litigation timetable.

10. **First**, before establishing a timetable, the issue of whether the various actions should proceed together by way of a common litigation plan needs to be resolved.

11. In paragraph 15 of its case conference memorandum, the Receiver acknowledges that it is premature to determine this issue before defences are delivered by each of MNP and Apex Canada. It is respectfully submitted that after the pleadings in all the actions have closed, the parties can confer on the issue of whether the actions should proceed together and negotiate a corresponding timetable. If the parties cannot agree, they can return to this Court for further direction.

12. **Second**, the Receiver's proposed timetable is unrealistic and unreasonable:

- (a) As described above, this case arises from a complicated fraud covering a lengthy period of time. It took a combination of PwC and KSV (both highly sophisticated professional firms) almost 18 months to bring forward proposed claims against Apex Canada. PwC commenced its investigation in summer 2024 and the Receiver's proposed pleading against Apex Canada was not delivered until November 2025;

- (b) The Receiver's reliance on a without prejudice letter exchange with Apex Canada in May 2025, before litigation counsel was appointed, is of no assistance. The letter was focussed on the administration agreement and did not make any reference to the Jersey Fund or Apex Jersey. Apex Canada responded to the Receiver's notice letter in June 2025 but heard nothing further until the proposed pleading was delivered in November 2025;
- (c) Apex Canada intends to commence third-party claims against the Estate of William Santor, Andrew Chang-Sang, and John Hills, as well as a crossclaim against MNP for contribution and indemnity. To do so, it requires a reasonable period of time to review and consider the documentary evidence in support of these claims;
- (d) The timetable does not take into consideration that the proposed third-party, Chang-Sang, resides in Spain. He will need to be served via the Hague Convention, and the *Rules* provide 60 days for delivery of a statement of defence;
- (e) The fact that the Receiver commenced claims against the Estate of William Santor, Andrew Chang-Sang, and John Hills (the "**D&O Actions**") is of no assistance because:
 - (i) the Receiver is not seeking to recover the same losses it alleges in its action against MNP and Apex Canada. The D&O Actions are limited to damages equal to what the Receiver alleges was over-compensation paid to each of William Santor, Andrew Chang-Sang, and John Hills; and

- (ii) The Receiver has entered into a settlement with the Estate of William Santor such that the litigation is no longer being pursued by the Receiver. It is not known to Apex Canada whether any assets recovered pursuant to the settlement agreement will be applied as against the losses claimed in the action against MNP and Apex Canada;
- (f) Apex Canada anticipates that a significant volume of documents will need to be collected, reviewed (including for privilege) and produced. It is not reasonable to expect Apex Canada to complete productions on the timeline proposed by the Receiver i.e. by May 2026. By way of example, it took PwC approximately six months to review and understand one million documents;
- (g) The Receiver's proposed timetable does not contemplate a discovery plan. Given what will be an enormous volume of documents, the parties should agree on the method of production, key search terms, custodians, scope, time period and other typical production parameters to help prevent future disputes in respect of their respective productions. The discovery plan is also contingent on the question of whether the various actions should proceed together. The Receiver's suggestion that the parties can simply agree on a 'common litigation plan' prior to examinations for discovery does not resolve this issue; and
- (h) With respect to examination for discovery, the timetable will need to account for the availability of witnesses who have not yet been identified or agreed upon by the parties.

13. Respectfully, the parties should start by agreeing to a timetable for the pleadings. Apex Canada proposes to deliver its Statement of Defence (subject to any motions to strike), third party claims and crossclaim by May 29, 2026. The Receiver can deliver its Reply (if any) by June 30, 2026. There will also need to be defences from the third parties and potential replies to those defences. It is not known whether the third parties will also choose to defend in the main action. Accordingly, pleadings will of necessity take a reasonable period of time.

14. Following the close of pleadings, the parties can (hopefully) agree on whether to proceed with a common discovery/litigation plan and a corresponding timetable. If the parties cannot agree, they can return to this Court for further direction.

Security For Costs Motion

15. Apex Canada requests a hearing date for a motion for security for costs pursuant to rule 56.01(1) of the *Rules of Civil Procedure*. There is good reason to believe that KSV in its capacity as the Receiver has insufficient funds to pay Apex Canada's costs in this action. The costs in this action, if the Receiver is unsuccessful as against Apex Canada, will be significant.

16. In its Receiver Reports, the Receiver has repeatedly acknowledged that the receivership estate has limited liquidity:

- (a) The First Receiver Report states that as of December 5, 2024, the Receiver was operating with minimal funds, relying on approximately \$275,000 USD held in the Debtors' bank accounts as at the date of the Receivership Order. The fact that the Receiver now has access to approximately \$5 million held at a branch located in Toronto is unlikely to be sufficient to cover the costs of multi-party litigation in a complex fraud case. Further, those funds may be subject to claims of others,

including creditors, secured lenders, DIP lenders and the administration charges in the Receivership (as described further below);¹

- (b) The Second Receiver Report states that the Receiver exhausted its borrowing authority of \$750,000. The Receiver acknowledged the existence of significant past-due and accruing professional fees, and that expenditures were outpacing available funds. As a result, it required additional borrowing authority to continue operating. It moved this Court for additional borrowing authority up to \$2,500,000, which was granted by this Court pursuant to an April 16, 2025, Amended and Restated Receivership Order. A receivership sustained through borrowed funds has no independent liquidity and there is no reasonable assurance that sufficient borrowed funds will be available to satisfy unsecured obligations such as adverse costs awards;²
- (c) The Third Receiver Report confirms that there is “limited liquidity in the receivership”. It states that ongoing operations are funded through borrowings authorized under the Amended and Restated Receivership Order and that liquidity remains constrained and funds are consumed by ongoing receivership operations and professional fees;³
- (d) The Receiver’s reliance on the appraised value of property in the Cayman Islands, which has not yet been realized, is problematic. There is no anticipated date by

¹ First Report of KSV Restructuring Inc. as Receiver and Manager of Productivity Media Inc., [available here](#), at p. 5.

² Second Report of KSV Restructuring Inc. as Receiver and Manager of Productivity Media Inc., [available here](#), at pp. 6-7.

³ Third Report of KSV Restructuring Inc. as Receiver and Manager of Productivity Media Inc., [available here](#), at pp. 6-7.

which the sale will be completed. The Receiver simply states in its case conference memorandum that there will be an “eventual sale” of the property. In any event, the appraised value is not sufficient to cover both the professional fees and disbursements of the receivership, as well as any unsecured interests, including cost orders. It is also unclear whether the property or proceeds are subject to any prior claims, including potentially by creditors seeking a tracing order, tax claims, etc.;

- (e) The Receiver’s reliance on future tax credits and a ‘profit-sharing interest in certain third-party film projects” is not sufficient from a security for costs perspective. These assets have not been realized and are speculative. A party cannot defeat a motion for security for costs by pointing to speculative or contingent interests. Courts require a party resisting security for costs to establish the existence of assets that are “sufficient and *readily exigible*” to satisfy a potential costs award. The burden rests squarely on the plaintiff to meet this heightened standard – one that exceeds Apex Canada’s burden to show a “good reason to believe” that costs may be unrecoverable. Courts therefore undertake a “close look at the sufficiency and *quality* of the assets”.⁴

17. In addition, pursuant to the Amended and Restated Receivership Order, the receivership estate assets are subject to:

⁴ *JoBro Film Finance Ltd. v. National Bank of Canada*, [2020 ONSC 975](#) at paras. 9, 46 and 48.

- (a) the Receiver's Charge for all legal fees and disbursements (which would also include PwC's fees), which is in priority to all other interests in the estate; and
- (b) the Receiver's Borrowing Charge which, although subordinate to the Receiver's Charge, is in priority to all other interests in the estate. Given that the borrowing capacity has been increased to \$2,500,000, the Receiver's Borrowing Charge will have a material impact on what is left over to fund any cost awards.⁵

18. In the circumstances, the Receiver has insufficient assets in Ontario to satisfy a potential adverse costs award. The Receiver's Charge and the Receiver's Borrowing Charge are likely to exhaust the estate's assets. To the extent this Court grants security for costs, Apex Canada also intends to seek an order requiring such funds to be segregated as security, not subject to prior claims. In addition, under the administration agreement, Apex Canada is entitled to be indemnified for all costs and expenses it incurs.

19. The Receiver's assertion that security for costs is not appropriate as against a receiver is incorrect at law. The Ontario Superior Court in *Livent. Inc. (Special Receiver) v. Deloitte & Touche* has confirmed that security for costs may properly be ordered against a plaintiff acting through a court-appointed receiver if the defendant shows that a ground in Rule 56.01 exists. The Court then exercises discretion to make whatever order is just, considering all relevant factors including merits, delay, prejudice, proportionality, and the risk of stifling a meritorious claim. In *Livent*, the Court was satisfied by proof of asset insufficiency, and, applying a flexible, merits-sensitive approach, ordered proportionate, staged security for go-forward costs.⁶

⁵ Amended and Restated Receivership Order dated April 16, 2025, [available here](#), at paras. 18-21.

⁶ *Livent. Inc. (Special Receiver) v. Deloitte & Touche*, [2011 ONSC 648](#).

20. The same considerations apply here. PMI is proceeding through a receiver that has acknowledged the estate has persistent liquidity constraints, operates with the assistance of borrowed funds, and is subject to the Receiver's Charge and the Receiver's Borrowing Charge. There is no reasonable assurance of available assets to satisfy a future adverse costs award.

21. In these circumstances, Apex seeks a motion date to deal with the issue of security for costs, following which the parties can work backwards to establish a timetable for the motion.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 12th day of January, 2026.



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PROCEEDING COMMENCED AT TORONTO

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APEX FUND SERVICES (CANADA) LTD.

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