

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

**TWO SHORES CAPITAL CORP.**

Applicant

- and -

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

Respondents

**AND IN THE MATTER OF AN APPLICATION UNDER section 243(1) of  
the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and  
section 101 of the *Courts of Justice Act*, R.S.O. 1990, c C.43, as amended**

**FACTUM OF THE APPLICANTS  
(MOTION FOR DIRECTIONS)**

February 19, 2025

**FASKEN MARTINEAU DuMOULIN LLP**  
Barristers and Solicitors  
333 Bay Street, Suite 2400  
Bay Adelaide Centre, Box 20  
Toronto ON M5H 2T6

**Stuart Brotman (LSO: 43430D)**  
sbrotman@fasken.com  
Tel: 416 865 5419

**Mitch Stephenson (LSO: 73064H)**  
mstephenson@fasken.com  
Tel: 416 868 3502

**Julia Chung (LSO: 90012D)**  
jchung@fasken.com  
Tel: 416 868 3409

Lawyers for the Applicant,  
Two Shores Capital Corp.

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## PART I - OVERVIEW<sup>1</sup>

1. On November 19, 2024, on the application of Two Shores Capital Corp. (“**Two Shores**”), this Court appointed KSV Restructuring Inc. (“**KSV**”) as the receiver and manager (in such capacity, the “**Receiver**”) without security, of all the assets, undertakings, and properties (the “**Property**”) of Productivity Media Inc. (“**PMI**”), Productivity Media Income Fund I LP (the “**Limited Partnership**”), and Productivity Media Lending Corp. I (collectively, the “**Debtors**”).

2. On this motion, Two Shores seeks an Order, among other things:

(a) authorizing and directing the Receiver to:

(i) until such time as the Debtors’ Indebtedness (defined below) to Two Shores has been repaid in full, (A) incur no further time or expense, and instruct its assistants and advisors to incur no further time or expense, in pursuing investigations into the business and affairs of the Debtors or in pursuing any claims which the Debtors may have against third-parties, including, without limitation, the estate of William Santor, companies owned or controlled thereby, or any property thereof, and (B) devote its time, efforts, and activities toward recoveries and realizations sufficient to repay the Indebtedness in full at the earliest opportunity (collectively, the “**Directions**”); and

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<sup>1</sup> Capitalized terms used but not defined herein have the meanings given to them in the Katz Affidavit, Motion Record of the Applicant dated February 14, 2025 [“**MR**”], Tab 2.

(ii) make one or more distributions to Two Shores in an aggregate amount not to exceed the amount of the Debtors' Indebtedness to Two Shores (collectively, the "**Distribution**"); and

(b) grant certain ancillary relief.

3. Two Shores is the sole secured creditor of the Debtors. In July 2024, Two Shores made a loan to the Debtors in the principal amount of US\$2.5 million which is secured by a first-ranking charge on the Property and which remains outstanding. Interest and expenses have and continue to accrue and form part of the Indebtedness owing to Two Shores.

4. Two Shores commenced this application at the request and with the full support of the Debtors. The Debtors' request in this regard followed their discovery of certain allegations of fraud, including allegations that PMI's former CEO had invested over US\$100 million of Debtor assets in fraudulent Media Projects.

5. Two Shores was adequately secured by the Debtors' anticipated receipts from tax credits and other sources. For this reason, Two Shores did not require the appointment of the Receiver or the conduct of an investigation into the allegations of fraud against PMI's former CEO or any recoveries that might arise therefrom.

6. Two Shores acquiesced to the request in good faith because (a) it was the only secured creditor of the Debtors and appeared to be the only party with standing to seek the appointment of the Receiver and (b) the Debtors required the appointment of the Receiver so that it could advance the Investigation and pursue recoveries for the benefit of the holders of the LP Units of the Limited Partnership.

7. Two Shores' assistance was founded on an understanding, shared with the Receiver and the Debtors, that Two Shores would suffer no prejudice, that it would be repaid in full in a timely manner (with the expectation that it would be repaid no later than the end of January 2025), and that the LP Unit Holders would fund the costs of the receivership and the Investigation, both of which were initiated primarily for their benefit, not for Two Shores' benefit.

8. The LP Unit Holders have failed to meet these expectations, which has and will continue to cause significant harm to Two Shores without intervention by this Court.

9. Save for a small injection of subordinate funds to pay for arrears in professional fees in December 2024, the LP Unit Holders have failed or refused to adequately fund the costs of the Investigation and the receivership. While certain LP Unit Holders sought to purchase Two Shores' debt and security immediately after the Receiver's appointment (which was consistent with the shared expectations of the parties), that transaction was unilaterally revoked the day before execution by the same cohort of LP Unit Holders who refuse to fund the Receiver.

10. The result is the Receiver has been forced to fund the costs of the Investigation and receivership from the Property of the estate, over which Two Shores holds a first-ranking security interest. To date, the Receiver has incurred more than \$1 million in fees and expenses which are unpaid and unfunded, and which sit in priority to Two Shores' security interest by virtue of the Receiver's Charge.

11. Two Shores understands that the vast majority of these fees and expenses relate to the Investigation, meaning Two Shores' collateral is being consumed in pursuit of the Investigation that it has no interest in pursuing. In effect, Two Shores has been directly or indirectly funding the

costs of the Investigation and is suffering significant ongoing erosion in its collateral and deferment of its entitlement to be promptly repaid in full.

12. The current state of affairs is commercially unreasonable and entirely inconsistent with the expectations and understandings of the parties at the time Two Shores sought the appointment of the Receiver. In such circumstances, this Court has and should exercise its jurisdiction to direct the activities of the Receiver to protect the Property and Two Shores' legitimate priority interests in such Property.

13. Two Shores is entitled to be repaid promptly from its collateral and the Receiver's activities should be entirely focused on this endeavour until such time as Two Shores has been paid in full. The relief sought on this motion is necessary to prevent the LP Unit Holders from deriving any further benefit from their ongoing failure or refusal to make funding decisions and further deterioration of Two Shores' security position resulting from the continued pursuit by the Receiver of the Investigation.

## **PART II - SUMMARY OF FACTS**

14. The facts relevant to this motion are set forth in the affidavit of Samson Katz sworn February 14, 2025 (the "**Katz Affidavit**").

### **A. Background**

15. In August 2024, the Debtors discovered allegations that the former chief executive officer of PMI had caused the Debtors to invest over US\$100 million in Media Projects which the Debtors believed were fraudulent (the "**Allegations**"). The Debtors and their counsel approached Two Shores in September 2024, and asked Two Shores, as the Debtors' only secured creditor, to bring an application to have KSV appointed as Receiver to oversee and advance the investigation

of the Allegations and to pursue potential recoveries and claims related to or arising out of such allegations (collectively, the “**Investigation**”).

**Katz Affidavit at paras 17-18, MR, Tab 2.**

16. At the time of the application, the realizable value of the Property ought to have been more than sufficient to repay the Indebtedness of the Debtors to Two Shores in full. For this reason, Two Shores did not require the appointment of the Receiver or the benefit of the Investigation, both of which were undertaken primarily for the benefit of investors holding limited partnership units (“**LP Units**”) in the Limited Partnership (the “**LP Unit Holders**”) and other stakeholders of the Debtors.

**Katz Affidavit at paras 6, 19, MR, Tab 2.**

17. Two Shores nevertheless obliged the Debtors’ request because, based on discussions with DLA Piper and KSV, it was mutually understood that:

- (a) Two Shores was the only stakeholder with the standing to bring the receivership application;
- (b) the LP Unit Holders would be the primary beneficiaries of the receivership and Investigation and would therefore fund the costs of same (with the possible exception that Two Shores might, at its discretion, advance a small amount of initial funding to the Receiver while the LP Unit Holders organized themselves); and
- (c) Two Shores would not be delayed or in any way prejudiced in recovering its Indebtedness from anticipated receipts in the receivership, with the expectation that Two Shores would be repaid in full by the end of January, whether from receipts in



the receivership or a purchase by the LP Unit Holders of Two Shores' debt and security.

**Katz Affidavit at paras 8, 20, MR, Tab 2.**

18. Based on these understandings, Two Shores, KSV, and the Debtors also agreed that the order sought on the receivership application would included a provision requiring compliance by the Receiver with an agreed upon cash flow forecast for so long as the Indebtedness owing to Two Shores remained outstanding.

**Katz Affidavit at para 22, MR, Tab 2.**

19. At the time of the application, Two Shores also understood, based upon information provided by counsel for the Debtors and by KSV, that all or some subset of the LP Unit Holders intended to step in shortly after the appointment of the Receiver to acquire Two Shores' debt and security and fund the costs of the Investigation.

**Katz Affidavit at paras 8, 20, MR, Tab 2.**

20. Based on the foregoing discussions and understandings, Two Shores commenced this application on November 7, 2024, and had KSV appointed as the Receiver on November 19, 2024. Two Shores' understandings and expectations, as described above, were communicated to and well-understood by counsel to the Debtors, KSV, and, after the Receiver's appointment, counsel to the LP Unit Holders as well.

**Katz Affidavit at para 21, MR, Tab 2.**

**B. The LP Unit Holders Agreed to Acquire Two Shores' Debt and Security, but Unilaterally Withdrew Immediately before Execution**

21. Consistent with discussions previously had between Two Shores, KSV, and DLA Piper, on December 7 and 8, 2024, Counsel for Westfield Partners Ltd. in its capacity as the trustee of a significant cohort of the LP Unit Holders (in such capacity, the “**Trustee**”) advised that the LP Unit Holders had, by December 8, 2024, funded into an account an amount sufficient to repay or purchase the Indebtedness to Two Shores and to begin funding the receivership.

**Katz Affidavit at para 23, MR, Tab 2.**

22. Immediately thereafter, the Trustee negotiated and settled the terms of an assignment and assumption agreement that would see the LP Unit Holders acquire the Indebtedness owed to Two Shores “at par” and take an assignment of the related security (the “**Proposed Assignment**”). The negotiations and planned closing of the Proposed Assignment were expedited so that the Trustee could advance urgently-needed funding to the Receiver without having to negotiate a subordination agreement with Two Shores or otherwise having to concern itself with Two Shores’ interests.

**Katz Affidavit at paras 24-25, MR, Tab 2**

23. The definitive documents for the Proposed Assignment were effectively settled by the end of the day on Friday, December 13, 2024, and the Proposed Assignment was expected to close on Monday, December 16, 2024. The Proposed Assignment did not close, and it still has not closed.

**Katz Affidavit at para 25, MR, Tab 2**

24. The day before the documents were to be executed, counsel for the Trustee advised that certain members of the funding committee (the “**KM Unit Holders**”) represented by Koskie Minsky LLP (“**KM**”) had raised certain questions or concerns regarding the Proposed Assignment. On Tuesday, December 17, 2024, counsel for the Trustee confirmed by email that the Trustee could not proceed with the Proposed Assignment because the KM Unit Holders required additional information.

**Katz Affidavit at para 26, MR, Tab 2**

25. Two Shores’ understands that the KM Unit Holders, having retained separate counsel, have not been agreeable to proceeding with the Proposed Assignment. They have since taken advantage of the goodwill shown by Two Shores in commencing this application by delaying their funding decision and forcing the Receiver to rely on Two Shores’ collateral to fund the costs of the Investigation (including the pursuit of related claims against third parties).

### **C. The LP Unit Holders Failed to Provide Funding**

26. As a result of the LP Unit Holders’ refusal to close the Proposed Assignment, the Trustee ultimately agreed to advance \$750,000 to the Receiver, subordinated in favour of Two Shores’ security, pursuant to an amended and restated Receiver’s Certificate issued on December 18, 2024 (“**Receiver’s Certificate No. 1**”).

**Katz Affidavit at para 27, MR, Tab 2**

27. The proceeds of Receiver’s Certificate No. 1 were used to pay the significant arrears in professional fees and other costs associated with the Investigation that existed at the time. There was little, if anything, remaining to fund the ongoing costs of the Investigation and

receivership, and neither the Trustee nor the LP Unit Holders have agreed to provide any additional funding since that time.

**Katz Affidavit at paras 28-29, MR, Tab 2**

28. Presently, the Receiver has incurred professional fees and expenses in excess of \$1 million which are unpaid and unfunded and fall within the claims secured by the Receiver's Charge sitting in priority to Two Shores' security. The majority of these fees and expenses were incurred to advance the Investigation.

**Katz Affidavit at para 30, MR, Tab 2**

### **PART III - ISSUES**

29. This motion raises the following questions:

- (a) Should this Court make the Directions to the Receiver?
- (b) Should this Court authorize and approve the Distribution to Two Shores?

30. Two Shores respectfully submits that this Court should grant the foregoing relief for the reasons that follow.

### **PART IV - LAW & ARGUMENT**

#### **A. The Court Has Jurisdiction to Make the Directions**

31. The Court's jurisdiction to direct a court-appointed receiver and manager on matters relating to estate property flows from the provisions of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, as amended ("BIA") and the *Personal Property Security Act*, R.S.O. 1990, c. P.10, as amended ("OPPSA").

32. Specifically, this Court has the discretion to make such directions pursuant to its jurisdiction to:

- (a) do what “justice dictates” and “practicality demands” under section 243(1)(c) of the BIA which gives judges the “broadest possible mandate in insolvency proceedings to enable them to react to any circumstances that arise” in the context of a Court-ordered receivership;
- (b) direct receivers to deal with estate property in a “commercially reasonable manner” under sections 247 and 248(1) of the BIA; and
- (c) give directions “on any matter relating to the duties of the receiver” or “make any order with respect to the receiver [...] that it thinks fit” under section 60(2) of the OPPSA.

**BIA, ss. 243(1)(c); *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, 2019 ONCA 508 [“Third Eye”] at paras. 52-53; *Re Peace River Hydro Partners v Petrowest Corp.*, [2022 SCC 41](#) at [para 148](#), citing *DGDP-BC Holdings Ltd v Third Eye Capital Corporation*, [2021 ABCA 226](#) at [para 20](#); BIA, ss. 247 and 248(1); and OPPSA, s. 60(2).**

33. While each of these, in its own right, gives this Court the jurisdiction to make the Directions sought on this motion, the case law favours reliance on sections 247 and 248(1) of the BIA in circumstances similar to those presently before the Court.

34. Section 247 of the BIA requires receivers to deal with estate property in a commercially reasonable manner. Section 248(1) permits the Court, on an application of a creditor (among others), to (a) make directions to the receiver to ensure this duty is met, (b) restrain the

receiver from realizing or otherwise dealing with the estate property until the duty has been carried out, or (c) both.

35. In circumstances where estate property is being used improvidently or contrary to the legitimate rights and expectations of the creditors, this Court has often applied sections 247 and 248(1) in concert to rectify the issue.

*Romspen v. Edgeworth* [*“Romspen”*], [2014 ONSC 4340](#) (Court amends receivership order to require the receiver to pay high-interest receiver’s loans before lower-interest mortgages); *Clark v. Carson*, [2011 ONSC 6256](#) at [paras 31, 38](#) (the Court ordered a court-appointed liquidator to conduct a new auction in the manner prescribed by the Court); *Sullivan v. Letnick*, 2002 CarswellOnt 3454 (ONSC) at paras 33-35, BOA, Tab 3 (the Court ordered the secured creditor and its agent to re-open the bid process under terms and conditions prescribed by the Court after finding that the sale was not conducted in a commercially reasonable manner).

36. For example, in *Romspen*, a first-ranking mortgagee (*Romspen*) insisted that the receivership order required the receiver to apply the surplus proceeds in the estate to its “blanket mortgage” bearing interest at 12% rather than applying it to the receiver’s borrowings bearing interest at 24%. *Romspen*’s proposed allocation was expected to result in a loss to the estate of up to \$875,000.

*Romspen, supra*

37. *Edgeworth*, who held a subordinate interest in certain real property of the estate, brought an application under sections 247 and 248(1), arguing that *Romspen*’s proposed allocation of funds was commercially unreasonable. The Court agreed, holding that *Romspen*’s proposed allocation was unreasonable *because*, among other reasons, it was inconsistent with the intention of the parties at the time the receivership order was granted. The Court wrote:

I appreciate the general need for certainty and finality in the issuance of court orders. However, in this case, the allocation of proceeds was

not finally decided, Romspen's proposed allocation is inconsistent with the evidence available as to the intention of the parties at the time the Receivership Order was issued, and new facts are available regarding the timing of the sale of significant proceeds which was not available at the time the Receivership Order was issued.

...

I note that section 247(a) of the Bankruptcy and Insolvency Act requires the Receiver to deal with the property of an insolvent person, "in a commercially reasonable manner". Repaying the blanket mortgage at the rate of 12% interest before repaying the other borrowing costs at 24% interest is not commercially reasonable.

*Romspen, supra*, at [paras 56, 58](#).

38. Having arrived at this conclusion, the Court adopted Edgeworth's proposed allocation and amended the receivership order accordingly so as to bind the receiver. Notably, *Romspen* was not a case where a receiver was culpable for the commercially unreasonable conduct, but rather a case where a competing stakeholder was responsible. The present case is similar in this regard, and *Romspen* demonstrates that the Court can and should correct such circumstances by directing the Receiver's activities and conduct.

39. In determining whether estate assets are being dealt with in a commercially unreasonable manner, this Court should also consider the following duties and factors:

- (a) *Duty of neutrality*: Actions by a court-appointed receiver favouring one claimant over another or changing the rights of competing creditors, whether deliberately or by default, are inconsistent with a receiver's duty of neutrality and are therefore not commercially reasonable.

*Commercial Bank v. Simmons Drilling Ltd.*, [1989 CanLII 4785](#) (SK CA) at [para 22](#); *Arthur Andersen Inc. v. Merit Energy Ltd.*, [2002 SKCA 105](#) at [para 36](#); Halsbury's Laws of Canada, Receivers and Other Court Officers (Kevin P. McGuinness), Book

of Authorities [“BOA”], Tab 1; *Commercial Insolvency of Canada, 4th Edition* (Kevin McElcheran), BOA, Tab 2; *Bankruptcy and Insolvency Act, RSC 1985, c. B-3* [“BIA”], s. 247.

- (b) *Amount of Priority Funding*: The funding of a receivership must be considered in light of the security interests of secured creditors who do not wish to be subordinated. Courts can and should limit the amount of priority funding that a receiver can obtain and often restrain the activities of the receiver so as to minimize utilization of such funding.

*Commercial Insolvency of Canada, 4th Edition* (Kevin McElcheran), BOA, Tab 2.

- (c) *Benefit of an Investigation*: Where a proposed investigation on the part of a receiver does not have the potential to benefit all creditors generally, the costs of the investigation ought to be borne by those creditors who stand to benefit and who are willing to bear the costs out of their own resources, and not from general receivership funds.

*Hickman Equipment (1985) Ltd., Re*, [2003 NLSCTD 153](#) at [paras 18-19](#).

## **B. The Directions Sought Are Necessary and Appropriate**

40. As set forth above, the Receiver, the Debtors, and Two Shores have taken meaningful steps to facilitate the conduct of an Investigation for the benefit of the LP Unit Holders. This facilitation on the part of Two Shores is and always has been founded upon the timely repayment of the Indebtedness and the LP Unit Holders’ committing to sufficiently fund the Receiver.



41. The failure of the LP Unit Holders to make necessary funding decisions in a timely manner has resulted in substantial prejudice to Two Shores which continues with each passing day. The Directions sought will, among other things, authorize and direct the Receiver to stop expending Two Shores' collateral for the benefit of the LP Unit Holders who sit below Two Shores in priority and who, to date, have refused or failed to fund the ongoing costs of the Investigation and receivership.

42. The ongoing erosion of Two Shores' collateral in this manner is commercially unreasonable because, for among other reasons:

- (a) it violates the intentions, expectations, and understandings of the parties at the time the receivership order was granted;
- (b) it changes the rights of the parties, subverting Two Shores' interests as a first-ranking secured creditor to be repaid promptly from the Property in favour of the subordinate interests of the LP Unit Holders;
- (c) without the Directions, the claims secured by the Receiver's Charge, which sit in priority to Two Shores' security, will continue to grow to Two Shores' detriment; and
- (d) the Investigation stands to benefit the LP Unit Holders and not Two Shores, and in such circumstances, it must be the LP Unit Holders and not Two Shores who pay the costs of advancing the Investigation.

43. As noted above, the Receiver has incurred more than \$1 million in fees and expenses which sits in priority to Two Shores' security and will be paid out of the Property on a

super-priority basis. In effect, Two Shores' source and certainty of recovery as a secured party is being transferred from existing tangible collateral with known and accessible value (i.e., the receipts from tax credits and other sources) to future claims in litigation of presently uncertain merit and value.

44. The relief sought on this motion is necessary to prevent further erosion of Two Shores' security position and to achieve the cornerstone of its agreement to bring this application, being timely repayment in full of the Indebtedness.

### **C. The Distribution Should be Approved**

45. As noted above, Two Shores seeks an order authorizing and approving the Distribution, which will be in an aggregate amount not to exceed the amount of the Debtors' indebtedness to Two Shores.

46. Orders authorizing a receiver to make a distribution to stakeholders are commonly granted in insolvency proceedings. The Court's discretion to make such orders is within its jurisdiction to do what "justice dictates" and "practicality demands" under section 243(1)(c) of the BIA.

*See Third Eye, supra*, at [paras 52-53](#); *Re AbitibiBowater Inc.*, [2009 QCCS 6461](#) at [para 71](#) [*"AbitibiBowater"*]. See also, for example, the [Interim Distribution and Fee Approval Order of Justice Steele](#) dated April 5, 2024 in the receivership of Mahal Venture Capital Inc., et al. and the [Ancillary Relief Order of Justice Steele](#) dated July 19, 2022 in the receivership of 2244039 Ontario Inc., et al.; BIA, [s. 243\(1\)\(c\)](#).

47. When asked to approve a distribution, the Court must consider "the advantages, disadvantages and potential prejudice of [the] distribution to all the stakeholders of the debtor entity". The Court must also consider the validity and enforceability of the relevant security, interest savings, and liquidity of the debtor following the distribution.

*Re SemCanada Crude Company (Companies' Creditors Arrangement Act)*, [2009 ABQB 90](#) at [para 27](#) [*SemCanada*]; *AbitibiBowater*, [paras 63, 68, 70, 75](#). While such *AbitibiBowater* factors were analyzed in the context of a *Companies' Creditors Arrangement Act* proceeding, they can be similarly applied in receivership proceedings: see, for example, *Ontario Securities Commission v. Bridging Income Fund L.P.*, [2022 ONSC 4472](#) at [para 8](#).

48. The factors contemplated in *AbitibiBowater* and *SemCanada* are satisfied in the present case:

- (a) As of January 23, 2025, the Debtors' indebtedness, on a secured basis, to Two Shores totalled US\$2,955,877 (the "**Indebtedness**");
- (b) the aggregate amount of the Distribution will not exceed the Indebtedness as of the time of repayment;
- (c) the Receiver's legal counsel, Osler Hoskin & Harcourt LLP, has issued an opinion, subject to standard assumptions and qualifications, confirming the validity, enforceability, and perfection of Two Shores' security interest in respect of the Debtors;  
  
**Katz Affidavit at para 41 and Exhibit "P" (Pre-Filing Report of the Receiver dated November 4, 2024), MR, Tab 2.**
- (d) as of the time of the receivership order, there were no third-party registrations against the Debtors under the OPPSA;
- (e) Two Shores and the Receiver are not aware of any claim that ranks in priority to the claim of Two Shores, except for the Receiver's Charge; and

**The only claim secured by the Receiver's Borrowings Charge has been subordinated to Two Shores' security. See Katz Affidavit at paras 27 and 40 and Exhibit "I" (Email confirming subordination of Receiver's Certificate No. 1)**

- (f) Two Shores and the Receiver are not aware of any person who will be prejudiced by the relief sought on this motion.

49. Two Shores is of the view that the Distribution is reasonable and appropriate in the circumstances, given its position as the sole secured lender in these Proceedings, and necessary in order to give effect to the Directions sought on this motion.

#### **PART V - ORDER REQUESTED**

50. For the reasons set out above, Two Shores respectfully requests that this Court grant the Order in the form included at Tab 3 of the MR, among other things:

- (a) authorizing and directing the Receiver to:
  - (i) until such time as the Debtors' Indebtedness to Two Shores has been repaid in full, (A) incur no further time or expense, and instruct its advisors and assistants to incur no further time or expense, in pursuing the Investigation or claims against third parties arising therefrom, and (B) devote its time, efforts, and activities toward recoveries and realizations sufficient to repay the Indebtedness in full at the earliest opportunity; and
  - (ii) make one or more distributions to Two Shores in an aggregate amount not to exceed the amount of the Debtors' Indebtedness to Two Shores; and
- (b) grant certain ancillary relief.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 19th day of February, 2025.

Per:



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Fasken Martineau DuMoulin LLP

**FASKEN MARTINEAU DUMOULIN LLP**

Barristers and Solicitors  
333 Bay Street, Suite 2400  
Bay Adelaide Centre, Box 20  
Toronto ON M5H 2T6

**Stuart Brotman (LSO: 43430D)**

sbrotman@fasken.com  
Tel: 416 865 5419

**Mitch Stephenson (LSO: 73064H)**

mstephenson@fasken.com  
Tel: 416 868 3502

**Julia Chung (LSO: 90012D)**

jchung@fasken.com  
Tel: 416 868 3409

Lawyers for the Applicant,  
Two Shores Capital Corp.

**SCHEDULE “A”  
LIST OF AUTHORITIES**

1. *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, [2019 ONCA 508](#)
2. *Re Peace River Hydro Partners v Petrowest Corp*, [2022 SCC 41](#)
3. *DGDP-BC Holdings Ltd v Third Eye Capital Corporation*, [2021 ABCA 226](#)
4. *Romspen v. Edgeworth*, [2014 ONSC 4340](#)
5. *Clark v. Carson*, [2011 ONSC 6256](#)
6. *Sullivan v. Letnick*, 2002 CarswellOnt3454 (ONSC)
7. *Commercial Bank v. Simmons Drilling Ltd.*, [1989 CanLII 4785](#) (SK CA)
8. *Arthur Andersen Inc. v. Merit Energy Ltd.*, [2002 SKCA 105](#)
9. Halsbury’s Laws of Canada, Receivers and Other Court Officers (Kevin P. McGuinness)
10. Commercial Insolvency of Canada, 4th Edition (Kevin McElcheran)
11. *Hickman Equipment (1985) Ltd., Re*, [2003 NLSCTD 153](#)
12. *Re AbitibiBowater Inc.*, [2009 QCCS 6461](#)
13. *Re SemCanada Crude Company (Companies' Creditors Arrangement Act)*, [2009 ABQB 90](#)
14. *Ontario Securities Commission v. Bridging Income Fund L.P.*, [2022 ONSC 4472](#)

I certify that I am satisfied as to the authenticity of every authority.

*Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).*

Date February 19, 2025



Mitch Stephenson (LSO: 73064H)

**SCHEDULE “B”  
TEXT OF STATUTES, REGULATIONS & BY-LAWS**

**[Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3](#)**

**Court may appoint receiver**

**243 (1)** Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person’s or bankrupt’s business; or
- (c) take any other action that the court considers advisable.

**Good faith, etc.**

**247** A receiver shall

- (a) act honestly and in good faith; and
- (b) deal with the property of the insolvent person or the bankrupt in a commercially reasonable manner.

**Powers of court**

**248 (1)** Where the court, on the application of the Superintendent, the insolvent person, the trustee (in the case of a bankrupt), a receiver or a creditor, is satisfied that the secured creditor, the receiver or the insolvent person is failing or has failed to carry out any duty imposed by sections 244 to 247, the court may make an order, on such terms as it considers proper,

- (a) directing the secured creditor, receiver or insolvent person, as the case may be, to carry out that duty, or
- (b) restraining the secured creditor or receiver, as the case may be, from realizing or otherwise dealing with the property of the insolvent person or bankrupt until that duty has been carried out,

or both.

**[Personal Property Security Act, R.S.O. 1990, c. P.10](#)**

**60(2)** Upon application of the secured party, the debtor or any other person with an interest in the collateral, and after notice to any other person that the court directs, the Superior Court of Justice, with respect to a receiver or receiver and manager however appointed, may,

- (a) remove, replace or discharge the receiver or receiver and manager;
- (b) give directions on any matter relating to the duties of the receiver or receiver and manager;
- (c) approve the accounts and fix the remuneration of the receiver or receiver and manager;
- (d) make any order with respect to the receiver or receiver and manager that it thinks fit in the exercise of its general jurisdiction over a receiver or receiver and manager.



TWO SHORES CAPITAL CORP.

Applicant

-and- PRODUCTIVITY MEDIA INC. et al.

Respondents

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

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

Proceeding commenced at  
Toronto

**FACTUM OF THE APPLICANT  
(MOTION FOR DIRECTIONS)**

**FASKEN MARTINEAU DuMOULIN LLP**

Barristers and Solicitors  
333 Bay Street, Suite 2400  
Bay Adelaide Centre, Box 20  
Toronto ON M5H 2T6

**Stuart Brotman (LSO: 43430D)**

sbrotman@fasken.com  
Tel: 416 865 5419

**Mitch Stephenson (LSO: 73064H)**

mstephenson@fasken.com  
Tel: 416 868 3502

**Julia Chung (LSO: 90012D)**

jchung@fasken.com  
Tel: 416 868 3409

Lawyers for the Applicant,  
Two Shores Capital Corp.