

**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  
and PRODUCTIVITY MEDIA LENDING CORP. I**

Respondents

**APPLICATION under section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c c.43, as amended**

**AIDE MEMOIRE OF THE PENSION PLAN TRUSTEES**

1. The trustees of 17 different pension plans (the "**Pension Plan Trustees**")<sup>1</sup> who invested pension fund assets in Productivity Media Income Fund I LP and have lost considerable amounts due to the alleged fraud of the former CEO of Productivity Media Inc., take no position on the motion by Two Shores Capital Corp. ("**Two Shores**") to, amongst other things, restrict KSV's activities as the Court-appointed receiver of the respondents, until such time as Two Shores' security is either repaid in full or assigned.

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<sup>1</sup> A list of the pension funds, and the amounts they invested in units of Productivity Media Income Fund LP are found in Schedule "A". Koskie Minsky LLP also represents various health and other benefit trust funds who invested in the limited partnership.

2. The Pension Plan Trustees wish to report on the status on co-ordinating their investment in buying out Two Shore's security position and the legal and regulatory conditions required, given that such an investment involves pension plan assets and are subject to pension regulatory statutes such as *Pension Benefits Act*, R.S.O. 1990, c. P.8.

3. For example, Section 62 of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, requires that any person investing "the assets of a pension fund shall ensure the investment is selected in accordance with the criteria set out in this Act" e.g. with the "care, diligence, and skill" that "a person of ordinary prudence" would exercise. The common law duties of trustees follow the same contours.

4. The Pension Plan Trustees have arranged to invest in a syndicate (which includes, among others, other union-sponsored trust funds, also represented by Koskie Minsky LLP – collectively, the "**Non-Pension Trustees**") that will take an assignment of Two Shore's security. Sufficient funds necessary to take an assignment of Two Shore's security already sit in an escrow account with Westfield Partners Ltd. (the trustee entity that will hold the security for the syndicate). Further, the Pension Plan Trustees, along with the Non-Pension Trustees, have the majority votes of the syndicate, so that if the steering committee members (the "**Steering Committee**") representing the syndicate (4 out of 5 of whom are represented by Koskie Minsky LLP) vote to complete the assignment, it will happen, subject to no opposition from the applicable pension regulators.

5. Due to both their statutory and common law duties,<sup>2</sup> the Pension Plan Trustees are required to abide by pension fiduciary duties that the unregulated commercial counterparties in this case do

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<sup>2</sup> Section 62 of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended, for example, requires that those investing "the assets of a pension fund shall ensure the investment is selected in accordance with the criteria set out in this Act" e.g. with the "care, diligence, and skill" that "a person of ordinary prudence" would exercise. The common law duties of trustees follow similar contours.

not. While not subject to pension supervisory regulation, the Non-Pension Trustees owe similar duties to their beneficiaries. This prudence should not be derided as mere delay. Investing in assets like Two Shore's security by pension and other union sponsored trust funds is a novel transaction.

6. The Pension Plan Trustees therefore require court approval of the investment and at least the non-opposition of the Financial Services Regulatory Authority of Ontario ("**FSRA**") (and its provincial counterparts in Manitoba and Saskatchewan) to proceed with the investment in Two Shore's debt. The Pension Plan Trustees have retained Ernst & Young Inc. as financial advisor to advise them and assess the investment. The Pension Plan Trustees and the Non-Pension Trustees are preparing court materials seeking directions on the investment under the *Trustee Act*, R.S.O. 1990, c. T.23, as amended. Further, FSRA and the other applicable pension regulators have already been contacted to notify them about the potential investment so that they can deliver a position at the earliest.

7. The required due diligence and pension regulatory oversight, and the inherent time involved, was always built into the transaction to buy out Two Shores. The Funding Agreement pursuant to which the interested Pension Trustees, the Non-Pension Trustees, and other interested unitholders contemplated the transaction, required a majority vote of the Steering Committee, which the Pension Plan Trustees and the Non-Pension Trustees control. Accordingly, without the requisite due diligence of the Non-Pension Trustees, along with the Pension Plan Trustees and its regulators, the purchase of Two Shore's security cannot be completed on the contemplated terms. This was known to all parties from the beginning.

8. While the timing of Two Shore's motion is curious, the Pension Plan Trustees are optimistic to clear the investment transaction with FSRA, its counterparts, and if this court grants Two Shores' motion to restrict the court-appointed receiver, the restriction should be just a temporary slowdown in recovery efforts by the Court-appointed receiver for all the victims of PMI.

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**SCHEDULE "A"**

<b>Pension Trust Fund</b>	<b>Net Asset Value of Productivity Media Income Fund I LP Units as of July 31, 2024 (CAD)</b>
Electrical Industry of Ottawa Pension Trust Fund	\$11.7M
United Brotherhood of Carpenters and Joiners of America Local Union 2041 Pension Trust Fund	\$2.9M
Quinte St. Lawrence Electrical Workers Pension Trust Fund	\$6.9M
U.A. Local 71 Pension Trust Fund	\$3.6M
Construction & Specialized Workers' Union Local 1258 Pension Trust Fund	\$2.4M
International Brotherhood of Electrical Workers ("IBEW") Local Union 2038 Pension Trust Fund	\$3.4M
IBEW Local Union 2085 Pension Trust Fund	\$10.9M
IBEW Local Union 529 Pension Trust Fund	\$5.6M
Iron Workers (Manitoba) Local Union 728 Central Pension Trust Fund	\$3.0M
Iron Workers (Saskatchewan) Local Union 771 Central Pension Trust Fund	\$6.1M
Manitoba Multiple Trades Pension Trust Fund	\$2.2M
Operating Engineers of Manitoba Local 987 Pension Trust Fund	\$6.1M
Prairie Arctic Regional Council Pension Trust Fund	\$6.4M

**SCHEDULE "A"**

The Link: Youth and Family Supports Pension Plan	\$2.3M
U.A. Local Union 254 Pension Trust Fund	\$6.0M
Ideal Roofing Company Limited Pension Plan	\$2.0M

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Respondents

Court File No.: CV-24-00730869-00CL

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**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
Proceeding commenced at **TORONTO**

**AIDE MEMOIRE OF THE PENSION PLAN**  
**TRUSTEES**

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