

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

TWO SHORES CAPITAL CORP.

Applicant

and

**PRODUCTIVITY MEDIA INC., PRODUCTIVITY MEDIA INCOME FUND I LP,
PRODUCTIVITY MEDIA LENDING CORP. I, and 8397830 CANADA INC.**

Respondents

Court File No. CV-24-00731806-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

**PRODUCTIVITY MEDIA INCOME FUND I LP, by its general partner,
PRODUCTIVITY MEDIA INC., by its court-appointed receiver and manager,
KSV RESTRUCTURING INC.**

Plaintiff

and

**THE ESTATE OF WILLIAM GREGORY SANTOR by its Executrix, SONJA SANTOR,
SONJA SANTOR, also known as SONJA NISTELBERGER, RADIANT FILMS
INTERNATIONAL INC., DARK STAR PICTURES (CANADA) INC., CONCOURSE MEDIA
INC., JOKER FILMS PRODUCTIONS INC., 8397830 CANADA INC., PRODUCTIVITY MEDIA
RELEASING INC., PRODUCTIVITY MEDIA RENTALS INC., PRODUCTIVITY MEDIA
PRODUCTIONS (CAYMAN) LTD., PROSAPIA CAPITAL MANAGEMENT CORP., PROSAPIA**

**HOLDINGS INC., PROSAPIA PROPERTY MANAGEMENT INC., PROSAPIA WEALTH
MANAGEMENT LTD., ERBSCHAFT CAPITAL CORP., STREAM.TV (CAYMAN) LTD.,
STARK INDUSTRIES LIMITED, JOHN DOE,
MARY DOE, and ABC COMPANY**

Defendants

**FACTUM OF THE RECEIVER/PLAINTIFF
(Settlement Approval Hearing – July 15, 2025)**

July 3, 2025

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Inc., Productivity Media (Malta) Ltd.,
and Productivity Media SICAV P.L.C.

PART I – OVERVIEW

1. This factum is filed by KSV Restructuring Inc. (the **Receiver**), in its capacity as court-appointed receiver and manager of Productivity Media Inc. (**PMI**), Productivity Media Income Fund I LP (the **Fund**), Productivity Media Lending Corp. I (**PMLC**), and 8397830 Canada Inc. (**839 Canada**) (collectively, the **Debtors**) in the receivership under Court File No. CV-24-00730869-00CL (the **Receivership**), and in its capacity as court-appointed receiver and manager of PMI, and the Fund and the Plaintiff as defined in the related civil action under Court File No. CV-24-00731806-00CL (the **Fraud Recovery Action**).
2. The Receiver has brought motions before the Ontario Superior Court of Justice (Commercial List) (the **Ontario Court**) to be concurrently heard within the Receivership and the Fraud Recovery Action on July 15, 2025, at 11:00 AM EDT.
3. As set out in the Notices of Motion, the Receiver seeks:
 - a. an order within the Receivership approving the Settlement Agreement reached with Sonja Santor (**Ms. Santor**) and other ancillary relief (the **Settlement Approval Order**); and
 - b. an order within the Fraud Recovery Action varying the *Mareva* injunction originally granted by the Ontario Court on December 2, 2025 (the **Mareva Order**) as contemplated in the Settlement Agreement, including removing Ms. Santor and 839 Canada as *Mareva* Defendants and dismissing the Fraud Recovery Action against Ms. Santor, in her personal capacity, along with ancillary relief (the **Mareva Variation Order**).

4. Both orders are contingent upon Ms. Santor's continuing compliance with the Settlement Agreement, including her ongoing cooperation with the Receiver in maximizing recoveries for the estates of the Debtors.

5. As discussed below, the Receiver submits that the Settlement Agreement represents a fair and commercially reasonable compromise as between the Receiver and Ms. Santor relating to the issues underlying the Fraud Recovery Action and the Receivership, which cannot otherwise be expeditiously or effectively achieved, and it ought to be approved by this Court.

6. This motion is brought on notice to, (a) the investors in the Fund, and (b) the parties to the Plaut Action.¹ While not parties to the Fraud Recovery Action or the Receivership, these entities may be impacted by the relief sought.

PART II – FACTS

7. As presented in the Receiver's Third Report dated June 17, 2025, filed in the Receivership (the **Receiver's Third Report**), on June 16, 2025, the Receiver entered into a Settlement Agreement with Ms. Santor conditional on approval of the Court. Additional factual basis for the Receiver's motions is set out in detail in the Receiver's Third Report, only a portion of which is repeated herein.

Background

8. Ms. Santor is a defendant in the Fraud Recovery Action both in her personal capacity and as executrix of the estate of Mr. Santor (the **Santor Estate**). The Settlement Agreement of which the Receiver seeks approval is only as between the Receiver and Ms. Santor in her personal capacity.²

¹ Affidavit of Service of Sophie Hession, affirmed June 25, 2025.

² Receiver's Third Report at paras 1.0.2, 1.0.7, 1.1.1, 3.1.1-3.1.7.

9. Mr. Santor was the co-founder and Chief Executive Officer of PMI. As detailed in the Statement of Claim in the Fraud Recovery Action, Mr. Santor is alleged to have perpetrated a Fraudulent Scheme against the Fund and PMI that involved the misappropriation of at least \$44 million. Both the August 26, 2024 whistleblower letter, which ultimately led to the Receivership, and subsequent investigation by the Receiver, point to Mr. Santor having misappropriated \$100 million or more.³

10. While it appears that Mr. Santor has dissipated most of the misappropriated funds—both through an extravagant lifestyle and through investments in speculative business ventures—the various Mareva Defendants (including the Santor Estate, Ms. Santor, and the various corporations that Mr. Santor established and which are now controlled by Ms. Santor) hold substantial assets in Canada, the United States, the Cayman Islands, and potentially other jurisdictions that are subject to the *Mareva* Order (collectively, the **Mareva Assets**), which the Receiver is seeking to liquidate for the benefit of affected stakeholders.⁴

Recent Orders within the Fraud Recovery Action and the Receivership

11. The *Mareva* Order was last varied on March 24, 2025. Among other things, with consent of the Mareva Defendants, Justice Black ordered that the *Mareva* injunction will remain in place until trial or further order of this Court.⁵

12. The Receivership Order, originally made on November 19, 2024, was last varied on April 16, 2025, when Justice Dietrich issued an Amended and Restated Receivership Order (the **ARRO**) extending KSV Restructuring Inc.'s appointment as Receiver over the assets, property, and undertakings of 839 Canada.⁶

³ Receiver's Third Report at paras 1.0.8-1.0.9, 2.0.3, 2.0.6-2.0.8.

⁴ Receiver's Third Report at para 1.0.9.

⁵ Receiver's Third Report, Appendix D.

⁶ Receiver's Third Report, Appendix E.

13. The last order made in the Fraud Recovery Action was on May 20, 2025. In light of Mr. Santor's passing on December 28, 2024, the Registrar of the Ontario Court signed an order continuing the Fraud Recovery Action against the Estate of Mr. Santor, by its Executrix, Ms. Santor, and amending the title of proceedings accordingly.⁷

PART III – ISSUES

14. These motions raise four questions:

- a. Should the Settlement Agreement and the related releases be approved?
- b. Should the *Mareva* Variation Order be granted?
- c. Have the affected parties been given sufficient notice?
- d. Should the claim recently asserted by Alan Plaunt and 1401713 Alberta Ltd. (collectively, the **Plaunt Plaintiffs**) that the proceeds of the three-bedroom condominium property located at 203, 12045 Guerin Street, Studio City, California, USA (the **Studio City Property**) are impressed with a constructive trust and other objections raised in the Plaunt Plaintiffs' Statement of Position prevent the Court from granting the Settlement Approval Order and *Mareva* Variation Order?

15. For the reasons that follow, the Receiver respectfully submits that the Court should grant the requested relief.

⁷ Receiver's Third Report, Appendix F.

PART IV – LAW AND ARGUMENT

Approving Settlements in a Receivership

16. There is an overriding public interest that favours the settlement of disputes. Courts encourage and facilitate such settlements because it is sound judicial policy which contributes to the effective administration of justice.⁸

17. In determining whether to approve a settlement in the context of a receivership, the Court generally considers:

- a. whether the settlement is fair and reasonable;
- b. whether the settlement provides substantial benefits to other stakeholders; and
- c. whether the settlement is consistent with the purpose and spirit of the relevant legislation.⁹

18. Further, in receiverships, the Court frames the test for settlement approval through the lens of the long-established *Soundair* principles:

- a. whether the party made a sufficient effort to obtain the best price and has not acted improvidently;
- b. the interests of all parties;
- c. the efficacy and integrity of the process by which the party obtained offers; and
- d. whether the working out of the process was unfair.¹⁰

⁸ *Sable Offshore Energy Inc. v. Ameron International Corp.*, 2013 SCC 37 at paras 11-12.

⁹ *Ontario Securities Commission v. Bridging Finance Inc.*, 2025 ONSC 539 at para 13 (***Bridging Finance***).

¹⁰ *Bridging Finance* at para 14, citing *Royal Bank of Canada v. Soundair Corp.*, 1991 CanLII 2727 (ONCA).

19. To satisfy the *Soundair* criteria in the settlement context, 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. When a receiver wishes to settle a claim for or against the receivership estate, it will meet its obligations so long as the proposed compromise is commercially reasonable.¹¹

20. As discussed below and further detailed in the Receiver's Third Report, the Receiver submits that the Settlement Agreement and the orders sought conform with these principles. The Settlement Agreement is the product of extensive negotiations through counsel, provides significant benefits to the Fund's creditors and investors, and its Court approval is now being sought through a fair and open process on notice to affected parties.

21. At this stage, no distributions of the funds recovered by the Receiver are being proposed other than:

- (a) the payment of professional fees and disbursements reasonably incurred in advancing the interests of affected stakeholders; and
- (b) the payments to Ms. Santor and her legal counsel set out in the Settlement Agreement and discussed below.

22. Before distributions are made to any creditors, investors, or other stakeholders, further approval of this Court will be sought on notice to the affected parties.

¹¹ *IWHL Inc., Re*, 2011 ONSC 5672 at para 6 (Commercial List).

Ongoing Cooperation by Ms. Santor

23. As indicated in the Receiver's Third Report, despite extensive investigation, to date no information has been identified that indicates that Ms. Santor took any role in the Fraudulent Scheme that is the subject of the Fraud Recovery Action.¹²

24. Ms. Santor, through counsel, has provided consistent and ongoing cooperation to the Receiver from the time she was first served. Since the parties last appeared before the Court on March 24, 2025, Ms. Santor has continued to cooperate with the Receiver in identifying, maintaining, and liquidating various Mareva Assets and in dealing with issues arising out of the death of Mr. Santor.¹³

25. The Receiver submits Ms. Santor's ongoing involvement will result in significant efficiencies, cost savings, and higher net recoveries, to the benefit of affected stakeholders. Chief among these beneficiaries will be the Fund's investors.¹⁴

Benefits of the Settlement Agreement

26. The Settlement Agreement provides numerous benefits to affected stakeholders, including:

- a. maximizing realizations and value for the Fund's creditors and investors and minimizing realization costs given Ms. Santor's existing role as Executrix;
- b. related to item (a), obtaining Ms. Santor's cooperation in dealing with the identification, maintenance, storage, and sale of Mareva Assets and dealing with issues arising from the passing of Mr. Santor;

¹² Receiver's Third Report at para 3.0.1.

¹³ Receiver's Third Report at paras 3.0.2.

¹⁴ Receiver's Third Report at para 3.0.3.

- c. avoiding tracing and litigation costs that the Receiver would otherwise be forced to incur, particularly from defences and claims that could be advanced by Ms. Santor as the current legal owner of the VDM Property (defined below) and of other Mareva Assets, as well as the significant delay that would result from this litigation;
- d. avoiding the ongoing Living Expense Amount to which Ms. Santor would otherwise be entitled under the *Mareva Order*; and
- e. minimizing the time to liquidate and distribute the proceeds of the Mareva Assets.

27. Consistent with the purpose and spirit of the *Bankruptcy and Insolvency Act*,¹⁵ and the *Courts of Justice Act*,¹⁶ the Settlement Agreement requires the parties to make reasonable commercial efforts to sell and liquidate the Mareva Assets—including substantial assets in which Ms. Santor holds legal title—with the joint goal of maximizing the value of the realizations.¹⁷

28. As Mr. Santor's spouse and the Executrix of his estate, Ms. Santor is uniquely positioned to aid the Receiver with its ongoing efforts to identify and locate the assets of the Mareva Defendants. Ms. Santor is also able to assist the Receiver with selling and liquidating personal property held in her own name or in Mr. Santor's estate with minimal administrative hassle.¹⁸

29. Further, since Mr. Santor's death, Ms. Santor has been made an officer and director of the various corporate Mareva Defendants. This provides the Receiver and Ms. Santor with significant efficiency in dealing with the records, accounts, and other assets of those corporate entities.¹⁹

30. The most significant known Mareva Asset is a 9,400 sq. ft. luxury home in Vista Del Mar, Grand Cayman, with an appraised value as of September 27, 2023, of US\$8,421,000

¹⁵ RSC 1985 c. B-3.

¹⁶ RSO 1990 c. C.43.

¹⁷ Receiver's Third Report at paras 3.0.2-3.0.4, 3.0.7, 3.2.2, 3.6.1.

¹⁸ Receiver's Third Report at para 3.1.5.

¹⁹ Receiver's Third Report at para 3.1.6.

(the **VDM Property**). It was purchased by Mr. Santor and Ms. Santor as joint tenants. By right of survivorship, upon Mr. Santor's death, Ms. Santor became the VDM Property's sole legal owner.²⁰

31. No allegations have been advanced by the Receiver that Ms. Santor participated in the Fraudulent Scheme detailed in the Statement of Claim, nor is there any evidence uncovered by the Receiver to date indicating this. Ms. Santor has been named in the Fraud Recovery Action as an "Enriched Defendant," with the claim against her based in knowing receipt, unjust enrichment, and constructive trust.²¹

32. As illustrated in *Solarblue LLC v. Aus*,²² if the Fraud Recovery Action were to proceed against Ms. Santor, she would be entitled to a hearing on the merits, including the hearing of *viva voce* evidence on at least the issue of the extent of her knowledge of the Fraudulent Scheme.

33. Aside from the costs and delay of the litigation itself, until the final decision was rendered, Ms. Santor would continue to be entitled to the Living Expense Amount of \$6,025.36 USD per week, or \$313,318.72 USD per year.²³ This is down from the combined \$10,000 USD per week originally ordered by the Cayman Court on December 6, 2024,²⁴ and reciprocated in the Ontario Court's order continuing the *Mareva* Order on December 12, 2024.

34. By contrast, the Settlement Agreement brings an immediate end to the Living Expense Amount and avoids possibly protracted litigation with Ms. Santor. The Settlement Agreement also facilitates an expedited and uncontested sale of the Mareva Assets, including the VDM Property, with Sonja's full cooperation onsite in the Cayman Islands. The vast majority of the anticipated

²⁰ Receiver's Third Report at para 3.2.2.

²¹ Receiver's Third Report at para 3.0.1; Statement of Claim, issued November 22, 2024.

²² [2014 ONSC 3482](#).

²³ Receiver's Third Report at para 3.3.1.

²⁴ Receiver's Third Report, Appendix C.

proceeds from the sale of the VDM Property will go to the Receiver for the benefit of affected stakeholders, most notably the investors in the Fund.²⁵

35. After weighing these risks and benefits, the Receiver is strongly of the view that the Settlement Agreement is in the best interests of PMI, the Fund, and affected stakeholders. It reflects a fair and reasonable compromise in exchange for the time and cost savings and the certainty that flow from Ms. Santor's ongoing cooperation in maximizing recoveries.

The Releases

36. As detailed in paragraphs 14-16 of the Settlement Agreement, and as agreed in subsequent discussions with counsel for Ms. Santor and the Funds' investors, to provide finality and certainty, the parties have contemplated various releases of liability being provided and their approval sought from the Court. This includes an order pursuant to which:

- a. Ms. Santor releases the Receiver, PMI, the Fund, the Fund's investors, and 839 Canada from any claims or liability arising from or related to the Fraud Recovery Action; and
- b. PMI, the Fund, the Fund's investors, and 839 Canada release Ms. Santor, in her personal capacity, from any claims or liability arising from or related to the Fraud Recovery Action.²⁶

37. The releases of Ms. Santor are contingent upon her continued cooperation with the Receiver and would be voided by the discovery of any deliberate and material misrepresentation by Ms. Santor.²⁷ No release is being sought for any defendant in the Fraud Recovery Action other than Ms. Santor.²⁸

²⁵ Receiver's Third Report at paras 3.2.2-3.2.5, 3.3.2, 3.4.1.a.

²⁶ Receiver's Third Report at para 3.10.1; Appendix G at paras 14-17.

²⁷ Receiver's Third Report at para 3.10.2; Appendix G at paras 7-10.

²⁸ Receiver's Third Report at para 3.10.5.

38. The Receiver submits that whether an order ought to be made granting the above-noted third-party releases as part of approving the Settlement Agreement should be determined by reference to the principles in *ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp (Metcalfe)*.²⁹ The criteria from *Metcalfe*, while originating in plans of compromise or arrangement under the *Companies' Creditors Arrangement Act*,³⁰ have been applied in the context of proposals under the *Bankruptcy and Insolvency Act*³¹ in *Kitchener Frame Ltd., Re*³² and *Innovative Coating Systems Inc., Re*.³³ The *Metcalfe* criteria can similarly help guide the Court in considering the Receiver's Settlement Agreement with Ms. Santor, with its proposed releases and cooperative steps to be taken to liquidate various assets for the benefit of the Fund's creditors and investors. The *Metcalfe* criteria, with necessary modifications, include:

- a. the parties to be released are necessary and essential to [maximizing recoveries for creditors and investors] of the debtor;
- b. the claims to be released are rationally related to the purpose of the [Settlement Agreement] and necessary for it;
- c. the [Settlement Agreement and realizations] cannot succeed without the releases;
- d. the parties who are to have claims against them released are contributing in a tangible and realistic way to the [Settlement Agreement and realizations]; and
- e. the proposal will benefit not only the debtor companies but creditors generally.³⁴

²⁹ [2008 ONCA 587](#), leave to appeal refused 2008 CanLII 46997 (SCC) (*Metcalfe*).

³⁰ RSC 1985, c C-36.

³¹ RSC 1985, c B-3.

³² [2012 ONSC 234](#).

³³ [2017 ONSC 3070](#).

³⁴ *Metcalfe* at para 71.

39. As detailed in the Receiver's Third Report and in the paragraphs above, Ms. Santor's cooperation is necessary and essential to maximizing recoveries within the Receivership and avoiding various costs and delays. She will be contributing to those recoveries and cost savings in a tangible and realistic way. The release of potential claims against Ms. Santor—including those of investors in the Fund—are rationally related to and necessary for the Settlement Agreement.

40. The primary beneficiaries of the Settlement Agreement will include (a) any *bona fide* third-party creditors of the Debtors, including potentially the Plaintiff Plaintiffs, and (b) the Fund investors from whom Ms. Santor is seeking the certainty and finality of the proposed releases.

The Mareva Variation Order

41. In addition to the relief related to Ms. Santor, the proposed *Mareva* Variation Order recognizes that 839 Canada is now a Debtor in the Receivership, placing its assets under the control of KSV as Receiver. Leaving 839 Canada as a *Mareva* Defendant would needlessly increase procedural costs and impair the Receiver's ability to efficiently deal with its assets.

42. The *Mareva* Variation Order contains various relief necessary to carrying out the Settlement Agreement. If Ms. Santor is left subject to the current *Mareva* Order, she would be unable to move on with her life and obtain the certainty and finality that the Settlement Agreement is designed to achieve. This includes her ability to freely use her personal TD Account and to cease providing daily screenshots of her TD Account activity to counsel for the Receiver as currently required under the *Mareva* Order. It also includes her removal as one of the "Enriched Defendants" in the Fraud Recovery Action, subject to the terms of the Settlement Agreement, which make any release of liability conditional upon Ms. Santor's ongoing cooperation and voidable upon the discovery of any material misrepresentation by her.

43. A key provision in the current *Mareva* Order that will cease is Ms. Santor's entitlement to the Living Expenses Amount. This will be of significant financial benefit to the Fund's estate.

44. The *Mareva* Variation Order also enables the Receiver, with ongoing cooperation from Ms. Santor, to proceed with liquidating Mareva Assets for the benefit of creditors and investors.

45. Under the proposed *Mareva* Variation Order, the VDM Property will remain subject to the *Mareva* injunction, and Ms. Santor will remain prohibited from dealing with various assets without the express written consent of the Receiver.

46. Along with the proposed Settlement Approval Order, the *Mareva* Variation Order strikes a carefully negotiated balance. Both orders are designed to maximize recoveries for affected stakeholders and avoid the costs and delay that would come with contested litigation.

Service on the Fund's Investors

47. In light of the third-party releases discussed above, the Receiver has endeavoured to provide notice of these motions to all investors in the Fund. To the best of the Receiver's knowledge, the LP Units of the Fund are held by the following entities:

LP Unit Holder(s)	LP Unit %
Investors who purchased through Westfield Partners Ltd.	60.75%
Qwest Productivity Media Income Trust	32.57%
Access Private Income LP	3.49%
Stewardship Alternative Income Fund	2.27%
Kensington Hedge Fund I	0.87%
Luigi Ruffolo	0.02%
Ivy Krause-MacDonald	0.02%
Productivity Media Inc.	0.01%
Sonja Santor	0.01%

48. As set out in the Affidavit of Service of Sophie Hession, affirmed June 25, 2025, the materials in support of the Receiver's motions (the **Motion Materials**) were served by email to:

- a. the managers of Qwest Productivity Media Income Trust, Stewardship Alternative Income Fund, and Kensington Hedge Fund I;

- b. counsel for Access Private Income LP and Ms. Santor; and
- c. Luigi Ruffolo and Ivy Krause-MacDonald.³⁵

49. As noted in the above table, 60.75% of the LP Units were purchased through Westfield Partners Ltd. (**Westfield**) as a registered exempt market dealer. The Motion Materials have been served on Loopstra Nixon LLP, who is representing both Westfield and an ad hoc committee of investors in the Fund.

50. The Motion Materials have also been served on Koskie Minsky LLP and Wright Henry LLP, who represent some—but not all—of the investors who purchased LP Units through Westfield. They have indicated that they support the Receiver's motions, with some minor edits requested to the terms of the Settlement Approval Order, which have now been incorporated.

51. In serving the Motion Materials on Loopstra Nixon LLP, our firm has requested the assistance of that firm and their client, Westfield, in ensuring that the Motion Materials are forwarded to the Steering Committee of investors to be distributed to holders of LP Units who purchased them through Westfield and are not currently represented by counsel listed on the Service List.

52. To date, no objections to the Receiver's motions have been received from any party served other than the Plaintiff Plaintiffs.

Service on the Parties to the Plaintiff Action

53. As part of the overall settlement arrangement, the Receiver and Ms. Santor have requested an order that Ms. Santor and Fogler Rubinoff LLP receive any further proceeds of the Studio City Property (as defined in the Receiver's Third Report) free and clear of any competing claims. This will provide necessary immediate cash flow for Ms. Santor and the payment of

³⁵ On June 25, 2025, we received notification that Ivy Krause-MacDonald has retained Stock Stewart LLP to provide counsel in respect to this matter.

reasonable fees and disbursements incurred by Ms. Santor's counsel in representing the Mareva Defendants, including in negotiating the Settlement Agreement.

54. To ensure that the parties to the Plaunt Action have an opportunity to state their position to the Court, the Motion Materials have been served on counsel for all parties who have participated in the Plaunt Action to date (the **Plaunt Action Parties**).

55. As set out in the Statement of Position served by counsel for the Plaunt Plaintiffs on June 27, 2025, the Plaunt Plaintiffs oppose not only the remaining Studio City Proceeds being paid to Ms. Santor and her legal counsel, but also oppose many of the key aspects of the Settlement Agreement. This includes, *inter alia*, the release of the *Mareva* Order as against 839 Canada and Ms. Santor (except for her interest in the VDM Property) and the authorization of the Receiver and Ms. Santor to sell the Mareva Assets, notwithstanding the *Mareva* Order.

56. As detailed below, the Receiver's position is that the only recently asserted, speculative, and time-barred constructive trust claim of the Plaunt Plaintiffs to the Studio City Proceeds and potentially other as-yet-unidentified assets should not be allowed to prevent approval of the Settlement Agreement. This is particularly so given:

- a. the \$20+ million dollars that Mr. Santor diverted from the Fund in the time leading up to his purchase of the Studio City Property, of which at least \$8,360,000 was diverted to 839 Canada in the lead-up to 839 Canada wiring the funds for the purchase of the Studio City Property;
- b. the additional \$80+ million dollars (and potentially more) that Mr. Santor appears to have diverted from the Fund in the years that followed, particularly during the period in which he paid for the construction of the VDM Property and acquired other Mareva Assets; and

- c. the limited—and, as detailed below, unreliable—tracing evidence provided by the Plaunt Plaintiffs to date.

57. Aside from the Plaunt Plaintiffs' claim appearing to be statute-barred, the fact that the purchase money for the Studio City Property came from 839 Canada means that any claim by the Plaunt Plaintiffs that the proceeds of their 2009-2010 loans to Prosapia Wealth Management Ltd. were potentially diverted to 839 Canada—and presumably intermingled with the millions diverted to 839 Canada from the Fund—can appropriately be dealt with as claims in the Receivership of 839 Canada.

58. To ensure the parties to the Plaunt Action have an opportunity to state their position to the Court, the Motion Materials have been served on counsel for all parties who have participated in the Plaunt Action to date (the **Plaunt Action Parties**).³⁶

59. The Plaunt Action Parties were not served with notice of any of the prior steps taken in the Receivership or the Fraud Recovery Action because until Mr. Aiello's May 17, 2025 letter, the Receiver had not been notified of any claim being asserted against any of the specific assets of the Debtors, nor against any specific assets frozen by the *Mareva* Order. To date, as confirmed by their Statement of Position, the only such asset identified by the Plaunt Plaintiffs is the Studio City Proceeds.

³⁶ The only parties to the Plaunt Action not served are Prosapia Consulting Inc. and Tristar Film Finance Corp. It appears that neither corporation has ever participated in the Plaunt Action. As set out in the Affidavit of Service of Sophie Hession, affirmed June 25, 2025, at paras 9-10, Tristar Film Finance Corp. was dissolved on January 2, 2012, and Prosapia Consulting Inc. on November 30, 2018.

60. As noted above, no distributions of the funds recovered by the Receiver have been made other than:

- a. to Mr. Santor and Ms. Santor for court-ordered living expenses and legal costs as required by *CIBC v. Credit Valley Institute of Business and Technology*³⁷ and judicial comity with the Cayman Court's December 6, 2024 order;³⁸ and
- b. for professional fees and disbursements incurred to advance the interests of the affected stakeholders.

61. Any distributions by the Receiver to creditors or investors—including potentially the Plaintiff Plaintiffs as creditors claiming through 839 Canada—will only be made with the express approval of the Court on notice to the affected parties.

Incomplete Tracing of the Funds Used to Purchase the Studio City Property

62. As detailed in the Receiver's Third Report, the Studio City Property was purchased by Mr. Santor and Ms. Santor, as joint tenants, on January 3, 2018, for \$1,150,000 USD in cash. It was mortgaged on July 30, 2024, for \$975,000 USD, and then sold on November 25, 2024—one week prior to the *Mareva* Order—for \$1,500,000 USD.³⁹ But for the actions of the Receiver in applying for and obtaining the *Mareva* Order on an urgent, *ex parte* basis, there would be no frozen Studio City Proceeds to be used for the benefit of any of the stakeholders served with the within motions.

63. The Plaintiff Plaintiffs, through counsel, asserted for the first time on May 17, 2025, that the likely source of the cash used to purchase Studio City was \$2.85 million CAD (the **Media House Settlement**) that Mr. Santor received in or around October 2017 from settling litigation with Media House Capital (Canada) Corp. (the **Media House Action**).⁴⁰

³⁷ [2003 CanLII 12916](#).

³⁸ Receiver's Third Report, Appendix C.

³⁹ Receiver's Third Report at paras 3.6.1, 3.7.1-3.7.2.

⁴⁰ Receiver's Third Report at para 3.8.6, Appendix N.

64. This assertion did not consider the C\$21,410,000 that Mr. Santor misappropriated from the Fund between March 30, 2016 and December 22, 2017, which funds were wired from the Fund to bank accounts held by 839 Canada and Concourse Media Inc. and controlled by Mr. Santor.⁴¹

65. As detailed in the Affidavit of Krista Mooney of PwC filed in support of the *Mareva* Order and posted on the Receiver's website, by January 2, 2018, Mr. Santor had already diverted C\$8,360,000 from the Fund to 839 Canada, of which only C\$1,123,669.21 had been repaid.

66. The Studio City Property was purchased using two wires from 839 Canada:

- a. The initial deposit of US\$34,500 on November 21, 2017; and
- b. The final payment of US\$1,096,144.10 on January 2, 2018.⁴²

67. While the Receiver's investigations have confirmed that the purchase money for the Studio City Property came from 839 Canada, as a result of the seven-year document retention policy of the National Bank of Canada (**NBC**), the bank statements provided to the Receiver pursuant to the December 2, 2024 *Mareva* Order only date back to December 1, 2017. Thus, despite the strong inferences that can be drawn that the amounts paid by 839 Canada for the purchase of the Studio City Property came from the funds that Mr. Santor diverted from the Fund to 839 Canada, the Receiver is unable to fully trace the source of the purchase money.⁴³

68. As can be seen in the Motion Record attached to the Receiver's Third Report as Appendix "M", the Plaintiff Plaintiffs filed no bank records of any kind in support of their motion for a preservation order that was scheduled to be heard—but did not proceed—on May 27, 2025.

⁴¹ Receiver's Third Report at paras 3.6.2-3.6.3, 3.8.8.

⁴² Receiver's Third Report at para 3.6.4.

⁴³ Receiver's Third Report at paras 3.6.4, 3.8.8-3.8.9.

69. Based on their Statement of Position, it appears that the only bank records the Plaintiff Plaintiffs have available to them are the “Redacted Bank Statements” that Mr. Santor provided to them through counsel sometime around March 2024. As detailed below, these Redacted Bank Statements appear to have been falsified by Mr. Santor and cannot be relied upon.

70. In light of Mr. Santor’s death and NBC’s seven-year document retention policy, unless the Plaintiff Plaintiffs have evidence they chose not to provide with their Statement of Position, it seems unlikely that the Plaintiff Plaintiffs will be able to prove any tracing claim and rebut the strong inference that can be drawn from available evidence that Mr. Santor purchased the Studio City Property using funds diverted from the Fund to 839 Canada.

71. With so many transactions passing through the 839 Canada bank accounts and no reliable bank statements available from prior to December 2017, no direct tracing appears possible. Any claims the Plaintiff Plaintiffs and the Fund wish to assert against 839 Canada should be addressed within the Receivership. Speculation by the Plaintiff Plaintiffs over seven years later as to how Mr. Santor used the funds he received from settling the Media House Action should not prevent the approval of the Settlement Agreement with its significant benefits for all affected stakeholders.

The Falsified Bank Statements

72. As detailed in the June 30, 2025 letter sent from the Receiver’s counsel to the Plaintiff Action Parties following service of the Plaintiff Plaintiffs’ Statement of Position, the Redacted Bank Statements referenced in paragraphs 26-28 of the Statement of Position appear to have been falsified by Mr. Santor.⁴⁴

⁴⁴ Affidavit of Sophie Hession, affirmed July 3, 2025, at para 4, Exhibit C.

73. While the Redacted Bank Statements provided to the Plaintiff Plaintiffs by Mr. Santor and the unredacted version provided by NBC pursuant to the *Mareva* Order (the **Unredacted Bank Statements**) are similar, on closer examination, it becomes apparent the Redacted Bank Statements have been altered.

74. For the December 2017 statement, two of the transactions have different descriptions, three transactions have different amounts, and the balances for the first half of the month do not match.

75. Of particular note, the record of the December 15, 2017 transaction in the two versions differs by \$1,000,000. The Redacted Bank Statements show a December 15, 2017 wire of \$2,287,400 and the Unredacted Bank Statements show a wire of \$1,287,400. Emails from Mr. Santor's Productivity Media email account, copies which were enclosed with the June 30, 2025 letter, confirm that the \$1,287,400 amount in the Unredacted Bank Statements is accurate.

76. Similarly, while the Redacted Bank Statements appear to indicate that Mr. Santor transferred \$2,832,477.29 on October 12, 2017 (presumably the Media House Settlement) from his personal account at NBC to 839 Canada's account, this does not line up with October 12, 2017 emails between Mr. Santor and NBC that indicate he only transferred \$1 million.⁴⁵

77. While unfortunately NBC is unable to provide Unredacted Bank Statements from prior to December 2017 to definitively confirm what occurred, it appears likely that Mr. Santor made further alterations to the Redacted Bank Statements. This is the only way in which the \$1,032,477.28 discrepancy between the starting balances of the redacted and unredacted versions of the December 2017 statement would not have been readily apparent from a review of the October 2017 and November 2017 Redacted Bank Statements.

⁴⁵ Affidavit of Sophie Hession, affirmed July 3, 2025, at para 4, Exhibit C.

78. While no reliable bank statements are available from prior to December 2017, based on emails from that time and the 839 Canada investment statements sent to Mr. Aiello on July 3, 2025, it appears that the vast majority of the \$1,374,235.86 withdrawn on January 2, 2018 to purchase the Studio City Property came from sources other than the Media House Settlement and there is no conclusive evidence that the balance of the money used to purchase the Studio City Property came from the Media House Settlement.⁴⁶

The Plaunt Plaintiffs' Claim to the Studio City Proceeds Is Statute-Barred

79. Aside from the lack of reliable tracing evidence detailed above, more fundamentally, any claim that the Plaunt Plaintiffs wish to assert against the proceeds of Studio City is time-barred under sections 4 and 5 of the *Limitations Act, 2002*, SO 2002, c 24, Sch B (the ***Limitations Act***).

80. It could be argued that the limitation period for the Plaunt Plaintiffs' claim began to run as soon as the loans they purportedly made to Prosapia Wealth Management Ltd. in 2009 and 2010 fell due and were not paid.

81. Based on the pleadings in the Plaunt Action, it appears that the Plaunt Plaintiffs' argument will be that, pursuant to s. 5(1)(a)(iv) of the *Limitations Act*, their claim against Mr. Santor was not discovered until many years later. While the Plaunt Plaintiffs appear to argue that, until the conclusion of the Media House Action commenced in or around 2012, which Mr. Santor purportedly claimed he was conducting "on behalf of Plaunt," a new proceeding would not have been "an appropriate means to seek to remedy" the Plaunt Plaintiffs' loss.⁴⁷

82. The test for discovery under section 5 of the *Limitations Act* has both a subjective and an objective component. The question is not merely when Mr. Plaunt—in his personal capacity and as the directing mind of 1401713 Alberta Ltd.—subjectively discovered the Plaunt Plaintiffs' claim

⁴⁶ Affidavit of Sophie Hession, affirmed July 3, 2025, at para 5, Exhibit D.

⁴⁷ Receiver's Third Report, Appendix M, Statement of Claim at para 25.

against Mr. Santor, but when “a reasonable person with the abilities and in the circumstances of” Mr. Plaunt, first ought to have known that the Plaunt Plaintiffs had incurred injury, loss, or damage caused by an act or omission of Mr. Santor and that, “having regard to the nature of the injury, loss or damage, a proceeding would be an appropriate means to seek to remedy it.”

83. Despite the millions of dollars purportedly at stake, according to paragraph 25 of his Statement of Claim, Mr. Plaunt never obtained “actual particulars” of the litigation Mr. Santor claimed he had commenced on the Plaunt Plaintiffs’ behalf, “or even a copy of the pleadings.” Year after year, Mr. Plaunt was seemingly content to rely on the assurances of Mr. Santor “that the said litigation was proceeding albeit slowly.” Despite Mr. Santor being “deliberately vague about any specifics,” Mr. Plaunt seems never to have insisted that Mr. Santor provide particulars, a copy of the court filings, or any other corroboration for his “deliberately vague” assurances.⁴⁸

84. In the decade between 2012 and 2022, it appears that Mr. Plaunt took no steps to confer with legal counsel or otherwise independently verify what he was being told by Mr. Santor. Had Mr. Plaunt conferred with counsel or gone to the courthouse himself, a court search would have revealed that—as the Plaunt Plaintiffs eventually pleaded in paragraphs 26-27 of the Statement of Claim—“In fact Santor had not initiated litigation against Media House [...] nor was it continuing,” and that “Santor instead had only defended and commenced a counterclaim in an action commenced against himself personally and against Prosapia WML by Media House, Gilbert, and another plaintiff.” The search would also have revealed, as pleaded in paragraph 28, that “the Media House Action, including the aforementioned counterclaim, were dismissed ‘*on consent*’ in October 2017.”⁴⁹

85. A reasonable person with Mr. Plaunt’s abilities and circumstances—i.e. a sophisticated investor with millions invested through Mr. Santor—at a minimum, ought to have requested a copy

⁴⁸ Receiver’s Third Report, Appendix M, Statement of Claim at paras 25-26.

⁴⁹ Receiver’s Third Report, Appendix M, Statement of Claim at paras 25-28.

of the court filings and/or consulted a lawyer to learn what could be done to ascertain the status of Mr. Santor's purported legal action.

86. While this reasonably ought to have been done within the first year or two of Mr. Santor's representations—i.e. in 2012 or 2013—surely by the time Mr. Santor stopped responding to Mr. Plaunt's questions about the legal action in mid-2019 to early 2020, Mr. Plaunt ought to have engaged counsel to investigate.

87. By the time it appears Mr. Plaunt finally engaged counsel in early 2023, the Plaunt Plaintiffs' claim against Mr. Santor and the other defendants had long been statute-barred. While the emails attached to the Receiver's Third Report showing Mr. Santor's lack of responsiveness make it abundantly clear that a reasonable person in Mr. Plaunt's circumstances ought to have made inquiries into the status of the purported litigation,⁵⁰ even without those emails, the facts as pleaded in paragraphs 24-28 of the Plaunt Plaintiffs' Statement of Claim are sufficient to establish that the Plaunt Action is time-barred.

88. This pattern of delay has continued into more recent months. The November 19, 2024 Receivership Order, the December 2, 2024 *Mareva* Order, and the motion records supporting those orders—including the extensive Affidavits of Andrew Chang-Sang of PMI and Krista Mooney of PwC detailing Mr. Santor's Fraudulent Scheme and the known assets of the Mareva Defendants—were published on the Receiver's website in early December 2024. The Receivership Order, the *Mareva* Order, and Mr. Santor's death were also the subject of multiple media articles. Plaunt Plaintiffs' counsel, Mr. Aiello, was then served with a Notice of Change of lawyer on January 22, 2025, indicating that DLA Piper (Canada) LLP was taking over as counsel for PMI in the Plaunt Action.

⁵⁰ Receiver's Third Report at paras 3.9.2-3.9.6, Appendix O.

89. Despite all this, it was not until several months later, on May 17, 2025, that for the first time Mr. Aiello advised the Receiver, through counsel, that his clients were asserting a constructive trust claim over the Studio City Property proceeds. As noted above, Mr. Aiello mistakenly asserted that the “purchase [of the Studio City Property] seems to predate all [Mr. Santor’s] activities that are the subject of the Receivership and related proceedings,”⁵¹ failing to note the findings of PwC that by the time of the purchase of the Studio City Property, Mr. Santor had already diverted at least \$21,410,000 CAD from the Fund into the bank accounts of Concourse Media Inc. and 839 Canada.⁵²

90. Further, contrary to the assertions in paragraphs 10-12 and 24 of the Statement of Position, at no point has the Plaunt Action as a whole been stayed by the Receivership, the *Mareva* Order, or otherwise. The general scheme of the *Bankruptcy and Insolvency Act* is that civil actions are stayed against the insolvent person.⁵³ The stay does not apply to the other defendants in a pre-existing action. The *Mareva* Order contains no stay provisions. While the Receivership Order did stay any claims against the Debtors, it did not stay the Plaunt Plaintiffs’ claim against any named defendants other than PMI. While under rule 11.01 Mr. Santor’s death automatically stayed any action as against Mr. Santor personally, the Plaunt Plaintiffs have been at liberty to apply for the Court for a continuation order under rule 11.02. The Receiver did this in the Fraud Recovery Action.

91. The Plaunt Plaintiffs’ only recently asserted and untenable claim against the Studio City Property proceeds should not be allowed to prevent the Settlement Agreement between the Receiver and Ms. Santor from proceeding. This is particularly so given the far greater amount that Mr. Santor misappropriated from the Fund and the many stakeholders who would be negatively impacted if the Settlement Agreement cannot proceed. Most of these stakeholders are workers

⁵¹ Receiver’s Third Report at paras 3.8.5, Appendix N.

⁵² Receiver’s Third Report at paras 3.6.2-3.6.4, 3.8.8-3.8.9.

⁵³ *Nicholson, Re*, [2025 ONSC 1069](#) at para 132.

whose pensions are at stake. Unlike Mr. Plaunt, these workers did not deal directly with Mr. Santor, nor have years of warning signs that something was amiss.

92. Considering the Settlement Agreement as a whole and all of the surrounding circumstances, it would be neither fair nor just for the Plaunt Plaintiffs' only recently asserted and statute-barred claim against the Studio City proceeds to prevent the Settlement Agreement from being approved by the Court. The Settlement Agreement and the related relief sought will enable the Receiver to move forward with maximizing realizations for all stakeholders with claims against PMI, the Fund, or 839 Canada.

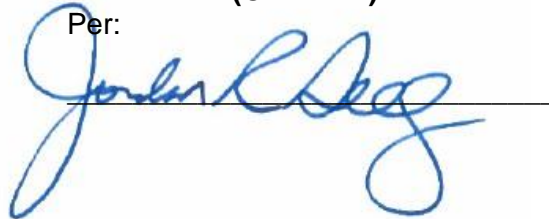
PART V - CONCLUSION

93. For the reasons set out above and detailed in the Receiver's Third Report, the Settlement Agreement is fair and reasonable, benefits all stakeholders with non-statute-barred claims, is consistent with the *Bankruptcy and Insolvency Act* and the *Courts of Justice Act*, involved a significant effort by the Receiver to maximize realizations, and has been negotiated with integrity and presented for approval through a fair and open process. The Receiver respectfully requests that the Court grant the above relief.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 3rd day of July, 2025.

DLA PIPER (CANADA) LLP

Per:



SCHEDULE “A”

LIST OF AUTHORITIES

Sable Offshore Energy Inc. v. Ameron International Corp., 2013 SCC 37

Ontario Securities Commission v. Bridging Finance Inc., 2025 ONSC 539

Royal Bank of Canada v. Soundair Corp., 1991 CanLII 2727

IWHL Inc., Re, 2011 ONSC 5672

970708 Ontario Inc. v. PCS Security Systems, 2014 ONSC 3482

Metcalfe & Mansfield Alternative Investments II Corp., (Re), 2008 ONCA 587

Kitchener Frame Limited (Re), 2012 ONSC 234

In the matter of the Proposal of Innovative Coating Systems Inc., 2017 ONSC 3070

Canadian Imperial Bank of Commerce v. Credit Valley Institute of Business and Technology
2003 CanLII 12916

Nicholson, Re, 2025 ONSC 1069

SCHEDULE “B”

RELEVANT STATUTORY PROVISIONS

Rules of Civil Procedure, RRO 190, Reg 194

Effect of Transfer or Transmission

11.01 Where at any stage of a proceeding the interest or liability of a party is transferred or transmitted to another person by assignment, bankruptcy, death or other means, the proceeding shall be stayed with respect to the party whose interest or liability has been transferred or transmitted until an order to continue the proceeding by or against the other person has been obtained. R.R.O. 1990, Reg. 194, r. 11.01; O. Reg. 14/04, s. 9.

Order to Continue

11.02 (1) Where a transfer or transmission of the interest or liability of a party takes place while a proceeding is pending, any interested person may, on filing an affidavit verifying the transfer or transmission of interest or liability, obtain on requisition from the registrar an order to continue (Form 11A), without notice to any other party. R.R.O. 1990, Reg. 194, r. 11.02 (1).

(2) An order to continue shall be served forthwith on every other party. R.R.O. 1990, Reg. 194, r. 11.02 (2).

TWO SHORES CAPITAL CORP.

and

PRODUCTIVITY MEDIA INC., ET AL

Applicant

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT
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