

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

BETWEEN:

NEW SKIES SATELLITES B.V.

Applicant

- and -

JUCH-TECH INC.

Respondents

**APPLICATION UNDER SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O.
1990, C. C.43, AS AMENDED, AND SECTION 243 OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, C. B-3 AS AMENDED**

**MOTION RECORD OF
NEW SKIES SATELLITES B.V.
(Motion for Expansion of Receiver's Powers
Returnable December 15, 2020)**

December 14, 2020

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Attention: Walt Juchniewicz
Email: juchniewicz@juch-tech.com

Related Party

AND TO: NEUTRAL SKIES INC.
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Related Party

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Attention: Walt Juchniewicz
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Related Party

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Court File No: CV-20-00652759-00CL

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

BETWEEN:

NEW SKIES SATELLITES B.V.

Applicant

- and -

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TAB 1

Court File No: CV-20-00652759-00CL

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

BETWEEN:

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NOTICE OF MOTION

(Motion for Expansion of Receiver's Powers)

The Applicant, New Skies Satellites B.V. (“**New Skies**”), will make a motion before the Honourable Justice Gilmore of the Ontario Superior Court of Justice (Commercial List) on December 15, 2020 at 11:30 a.m., or as soon after that time as the motion can be heard by judicial videoconference via Zoom at Toronto, Ontario. The videoconference call details are appended as Schedule “A” to this Notice of Motion. Please advise if you intend to join the hearing of the motion by emailing Waleed Malik at wmalik@osler.com.

PROPOSED METHOD OF HEARING: The motion is to be heard by videoconference.

THE MOTION IS FOR:

1. An order substantially in the form included in Tab 2 of the Motion Record (the “**Proposed Order**”), among other things:

- (a) authorizing KSV Restructuring Inc. (the “**Receiver**”), in its capacity as receiver of all of the assets, undertakings and properties (the “**Property**”) of Juch-Tech Inc. (“**Juch-Tech**”) to
 - (i) investigate and report to this Court with respect to the affairs, transactions, and financial records of the Related Parties (defined below);
 - (ii) subject to such terms as to confidentiality as the Receiver deems advisable, to report to, write to, meet with, and discuss with any financial institution(s) having business relations with Juch-Tech or any of the Related Parties (collectively, the “**Financial Institutions**”) on all matters relating to Juch-Tech’s and/or the Related Parties’ respective businesses, affairs, transactions, financial records, assets, and properties, the Property, the receivership, and authorizing the Receiver and each of the Financial Institutions to share any such information with the other;
 - (iii) to take any steps reasonably necessary to the exercise of the above-noted powers;
- (b) ordering all persons to advise the Receiver of any books and records any kind related to the business or affairs of any of the Related Parties (the “**Related Party**”)

Records”) in that person’s control, and to provide copies or an opportunity to make copies of such Related Party Records;

- (c) directing Wlodzimierz (Walt) Juchniewicz (the principal of Juch-Tech) to forthwith provide the Receiver with access to the records of Juch-Tech and the Related Party Records;
- (d) directing Mr. Juchniewicz to, by 12:00 p.m. on January 11, 2021, provide the Receiver with documentation or other information satisfactory to the Receiver, in its sole discretion, (i) evidencing ownership of all property and assets of Juch-Tech and the Related Parties (collectively, the “**Juch Group Property**”), including, without limitation, the Property, and of all property and assets located on or at the location municipally known as 600 10th Road East, Stoney Creek, Ontario (the “**10th Road Location**”), and (ii) detailing how and when all such property and assets were purchased or otherwise acquired by the applicable owner(s);
- (e) ordering that (subject to the relief set out in paragraph (f) below), (i) no property or assets, including any Property, shall be sold or removed from the 10th Road Location, and (ii) no Juch Group Property may be sold, transferred or otherwise disposed of by the applicable owner outside of the ordinary course of business, in each case, without the consent of the Receiver or further order of this Court;
- (f) directing Mr. Juchniewicz to forthwith remove, or to arrange for the removal of, a house cat living in a trailer at the 10th Road Location, provided that the Receiver may, at any time, make arrangements with an animal services group or shelter for

the surrender of such cat to any such services group or shelter and to take any steps reasonably incidental thereto; and

- (g) such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

Background

1. New Skies is a Dutch company with its registered office in the Hague, Netherlands. It is a direct subsidiary of SES S.A. (“**SES**”), a Luxembourg company that is one of the world’s leading satellite owners and operators.
2. Juch-Tech is a corporation operating under the laws of Canada with its registered office in Hamilton, Ontario. Juch-Tech provides satellite broadcast and internet transmission and uplink services.
3. Juch-Tech owes approximately \$10.4 million to New Skies (the “**Juch-Tech Indebtedness**”) for services provided by New Skies to Juch-Tech pursuant to a Master Services Agreement dated December 17, 2010 (as amended from time to time, the “**MSA**”) and related service orders (the “**Service Orders**”). Approximately \$5.2 million of the Juch-Tech Indebtedness is secured (the “**Secured Obligation**”).
4. The only other secured creditors of Juch-Tech are Canada Trustco Mortgage Company (now known as TD Canada Trust) (“**Canada Trustco**”) and The Hamilton Teleport Ltd. (“**Hamilton Teleport**” and, collectively, the “**PPSA Registrants**”). Canada Trustco advised that it is owed approximately \$100,000 by Juch-Tech. The amount owing to Hamilton Teleport, if any, is unknown and the validity of the purported security has not been verified.

5. New Skies and the Receiver have identified the following entities that appear to be related to Juch-Tech: Hamilton Teleport, Net-Neutral Inc., Neutral Skies Inc., and Telenap Canada Corp. (collectively, the “**Related Parties**”). Mr. Juchniewicz is the sole director of each of the Related Parties and the registered head office of each of the Related Parties is 335 Greencedar Drive, Hamilton, Ontario.

Appointment of the Receiver

6. As of the date of the Appointment Order, Juch-Tech was in default under the MSA, the Service Orders, and the General Security Agreement dated July 2, 2015 between New Skies and Juch-Tech (the “**General Security Agreement**”) by: (i) failing to pay the Secured Obligation; (ii) failing to pay outstanding Service Fees (as defined in the MSA); (iii) ignoring New Skies’ requests for a detailed summary of the scope and value of the Collateral (as defined in the General Security Agreement) and information regarding Juch-Tech’s indebtedness to the PPSA Registrants; and (iv) engaging in a pattern of improper conduct, including unauthorized use of New Skies’ satellites in violation of the MSA.

7. Over many months, Juch-Tech and Hamilton Teleport completely ignored demand notices and requests for information sent by New Skies.

8. In the days before obtaining the Appointment Order, New Skies discovered that Juch-Tech appeared to have moved assets that are subject to the General Security Agreement to a property owned by Hamilton Teleport (the 10th Road Location), possibly to frustrate efforts by New Skies to enforce its security interest and preserve its rights.

9. On December 9, 2020, New Skies brought an urgent application asking this Court to appoint the Receiver with limited powers to, among other things, preserve and protect Juch-Tech's assets and to perform an investigation into Juch-Tech's assets, operations, and financial position.

Juch-Tech's Obstruction Since Receiver's Appointment

10. Juch-Tech and Mr. Juchniewicz have refused to cooperate with the Receiver since being advised of the Receivership Order:

- (a) On December 11, 2020, after multiple attempts by the Receiver and its counsel to contact him, Mr. Juchniewicz sent an email to the Receiver advising that he was in the process of retaining legal counsel to "address the illegal trespass, break in and seizure of the [Hamilton Teleport] property."
- (b) There was one short in-person interaction between the Receiver and Mr. Juchniewicz on December 11, during which Mr. Juchniewicz told the Receiver's representative that he was trespassing.
- (c) Mr. Juchniewicz has not communicated with the Receiver otherwise.
- (d) Mr. Juchniewicz has twice sent a former police officer to meet with the Receiver at the 10th Road Location. At the first meeting, the former officer told the Receiver that he was expecting a physical altercation.

11. Juch-Tech's books and records do not appear to be maintained at the 10th Road Location and, to date, the Receiver has not been provided any books and records of Juch-Tech.

12. The Receiver has discovered that the 10th Road Location has assets strewn around it, and the business and assets of Juch-Tech and the Related Parties appear to be commingled.

13. In light of Mr. Juchniewicz and Juch-Tech's non-cooperation before and after the granting of the Appointment Order and the comingling of Juch-Tech's and the Related Parties' businesses, the expanded powers set out in the Proposed Order are necessary for the Receiver to identify and secure the Property and carry out its investigation.

14. The Receiver recommends that this Court make the Proposed Order.

Other Grounds

15. Section 243 of the *Bankruptcy and Insolvency Act* and section 101 of the *Courts of Justice Act*.

16. Rules 1.04, 1.05, 2.03, 3.02, 16 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended.

17. The Consolidated Notice to the Profession, the Public and the Media Regarding Civil and Family Proceedings dated May 13, 2020.

18. Changes to Commercial List operations in light of COVID-19 dated March 16, 2020.

19. Such further and other grounds as the lawyers may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

1. The First Report of the Receiver dated December 14, 2020; and

2. Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

December 14, 2020

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Related Party

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Related Party

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Court-Appointed Receiver

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Counsel for the Court-Appointed Receiver

Schedule A- Zoom Meeting Details

Please advise if you intend to join the hearing of the motion by emailing Waleed Malik at wmalik@osler.com.

Join Zoom Meeting

<https://us02web.zoom.us/j/85427265973?pwd=cDhrc3UzMmF4aWErWTlVMThENlIZQT09>

Meeting ID: 854 2726 5973

Passcode: 740560

One tap mobile

+17789072071,,85427265973#,,,,,0#,,740560# Canada

+12042727920,,85427265973#,,,,,0#,,740560# Canada

Dial by your location

+1 778 907 2071 Canada

+1 204 272 7920 Canada

+1 438 809 7799 Canada

+1 587 328 1099 Canada

+1 647 374 4685 Canada

+1 647 558 0588 Canada

+1 669 900 9128 US (San Jose)

+1 253 215 8782 US (Tacoma)

+1 301 715 8592 US (Washington D.C)

+1 312 626 6799 US (Chicago)

+1 346 248 7799 US (Houston)

+1 646 558 8656 US (New York)

Meeting ID: 854 2726 5973

Passcode: 740560

Find your local number: <https://us02web.zoom.us/u/kdfv9yVRTC>

and

Applicant

Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
 PROCEEDING COMMENCED AT: TORONTO

NOTICE OF MOTION
(Motion for Expansion of Receiver's Powers)

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Counsel for the Applicant

TAB 2

Court File No. CV-20-00652759-00CL

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

THE HONOURABLE MADAM)	TUESDAY, THE 15 TH
)	
JUSTICE GILMORE)	DAY OF DECEMBER, 2020

B E T W E E N:

NEW SKIES SATELLITES B.V.

Applicant

- and -

JUCH – TECH INC.

Respondent

APPLICATION UNDER SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, C. C.43, AS AMENDED, AND SECTION 243 OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED

**ORDER
(Expansion of Receiver’s Powers)**

THIS MOTION made by New Skies Satellites B.V. (the “**Applicant**”) for an Order, among other things, authorizing KSV Restructuring Inc., in its capacity as receiver all of the assets, undertakings and properties of Juch – Tech Inc. (the “**Debtor**”) (in such capacity, the “**Receiver**”) to investigate the Related Parties (as defined below) and directing Wlodzimierz (Walt) Juchniewicz (“**Juchniewicz**”) to provide certain books, records and information relating to the Debtor and the Related Parties to the Receiver, was heard this day via videoconference in Toronto, Ontario.

ON READING the Receiver’s First Report dated December 14, 2020 (the “**First Report**”) and on hearing the submissions of counsel for the Applicant, counsel for the Receiver,

and no one else appearing although served as appears from the affidavit of service of Waleed Malik affirmed December 9, 2020,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

DEFINITIONS

2. THIS COURT ORDERS that capitalized terms not defined in this Order shall have the meaning set out in the Order (appointing Receiver) made in these proceedings on December 9, 2020 (the “**Appointment Order**”).

EXPANSION OF RECEIVER’S POWERS

3. THIS COURT ORDERS that, in addition to and without limiting any of the powers set out in the Appointment Order, the Receiver is hereby expressly empowered and authorized, but not obligated, to do any of the following where the Receiver considers it necessary or desirable:

- (a) to investigate and report to this Court with respect to the business, affairs, transactions, financial records, and assets of The Hamilton Teleport Ltd., Net-Neutral Inc., Neutral Skies Inc., and Telenap Canada Corp. (the “**Related Parties**”);
- (b) subject to such terms as to confidentiality as the Receiver deems advisable, to report to, write to, meet with, and discuss with any financial institution(s) having business relations with the Debtor or any of the Related Parties (collectively, the “**Financial Institutions**”) on all matters relating to the Debtor’s and/or the Related Parties’ respective businesses, affairs, transactions, financial records, assets, and properties, the Property, the receivership, and the Receiver and each of the Financial Institutions is hereby authorized to share any such information with the other, which may include, without limitation, information relating to:

- (i) the current or historical balance of any deposit or other accounts;
 - (ii) copies of any bank or similar statements; and
 - (iii) such other information and documentation as the Receiver believes is necessary to carry out its investigation of the Debtor and the Related Parties; and
- (c) to take any steps reasonably incidental to the exercise of these powers,

and, in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons, including the Debtor and the Related Parties, and without interference from any other Person.

EXPANDED DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of any of the Related Parties, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the “**Related Party Records**”) in that Person’s possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 4 or in paragraph 5 of this Order shall require the delivery of Related Party Records, or the granting of access to Related Party Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

5. THIS COURT ORDERS that, if any Related Party Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Related Party Records shall forthwith give unfettered access to the Receiver for the purpose of allowing

the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Related Party Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Related Party Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

DIRECTION REGARDING RECORDS AND RELATED PARTY RECORDS

6. THIS COURT ORDERS that, in addition to and without limiting any obligations imposed upon Juchniewicz by the Appointment Order or this Order, including those obligations set out in paragraphs 5, 6 and 7 thereof and paragraphs 4 and 5 hereof, Juchniewicz is hereby directed to forthwith provide the Receiver with access to the Records of the Debtor and the Related Party Records.

7. THIS COURT ORDERS AND DIRECTS Juchniewicz to, by no later than 12:00 p.m. Toronto Time on January 11, 2021, provide the Receiver with documentation or other information satisfactory to the Receiver, in its sole discretion, (i) evidencing ownership of all property and assets of the Debtor and the Related Parties (collectively, the “**Juch Group Property**”), including, without limitation, the Property, and of all property and assets located on or at the location municipally known as 600 10th Road East, Stoney Creek, Ontario (as represented by PIN 17373-0141 (LT) and legal description Pt Lt 4, Con 5 Saltfleet, as in VM134950 (1stly); Stoney Creek; City of Hamilton) (the “**10th Road Location**”), and (ii) detailing how and when all such property and assets were purchased or otherwise acquired by the applicable owner(s).

NO REMOVAL OR SALE OF PROPERTY

8. THIS COURT ORDERS that, subject to paragraph 9 hereof:

- (a) no property or assets shall be removed from the 10th Road Location, including, for greater certainty and without limitation, any Juch Group Property, cash, Records, Related Party Records, computers or other electronics, satellite dishes, motor vehicles, trailers, and equipment; and
- (b) no Juch Group Property may be sold, transferred or otherwise disposed of by the applicable owner outside of the ordinary course of business,

in each case, without the consent of the Receiver or further order of this Court.

9. THIS COURT ORDERS AND DIRECTS Juchniewicz to forthwith remove, or to arrange for the removal of, the house cat living in the trailer at the 10th Road Location (as more fully described in the First Report), provided that the Receiver may, at any time, make arrangements with the City of Hamilton Animal Services, the Hamilton / Burlington Society for the Prevention of Cruelty to Animals, or any other animal services group or shelter for the surrender of such cat to any such services group or shelter and to take any steps reasonably incidental thereto.

LIMITATION ON THE RECEIVER'S LIABILITY

10. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or, to the extent applicable, in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA, by any other applicable legislation, or by the Appointment Order, and the protections afforded to the Receiver under the Appointment Order shall apply *mutatis mutandis* herein.

GENERAL

11. THIS COURT ORDERS that this Order is effective from the date that it is made and is enforceable without any need for entry or filing.

12. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

13. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

14. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

15. THIS COURT ORDERS that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

NEW SKIES SATELLITES B.V.
Applicant

- and -

JUCH – TECH INC.
Respondent

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

Proceeding Commenced at Toronto

**ORDER
(Expansion of Receiver’s Powers)**

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JUCH-TECH INC.:

and

Court File No: CV-20-00652759-00CL

Applicant

Respondent

ONTARIO

**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT: TORONTO

**MOTION RECORD OF
NEW SKIES SATELLITES B.V.
(MOTION FOR EXPANSION OF RECEIVER'S POWERS)**

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