

**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 I LP,
and not in its personal capacity

Plaintiff

and

MNP LLP

Defendant

**CASE CONFERENCE MEMORANDUM OF THE DEFENDANT,
MNP LLP
(Case Conference January 15, 2026, 11:00 a.m.)**

January 9, 2026

AFFLECK GREENE MCMURTRY LLP
Barristers
200 - 365 Bay Street
Toronto, ON M5H 2V1

Kenneth A. Dekker LSO# 40419P
kdekker@agmlawyers.com
Tel: (416) 360-6902

Meredith L. Hayward LSO# 40870V
mhayward@agmlawyers.com
Tel: (416) 360-0121

Adam Casey LSO# 82166I
acasey@agmlawyers.com
Tel: (416) 360-8732

Tel/Fax: (416) 360-2800

Lawyers for the Defendant,
MNP LLP

1. MNP LLP audited the annual financial statements of the Plaintiff, Productivity Media Income Fund (the “**PMI Fund**”), and is sued by its Receiver, KSV Restructuring Inc., for \$280 million in damages based on the allegation, among other things, that MNP failed to comply with generally accepted auditing standards (“**GAAS**”) in relation to its audits of the PMI Fund’s annual financial statements for 2018-2023, inclusive. KSV also claims against MNP on behalf of the general partner and manager of the PMI Fund, Productivity Media Inc. (“**PMI GP**”).

2. It is alleged that MNP failed to detect a complex fraud that took place over the course of eight years and involved the misappropriation of assets by William Santor (“**Santor**”) the CEO of PMI GP. It is also alleged that MNP failed in its annual audits to detect that management of the PMI Fund overvalued the debt portfolio that was its main asset.

MNP’s steps since the original claim was served:

3. Since being served with the Statement of Claim on May 30, 2025, MNP has moved expeditiously to investigate the serious and wide-ranging allegations made against it to prepare its defence.

4. MNP also delivered a detailed Demand for Particulars and Request to Inspect Documents on July 18, 2025, approximately 10 days after the last case conference was held on July 9, 2025. The Plaintiffs delivered a Response to the Demand for Particulars and Request to Inspect Documents a month later, on August 18, 2025 and, after further discussions among counsel, MNP received an Amended Response to the Demand for Particulars on September 19, 2025 that was deemed to be sufficient in order to plead back to the original claim.

The proposed Amended Claim to add Apex:

5. However, before MNP could take steps to plead in response, the Plaintiffs indicated in early September 2025 that they would be amending their claim to add Apex Fund Services (Canada) Ltd. (“**Apex**”) as a second defendant to the action.

6. Apex was the fund administrator for the PMI Fund during the relevant period. Among other things, it did the day-to-day financial record-keeping and helped prepare all of the annual financial statements for the PMI Fund that MNP audited.

7. The Plaintiffs asked that the September 17, 2025 Case Conference that had been booked be adjourned to allow for the amendment of their claim. At that point, it was indicated to counsel that the Plaintiffs expected to deliver their proposed Amended Claim by the end of September. However, it was not provided until about two months later – on November 6, 2025.

8. The amendments made by the Plaintiffs do not just involve the addition of a defendant. The Amended Claim¹ is about 50% longer than the original. It pleads 17 additional pages of new allegations in which, among other things:

- (a) It details in para. 14 the role and responsibilities that Apex is alleged to have had in monitoring the loans by the PMI Fund during the relevant period, and in preparing the annual and semi-annual financial statements for the PMI Fund, including the calculation of its net asset value;

¹ Redlined Fresh as Amended Statement of Claim - Appendix C to the Plaintiffs’ Case Conference Brief

- (b) It makes new allegations in para. 25 about “control accounts” into which amounts advanced to borrowers from the PMI Fund were deposited and claims that neither MNP nor Apex took any steps to confirm the existence of any “control accounts” relating to the fraudulent loans made by the PMI Fund;
- (c) It makes detailed new factual allegations regarding Apex and its alleged breaches in its paras. 48 – 64 that relate to Apex, but will nevertheless require investigation by MNP – both in the preparation of its defence and in anticipation of the crossclaims as between MNP and Apex;
- (d) It makes new allegations in para. 59 regarding an entity that has never been identified before in this proceeding, Productivity Media Lending Fund Limited (“PMLF”). PMLF has been identified as a Jersey Private Fund, that “was created to allow non-Canadian investors the opportunity to participate in Productivity Media;” and
- (e) It alleges in paras. 80-85 that Apex was directly involved in processing the \$100 million in loans at issue that are alleged to have been fraudulent.

9. MNP has had the Plaintiff’s proposed amended claim for about two months. The amendments include key allegations that are not only relevant to MNP’s defence but also to the Counterclaim, Crossclaim and Third Party Claims it will be advancing.

MNP's anticipated Third Party Claim, Counterclaim and Crossclaim:

10. While MNP has indicated it will consent to the Plaintiff's proposed amendments to its claim, MNP does not agree to the proposed timetable for the delivery of pleadings and documentary discovery - which is neither reasonable nor in compliance with the Rules.

11. The Defendants are entitled to a reasonable time to investigate and respond to the allegations against them and it does not lie in the mouth of the Plaintiffs to complain about this, given the lack of any delay by the Defendants.

12. The Plaintiffs, with the assistance of two sophisticated firms, KSV and Pricewaterhousecoopers, have already been afforded significant time, more than eighteen months, to investigate the factual background to the litigation and bring their action in its current form.

13. Regarding the planned Third Party Claims, contrary to the Plaintiffs' Brief MNP has indicated since the initial July 9, 2025 case conference that it anticipates a third party claim against the three members of senior management of the PMI Fund and PMI GP, the Estate of William Santor (the "**Santor Estate**"), Andrew Chang-Sang ("**Chang-Sang**"), and John Hills ("**Hills**") – given that, as members of management, they bore primary responsibility for the accuracy of financial statements.

14. It is not the fault of MNP that Receiver has chosen not to name these three former members of management in this proceeding but instead to pursue them in the three separate actions listed in para. 14 of the Plaintiffs' Brief.

15. At least one of these anticipated Third Parties, Chang-Sang, resides abroad in Spain. MNP already understands that any service on Chang-Sang will need to proceed under the *Hague*

Convention on the Service Abroad of Judicial and Extrajudicial Documents. This is going to take time and Chang-Sang will need time to respond – at least 60 days after service is made, under the *Rules*.

16. MNP has also indicated since the July 9, 2025 case conference that it intends to claim contribution and indemnity against Apex – whether by third party claim or, now, crossclaim. The Plaintiffs now indicate in their Brief (para. 19) that they wrote a demand letter to Apex on May 1, 2025 making the same allegations that are contained in the Amended Claim – but provide no explanation as to why they did not bother naming Apex as a defendant when they commenced their action against MNP on May 23, 2025 or even identifying Apex as a planned defendant at the July 9th case conference.

17. Finally, MNP's engagement was solely to audit the PMI Fund and at all times the management of the PMI Fund was in the hands of its general partner, PMI GP. MNP anticipates a counterclaim against PMI GP in this proceeding for contribution and indemnity in relation to any liability MNP has to its former audit client, the PMI Fund.

Proceeding together:

18. MNP supports the request by Apex that the Receiver's current claims against Santor, Chang-Sang, and Hills proceed together or on the same timeline as this action. There can be little doubt that these other claims arise from, and relate to, substantially the same factual allegations that are made in this action.

Proposed Timetable:

19. This is a complex \$280 Million proceeding that spans an eight-year period dating back almost a decade, to 2016. The defendants should be entitled to fully investigate the allegations before responding – both those in the original claim and those in the amended claim delivered in November. This takes time, and a February 27, 2026 deadline for defences and any third party claims is not reasonable. Nor is the proposed timeline efficient, as it will increase the likelihood that any defences will need to be amended at a later date after a full investigation.

20. This is not a case where an expedited timetable should be imposed on the Defendants due to any delay on their part – as there has been none. To the contrary, it is clear that any delay thus far has more to do with the manner in which the Receiver has chosen to proceed, including:

- (a) The failure to plead sufficient particulars in the original Statement of Claim against MNP;
- (b) The choice to commence three separate actions against Santor, Chang-Sang and Hills rather than naming them as defendants in this action;
- (c) The decision of the Receiver not to name Apex in its initial May 23, 2025 Statement of Claim, notwithstanding identification of its claim against Apex three weeks earlier on May 1, 2025; and
- (d) The Receiver's six-month delay in sending to MNP and Apex its proposed Amended Claim after its initial demand letter.

21. Further, the third party claims will take time to issue and serve and to be defended – especially to the extent that foreign service is required. The proposed timetable of the Plaintiffs, even if it were otherwise reasonable, fails completely to account for this.

22. MNP agrees with the timetable proposed by Apex – that defences be delivered by the end of May 2026, third party claims are issued within ten days thereafter, and defences to the third party claims and any crossclaims or counterclaims, if any, are delivered in accordance with the Rules or the agreement of the parties.

23. Regarding Third Party Claims, it is important to note that MNP reserves the right to commence further Third Party Claims in this proceeding as its investigations continue. The claims against former members of management of the Plaintiffs are the ones that can be identified at this stage.

24. It should be only after the close of pleadings that the parties and their counsel, including counsel for the third parties, should be expected to canvass and agree upon dates for delivery of documentary productions and oral discoveries.

25. Regarding security for costs, MNP also is of the view that there is good reason to believe that Plaintiffs and their Receiver do not have sufficient funds to cover MNP's costs, if the claim is unsuccessful. While MNP is content to refrain from booking a security for costs motion until after the close of pleadings, if Apex's requested motion for security for costs is booked MNP expects to bring a corresponding motion. In any event, it is expected that in opposition to an order for security for costs the Plaintiffs understand that they cannot raise any delay by MNP in bringing such a motion.

November 12, 2026

AFFLECK GREENE MCMURTRY LLP

Barristers
200 - 365 Bay Street
Toronto, ON M5H 2V1

Kenneth A. Dekker LSO# 40419P

kdekker@agmlawyers.com
Tel: (416) 360-6902

Meredith L. Hayward LSO# 40870V

mhayward@agmlawyers.com
Tel: (416) 360-0121

Adam Casey LSO# 82166I

acasey@agmlawyers.com
Tel: (416) 360-8732

Tel/Fax: (416) 360-2800

Lawyers for the Defendant

TO:

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP

Barristers and Solicitors
155 Wellington Street West
35th Floor
Toronto, ON M5V 3H1

Jeffrey Larry LSO# 44608D

jeff.larry@paliareroland.com
Tel: (416) 646-4330

Daniel Rosenbluth LSO# 71044U

daniel.rosenbluth@paliareroland.com
Tel: (416) 646-6307

Mannu Chowdhury

mannu.chowdhury@paliareroland.com
Tel: (416) 646-6302

Tel: (416) 646-4300

Fax: (416) 646-4301

Lawyers for the Plaintiff

KSV RESTRUCTURING INC.
Plaintiff

-and-

MNP LLP
Defendant

Court File No. CV-25-00743761-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

AIDE MEMOIRE OF THE DEFENDANT, MNP LLP

AFFLECK GREENE MCMURTRY LLP

Barristers

200 - 365 Bay Street

Toronto, ON M5H 2V1

Kenneth A. Dekker (40419P)

kdekker@agmlawyers.com

Tel: (416) 360-6902

Meredith L. Hayward (40870V)

mhayward@agmlawyers.com

Tel: (416) 360-0121

Adam Casey (82166I)

acasey@agmlawyers.com

Tel: (416) 360-8732

Tel: (416) 360-2800

Lawyers for the Defendant