



ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**COUNSEL/ENDORSEMENT SLIP**

COURT FILE NO.: CV-24-00715326-00CL

DATE: December 18, 2024

NO. ON LIST: #6

TITLE OF PROCEEDING: CONSTANTINE ENTERPRISES INC. v. SAM (180 SAW) LP INC. et al  
BEFORE: JUSTICE STEELE

**PARTICIPANT INFORMATION**

**For the Applicant:**

Name of Person Appearing	Name of Party	Contact Info
Jeremy Bornstein	Counsel for the Applicant, Constantine Enterprises Inc.	jbornstein@cassels.com

**For the Receiver:**

Name of Person Appearing	Name of Party	Contact Info
Jennifer Stam	Counsel for the Court Appointed Receiver, KSV Restructuring.	jennifer.stam@nortonrosefulbright.com
Lauren Archibald		lauren.archibald@nortonrosefulbright.com

**ENDORSEMENT OF JUSTICE STEELE:**

- [1] The Receiver seeks an order approving its activities, approving fees and disbursements and a fee accrual, authorizing the Receiver to distribute any surplus funds from the fee accrual to Constantine Enterprises Inc., and releasing and discharging the Receiver upon the filing of the Discharge Certificate.
- [2] No one opposes the relief sought. The motion record and factum were served on the service list. The Receiver is the only person who filed materials on this motion.
- [3] Constantine Enterprises supports the relief sought.
- [4] The proceedings are largely complete. Upon completion, the Receiver will file a Discharge Certificate.
- [5] Upon the filing of the Discharge Certificate, the Receiver will have completed all its activities and mandate set out in the receivership order, and ought to be discharged. The proposed order also contains

language to release the Receiver consistent with the release provided in the Model Discharge Order. As noted by the Receiver, there is no evidence of gross negligence or willful misconduct by the Receiver.

- [6] I am satisfied that it is appropriate to grant the discharge and release upon the filing of the Discharge Certificate. I note the Receiver's submissions at para. 17 of its factum.
- [7] The Receiver seeks approval of its activities as set out in various reports. As noted by this Court in *Re Target Canada Co.*, 2015 ONSC 7574 at para. 22, there are good policy and practical reasons for the Court to grant approval of a court-appointed officer's reports and the activities set out in the report. The Receiver states that its activities were carried out in good faith, undertaken with efficiency and reasonableness, and served the best interests of the debtors their stakeholders.
- [8] The Receiver seeks approval of its fees and disbursements and those of its counsel. The Receiver's total fees are \$126,936.38 (plus HST and disbursements) and the Receiver's counsel's fees are \$112,459.25 (excluding HST and disbursements). The Receiver also seeks a fee accrual of \$50,000 to cover its fees and its counsel's fees from December 1, 2024 to the filing of the Discharge Certificate.
- [9] In *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851, at para. 45, the Court of Appeal noted that "it is not for the court to tell lawyers and law firms how to bill." The Court is to ensure that the fees sought are "fair and reasonable." When assessing whether the fees are fair and reasonable, the focus needs to be on what was accomplished, not the time taken to do so.
- [10] In *Re Nortel Networks Corporation et al*, 2017 ONSC 673, at para. 14, the court set out a non-exhaustive list of factors for the court to consider when reviewing a receiver's fees.
- [11] Fee affidavits have been filed.
- [12] I am satisfied that the fees are fair and reasonable and should be approved.
- [13] The Receiver asks the court to authorize the distribution of any remaining fee accrual amount to Constantine Enterprises as partial repayment of the amount owing to them. As noted by the Receiver, such orders are routinely issued in receivership proceedings. The Receiver further notes that no party will be prejudiced if the Receiver is authorized to make this distribution.
- [14] Order attached.

A handwritten signature in blue ink, appearing to be 'J. [unclear]', is centered at the bottom of the page.