**Court File No. CV-20-00637081-00CL**

# KEW MEDIA GROUP INC.
# KEW MEDIA INTERNATIONAL (CANADA) INC.

## FOURTH REPORT OF THE RECEIVER

**September 29, 2021**

FTI CONSULTING

**Court File No. CV-20-00637081-00CL**

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

IN THE MATTER OF THE RECEIVERSHIP OF
KEW MEDIA GROUP INC. AND
KEW MEDIA INTERNATIONAL (CANADA) INC.

**FOURTH REPORT TO THE COURT**
**SUBMITTED BY FTI CONSULTING CANADA INC.,**
**IN ITS CAPACITY AS RECEIVER**

## INTRODUCTION

1. Pursuant to the Order of the Honourable Mr. Justice Koehnen (the "**Receivership Order**") of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") granted February 28, 2020 (the "**Date of Receivership**"), FTI Consulting Canada Inc. was appointed as receiver and manager (the "**Receiver**") without security, of all of the assets, undertakings and properties of Kew Media Group Inc. ("**KMG**") and Kew Media International (Canada) Inc. ("**KMICI**" and, together with KMG, the "**Debtors**"), acquired for, or used in relation to a business carried on by the Debtors. The proceedings were commenced by way of 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 (the "**BIA**"), and shall be referred to herein as the "**Receivership**").

2. To date, the Receiver has filed three reports in respect of various aspects of the Receivership. The purpose of this, the Receiver's fourth report (the "**Report**"), is to provide information to the Court on the following:

(a) The motion (the "**Class Action Motion**") by Alex Kan and Stuart Rath (the "**Class Action Plaintiffs**"), plaintiffs in a securities class action brought against KMG and certain of its former directors and officers (collectively, the "**Individual Defendants**") brought in the Ontario Superior Court of Justice, Toronto, as Court File No. CV-20-00644200-00CP) (the "**Class Action**"), for an Order:

(i) Permanently lifting the stay of proceedings imposed by the Receivership Order for the limited purpose of allowing the Class Action to proceed against KMG (the "**Lift Stay Relief**"); and

(ii) Directing the Receiver to facilitate the retainer of counsel to act for KMG in defence of the Class Action within 30 days (the "**Compelled Defence Relief**").

**TERMS OF REFERENCE**

3. In preparing this Report, the Receiver has relied upon unaudited financial information of the Debtors, the Debtors' books and records, and discussions with the Debtors' employees and various interested parties (the "**Information**").

4. Except as described in this Report:

(a) The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook; and

(b) The Receiver has not examined or reviewed financial forecasts and projections referred to in this Report in a manner that would comply with the procedures described in the Chartered Professional Accountants of Canada Handbook.

5. The Receiver has prepared this Report in connection with the Class Action Motion. The Lift Stay Relief component of the Class Action Motion is scheduled to be heard on October 6, 2021. The hearing of the Compelled Defence Relief component of the Class Action Motion is yet to be scheduled. The Report should not be relied on for other purposes.

6. Future oriented financial information reported or relied on in preparing this Report is based on assumptions regarding future events; actual results may vary from forecast and such variations may be material.

7. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars. Capitalized terms not otherwise defined herein have the meanings defined in the Receivership Order or previous reports of the Receiver.

**EXECUTIVE SUMMARY**

8. For the reasons set out in this Report, the Receiver is of the view that:

   (a) although the Receiver takes no position in respect of the Lift Stay Relief due to potential complications regarding KMG's insurance coverage availability (as discussed further below), such relief is customary in comparable circumstances. A form of Lift Stay Order has been agreed to by the Receiver and counsel to the Class Action Plaintiffs if the Court determines that it is appropriate to grant the Lift Stay Relief.

   (b) the Compelled Defence Relief is both inappropriate and unworkable, and should not be granted. As discussed below, the Compelled Defence Relief would impose significant cost and prejudice to KMG's creditors (particularly, its secured lenders) for the sole benefit of the Class Action Plaintiffs.

9. Accordingly, the Receiver respectfully requests that:

(a) if the Lift Stay Relief is granted, such relief should be in the form of Order agreed to by the Class Action Plaintiffs and the Receiver. This form of Order – including the important protections and limitations that it provides for the benefit of the Receiver and creditors of KMG – are, in the Receiver's view, customary where a receivership stay of proceeding is lifted and reflect an appropriate balancing of stakeholders interests. The form of Order agreed to is derived from and closely adheres to the prior form of lift stay order agreed to by the parties and granted by this Court in respect of the Class Action earlier in the Debtors' receivership proceedings; and

(b) the Compelled Defence Relief be denied.

**BACKGROUND**

10. The Receiver is of the view that in order to properly consider the Class Action Motion, and the Receiver's response thereto, the Court would benefit from understanding the events that gave rise to the Receivership application, certain events in the Receivership Proceedings to date, the underlying issues that have given rise to the Class Action Motion, and the potential consequences if the relief sought by the Class Action Plaintiffs was to be granted. The foregoing are not addressed in the Class Action Motion Record and have therefore been detailed herein.

**THE RECEIVERSHIP**

11. The Receivership application was made by Truist Bank, in its capacity as agent for a syndicate of lenders consisting of Truist Bank, Bank of Montreal and The Toronto-Dominion Bank (collectively, the "**Secured Lenders**"). The Receivership application and the granting of the Receivership Order were founded in serious allegations of wrongdoing by KMG and one or more of its officers and directors. Details of the conduct of KMG and its principals were set out in detail in the application materials filed by the Secured Lenders in support of the Receivership Order. Certain of the underlying facts concerning wrong-doing were a matter of public record prior to the Receivership application, as a result of KMG's public company disclosure obligations under securities law.

12. The events that led to the Receivership application commenced with disclosure by KMG that it had learned that certain reports provided by KMG's chief financial officer to KMG and to the Secured Lenders contained inaccurate information regarding working capital and that the chief financial officer had left the company. That disclosure was included in a press release issued by KMG on December 11, 2019. As a result of the inaccurate information given to them, the Secured Lenders had advanced almost twice as much funding to KMG as than the amount it was, in fact, entitled to.

13. On January 15, 2020, KMG announced that its auditor, Grant Thornton LLP, had withdrawn its audit reports for the years ending December 31, 2017 and 2018, together with any interim audit review reports for the interim periods in the 2017, 2018, and 2019 fiscal years.

14. On January 16, 2020, the Ontario Securities Commission issued a notice of temporary cease trade order in respect of KMG's shares, and thereafter such order was made permanent by a cease trade order dated January 20, 2020.

15. The Receivership Order was granted in circumstances of urgency. As noted in the Endorsement of Justice Koehnen dated February 28, 2020, that accompanied the granting of the Receivership Order, KMG was served with notice of the application the night before the hearing and without the customary 10-day statutory notice of the Secured Lenders' intention to enforce their security. Despite KMG's request for an adjournment to respond to the application and despite the "very short service" noted by Justice Koehnen, he cited the conduct of KMG that had resulted in the Secured Lenders having advanced approximately twice as much money to KMG as it was entitled, denied the adjournment request and granted the Receivership Order. A copy of Justice Koehnen's handwritten endorsement, together with an unofficial transcript thereof, is attached hereto as **Appendix A**.

16. KMG is no longer a functional entity – it has no business or operations, and it has no directors, officers or employees. In customary manner, the Receivership Order authorized and empowered the Receiver to realize upon the assets of KMG and KMIC. The realization process is complete, other than the pursuit of the potential legal claims that are discussed below, and interim distributions have been made to the Senior Lenders, all as approved by the Court. The Receiver's current estimate is that, before potential recoveries from the legal claims, the Senior Lenders will suffer a shortfall in excess of US$100 million. Accordingly, unless net proceeds in excess of US$100 million are realized from the potential legal claims, the Senior Lenders are the only stakeholder with an economic interest in the Receivership.

17. Two potential claims have been identified by the Receiver that could lead to additional recoveries:

(a) A claim against Grant Thornton LLP ("**GT Canada**"), and Grant Thornton UK LLP and Grant Thornton UK LLC (together "**GT UK**" and collectively with GT Canada, the "**GT Action Defendants**"), as the former auditors for KMG and its subsidiaries (the "**KMG Group**") in relation to damages suffered by KMG and Kew Media International Limited, an indirect subsidiary of KMG ("**KMIL**", and together with KMG, the "**GT Action Plaintiffs**") on account of the Defendants' failure to detect issues with the KMG Group's financial information and financial reporting provided to the GT Action Plaintiffs' stakeholders (the "**GT Claim**"); and

(b) Potential claims against former officers and directors of KMG (the "**D&O Claims**").

## THE GT ACTION

18. A legal proceeding in respect of the GT Claim (the "**GT Action**") was commenced on February 9, 2021, when, pursuant to powers granted in paragraph 3(i) of the Receivership Order, the Receiver caused the GT Action Plaintiffs to issue a Notice of Action against the GT Defendants. The GT Action is to be heard in the Ontario Superior Court of Justice under Court File No. CV-21-00656707-0000.

19. As outlined in the Statement of Claim dated March 11, 2021 (the "**Original GT Statement of Claim**") in relation to the GT Action, the GT Action Plaintiffs claim against the GT Action Defendants for the following:

    (a) Damages in the amount of $100 million for breach of contract, breach of duty, breach of fiduciary duty, negligence and negligent misrepresentation;

    (b) An order requiring the GT Action Defendants to repay to the GT Action Plaintiffs all fees, payments, and monies paid to them by the GT Action Plaintiffs;

    (c) A declaration that any indemnity or limitation of liability provisions in favour of the GT Action Defendants, express or implied, are void or voidable or in the alternative unenforceable;

    (d) Pre- and post-judgment interest in accordance with the *Courts of Justice Act, R.S.O. 1990, c. C. 43*, as amended;

    (e) The GT Action Plaintiffs' costs of the action; and

    (f) Such further and other relief as the Honourable Court permits.

20. On June 2, 2021, the GT Action Plaintiffs filed an Amended Statement of Claim (the "**Amended GT Statement of Claim**") that revised the Original GT Statement of Claim and also provided certain additional information with respect to the GT Action, including the following:

(a) KMG is entitled to sue the GT Action Defendants on its own behalf and on behalf of the individual companies in the KMG Group on the basis that the GT Action Defendants were providing services to KMG and the group of related companies in connection with the preparation of consolidated financial statements; and

(b) Providing additional details with respect to the audit and review services rendered to the KMG Group by GT Canada and GT UK, and the respective engagement letters under which the services were provided.

**THE D&O CLAIMS**

21. KMG carried insurance in respect of claims against its directors and officers (the "**D&O**"). Specifically, it has a primary policy and an excess policy (collectively, the "**D&O Policy**"). The D&O Policy has a policy period of March 20, 2019 at 12:01 a.m. Eastern time to March 20, 2020 at 12:01 a.m. Eastern time, with a 90-day discovery period after the end of the policy period. The insurers' liability under the primary D&O Policy is limited to $10 million in the aggregate (including defence costs), with an additional $1 million per director or officer in additional coverage for Non-Indemnifiable Loss (as defined in the D&O Policy).

22. By letter dated March 17, 2020, the Receiver gave notice of its potential claims against the Debtor's directors and officers. This notice and its delivery were coordinated with the Debtors' principal secured lenders, who also provided notice of potential claims. The Receiver's notice was provided to, among other, Lloyd's London and Marsh Canada, the insurers and broker respectively, under the D&O Policy (collectively, the "**D&O Insurer**"). A copy of the Receiver's notice is attached hereto as **Appendix B**.

23. On September 3, 2020, the Receiver sent a letter to Roderic McLauchlan of Clyde & Co, counsel to D&O Insurer, requesting, among other things, that the D&O Insurer provide a coverage position with respect to the Class Action. A copy of that letter is attached hereto as **Appendix C**.

24. There have been further emails, letters and telephone calls with counsel to the D&O Insurer since that time. As of the writing of this Report and despites several further requests and follow-up, the Receiver has still not been provided with a coverage position by the D&O Insurer. Of particular importance and relevance to the current motion by the Class Action Plaintiffs for the Lift Stay Relief and the Compelled Defence Relief, the D&O Insurer has reserved its right to deny coverage in the event that KMG fails to defend the Class Action (discussed further below).

25. The Receiver has continued its investigations with respect to the D&O Claims and has been in discussions with the Senior Lenders with respect thereto. As at the date of this Report, no decision has yet been reached as to whether the Receiver will pursue some or all of the D&O Claims and, if so, whether it would seek recovery under the D&O Policy.

26. **The Class Action**

27. The Class Action was commenced by Statement of Claim issued July 20, 2020, pursuant to the *Class Proceedings Act*, 1992, S.O. 1992, c.6.

28. The Class Action is brought by the Class Action Plaintiffs as representatives of the Class. The Class is all persons or entities who acquired KMG's securities in the secondary market during the class period[1], other than certain excluded persons[2]. The Class members are therefore all shareholders or former shareholders of KMG. Accordingly, they have only equity claims and are not creditors in the Receivership. Furthermore, they have no economic interest in the Receivership unless net proceeds well in excess of US$100 million (i.e. sufficient to repay in full all secured and unsecured claims against KMG) are realized from the potential legal claims described above.

[1] Being the period from March 28, 2017, to January 16, 2020.
[2] Consisting of KMG, any of KMG's directors and the other individuals named as defendants in the Class Action.

29. It is the Receiver's understanding that any judgment awarded in the Class Action is intended to be satisfied through recovery from the D&O Policy and, potentially, directly from the D&Os. Erosion of the D&O Policy would reduce the potential recoveries available to the Receiver from the D&O Policy, and consequently recoveries by the Senior Lenders from the Receivership, in the event that the Receiver pursues the D&O Claims and coverage under the D&O Policy is available in respect of such D&O Claims.

30. In connection with the Class Action, the Receiver previously consented to a lift stay Order granted by this Court on July 14, 2020 (the "**July 14 Lift Stay Order**"), the language of which was negotiated between the Receiver and counsel to the Class Action Plaintiffs. The July 14 Lift Stay Order allowed for the limited commencement (but not continuation) of the Class Action against KMG. In particular, the Court permitted the following:

(a) granting the Class Action Plaintiffs leave to issue and file with the court and serve the Statement of Claim

(b) granting the Class Action Plaintiffs leave to file with the court their Motion for Certification and for Leave under Part XXIII.1 of the *Ontario Securities Act*;

(c) serving (as necessary), filing with the court and hearing any motion(s) related to the service of the Statement of Claim and/or the Class Action Plaintiffs' Motion for Certification and Leave under Part XXIII.1 of the *Ontario Securities Act*; and

(d) serving (as necessary), filing with the court and hearing any motions related to the court approval of a third-party adverse costs indemnity and disbursement funding agreement,

provided that no further steps shall be taken in the Class Action in respect of KMG or the Receiver without further Order of the Court.

31. The July 14 Lift Stay Order, a copy of which is attached hereto as **Appendix D**, stated, *inter alia*:

"3. THIS COURT ORDERS that, subject to further Order of this Court, the Receiver shall not be required to participate in or defend the Action or any hearing authorized in paragraph 2 above, or to incur any costs in respect of the Action or such hearings. Subject to: (i) an agreement between the Plaintiffs and the Receiver; or (ii) further Order of this Court, the Plaintiffs and defendants in the Action shall not:

(a) seek, make, or obtain, whether directly or indirectly, as the case may be, any further claim, counterclaim or recovery from, against, or in respect of the Receiver, Kew Media or any other entity that is, or has assets, subject to the Appointment Order (collectively, the "Receiver and Debtor Entities");

(b) add any of the Receiver and Debtor Entities, other than Kew Media, to the Action;

(c) seek, or obtain, any costs awards, judgments or any relief of any kind against, or in respect of the Receiver and Debtor Entities in the Action; or

(d) seek, or obtain, any discovery from, or examination or participation of, the Receiver and Debtor Entities in the Action.

4. THIS COURT ORDERS that except as expressly provided for in this Order: (i) all other stays of proceedings provided for in the Appointment Order; and (ii) all rights and protections in favour of the Receiver, remain in full force and effect in accordance with the terms of the Appointment Order.

…

9. THIS COURT ORDERS AND DECLARES that, subject to further Order of this Court, it retains exclusive jurisdiction with

> respect to the within proceedings, the Receiver, the assets, property and undertaking of Kew Media, and the other matters that are set out in or the subject of the Appointment Order (including, without limitation, the Stay of Proceedings)."

32. There have also been protracted, but ultimately productive, discussions between the Class Action Plaintiffs' counsel and the Receiver with respect to the acceptance of service of the Class Action Plaintiffs' statement of claim in the Class Action.

33. Although the Receiver accepted service of the Statement of Claim on its own behalf, Class Action Plaintiffs' counsel requested that the Receiver also formally accept service of behalf of KMG. The parties had considerable discussions about the distinction drawn by the Class Action Plaintiffs and the possible consequences of accepting service not only on behalf of the Receiver but also on behalf of KMG; in particular, whether doing so would, in the opinion of Class Action Plaintiffs' counsel, constitute a step taken in the defence of the Class Action or otherwise obligate the Receiver to defend the Class Action. In addition, another law firm continued to appear on the service list as representing KMG in the receivership proceedings, notwithstanding the appointment of the Receiver, further complicating the question of service on KMG.

34. An Order was granted by this Court on January 18, 2021, extending the time for service of the Class Action Plaintiffs' Statement of Claim while those discussions were ongoing. In reliance on comments of the Court expressed at that hearing with respect to the issue of service, and in light of the law firm that had represented KMG confirming that it no longer did so and amending the public record accordingly, and upon further discussions with Class Action Plaintiffs' counsel, the Receiver formally accepted service of the Class Action Plaintiffs' Statement of Claim on July 6, 2021.

**THE CLASS ACTION MOTION**

35. As noted earlier in this Report, the Class Action Motion seeks an Order:

(a) for the Lift Stay Relief (i.e. permanently lifting the stay of proceedings imposed by the Receivership Order for the limited purpose of allowing the Class Action to proceed against KMG); and

(b) for the Compelled Defence Relief (i.e. directing the Receiver to facilitate the retainer of counsel to act for KMG in defence of the Class Action within 30 days).

**THE LIFT STAY RELIEF**

36. Whereas the July 14 Lift Stay Order was of a limited nature, the Class Action Plaintiffs have informed the Receiver that they now wish to proceed to fully litigate their claims in the Class Action against KMG for the sole purpose of accessing available insurance coverage.

37. A request by a potential litigant to lift a stay of proceedings in a receivership in order to allow the litigant to pursue recovery against an insurer is typically not opposed by a receiver provided that two fundamental conditions are met:

(a) The lifting of the stay is limited so as to provide that a judgment may be obtained solely for the purpose of accessing available insurance proceeds but any such judgment remains stayed and may not be enforced as against the insolvent debtor company or its assets or against the receiver; and

(b) The receiver shall not be required to participate in such litigation or to incur costs that will diminish recoveries for creditors in the receivership proceedings.

38. The foregoing reasonably, fairly and appropriately balances the litigant's interests in accessing available insurance proceeds while preserving the integrity of the receivership process and not permitting a preference or "end run" around the priorities and treatment afforded creditor and equity claims in the receivership proceedings. The Receiver is of the view that if the lift stay component of the Class Action Motion is granted, it should only be done subject to satisfying those conditions.

39. As noted earlier in this Report, the July 14 Lift Stay Order included language to incorporate those conditions; language that was negotiated between the Class Action Plaintiffs' counsel and the Receiver that was acceptable to the parties and to the Court, with no other persons objecting. Accordingly, the Receiver respectfully requests and recommends that the same language be included in any Order permanently lifting the receivership stay of proceedings granted by this Honourable Court as a result of the Class Action Motion.

40. The Receiver does not object to the lift stay component of the Class Action Motion, provided that it is on the same terms as those articulated in the July 14 Lift Stay Order. The Receiver does note however, that because of statements made by the D&O Insurer as described later in this Report, it appears possible that if the Receiver was to consent to the lifting of the stay, the D&O Insurer may attempt to rely on that position that as a basis to deny coverage in respect of the Class Action to the detriment of the Class Action Plaintiffs.

41. Accordingly, in order to mitigate against the risk of the D&O Insurer taking that position, the Receiver is not taking a position with respect to the granting of the lift stay Order requested in the Class Action Motion, save that any such Order should be made on the terms noted above.

42. The Receiver is mindful that its position in respect of the Lift Stay Relief (i.e. formally consenting versus taking no position) might be argued by the D&O Insurer to affect coverage, thereby affecting the Class Action Plaintiffs. Accordingly, the Receiver has engaged in ongoing discussions with counsel to the Class Action Plaintiffs with respect to its electing to take no position regarding the Lift Stay Relief.

43. While the Receiver takes no position on the Lift Stay Relief, it feels strongly that such relief should only be granted on the basis negotiated with counsel to the Class Action Plaintiffs (i.e. in the form of Lift Stay Order that has been agreed to by the Receiver and the Class Action Plaintiffs). This form of Order contains important safeguards and limitations that are, in the Receiver's view, both customary for orders of this nature and protective of the interests of the Debtors' creditors.

## THE COMPELLED DEFENCE RELIEF

44. For the reasons more fully described below, the Receiver objects to the component of the Class Action Motion seeking an Order that would require the Receiver to retain counsel to act for KMG in defence of the Class Action because, in the business judgment of the Receiver, it is not in the best interests of the estate or its creditors to do so and the Class Action Motion does not address a variety of significant challenges to which a compelled defence of the Class Action would give rise.

45. The Receiver asked counsel to the Class Action Plaintiffs to provide precedent cases where a receiver has been compelled to defend litigation. Counsel to the Class Action Plaintiffs have been unable to provide any such precedent, nor has counsel to the Receiver been able to find any such precedent.

### *The D&O Policy "Duty to Defend"*

46. As noted in the Class Action Plaintiffs' Motion Record, KMG has multiple layers of insurance coverage. In most circumstances, it would be expected that a litigant would welcome a situation where its litigation would not be defended, thereby opening the door to summary judgment and a swift resolution of the case.

47. However, Claims Condition 7.3 of the primary D&O Policy in this case states:

> "Insured shall have the obligation to defend and contest any Claim made against it."

48. The Receiver has been advised by counsel to the D&O Insurer that the insurers have reserved their right to deny KMG coverage in the event that it fails to defend the Class Action. Accordingly, if KMG fails to defend the Class Action, the Class Action Plaintiffs may lose their recourse to insurance proceeds. It is this dynamic that has ultimately led to the unusual circumstance in which the Class Action Plaintiffs wish to see the Class Action defended and the filing of the Class Action Motion.

49. The Receiver has requested that the D&O Insurer provide a definitive coverage position in respect of the Class Action but the D&O Insurer has, to date, refused to provide one. Rather, it has reserved rights or raised questions or concerns with respect to various steps taken by the Receiver in the course of the Receivership that may be viewed by the D&O Insurer as inconsistent with KMG's contractual "duty to defend", including:

    (a) The acceptance of service by the Receiver of the Class Action Plaintiffs' statement of claim in the Class Action;

    (b) The consent by the Receiver to the July 14 Lift Stay Order;

    (c) The potential consent by the Receiver to the Lift Stay Relief;

    (d) The alleged making of admissions by the Receiver that may be inconsistent with KMG's duty under the D&O Policies not to admit liability, including as a result of the commencement of the GT Action and the allegations or statements made therein in respect of KMG's past conduct.

50. It is unclear what steps and actions would be required of the Receiver (or another party) in order to satisfy the "duty to defend". For example, would a notice of defence suffice? Would a fulsome and vigorous defence be required? Would an appeal be required in the event that the defence fails? The Receiver has asked the D&O Insurer to provide guidance on that point, but to date it has declined to do so.

51. It is not a certainty that the D&O Insurer will deny coverage for failure to defend because to date they have declined to provide a definitive position and have simply reserved rights. Furthermore, it is possible that even if the D&O Insurer was to take that position, such a position may not be upheld as a proper and valid interpretation of the terms of the D&O Policy. Understandably, however, the Class Action Plaintiffs wish to avoid the risk of loss of coverage and side-step the issue entirely by ensuring that KMG does defend the Class Action.

***The Receiver's Analysis and Conclusions***

52. The Receiver has been appointed by the Court pursuant to the Receivership Order and is the *de facto* controlling mind of KMG for the purposes and objectives set out therein and in other Orders granted in the Receivership. In this case, those objectives were primarily realizing upon the assets of KMG and distributing the proceeds thereof to KMG's creditors. Indeed, as there are no remaining directors, officers or employees of KMG, the Receiver is the *only* person that is in a position to make decisions and act on behalf of KMG.

53. Paragraph 3(i) of the Receivership Order states:

> "3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:
>
> (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;"

54. It is clear from paragraph 3(i) that the Receiver is the party that is authorized to defend the Class Action and, importantly, that it has the choice whether or not to do so based on the Receiver's analysis of whether or not it is necessary or desirable to do so. To put it another way, the Court has authorized the Receiver to use its business judgment to determine whether or not to defend the Class Action.

55. In exercising its business judgment, the Receiver has considered the interests of all stakeholders and must balance their competing interests.

56. Here, there are two primary parties whose interests must be considered by the Receiver – the Secured Lenders, who are creditors in the Receivership and who face a potential shortfall in excess of US$100 million, and the members of the Class, who are equity claimants that have no prospect of recovery in the Receivership proceedings unless the Receiver successfully recovers well in excess of US$100 million from the GT Action and the D&O Claims.

57. As discussed later in this Report, defending the Class Action would impact the recoveries to the Secured Lenders as:

    (a) Costs would be incurred that would deplete funds otherwise available for distribution, with no benefit or potential upside to the Secured Lenders in terms of potential further recoveries; and

    (b) The defence of the Class Action could jeopardize the GT Action and the D&O Claims, the sole remaining sources of material recovery for the estate and the Secured Lenders.

58. The Receiver has been advised by counsel to the Secured Lenders that they do not support the Receiver's participation in the defence of the Class Action or the Receiver incurring costs in connection therewith.

59. Not defending the Class Action would, if the D&O Insurer successfully denied coverage as a result of the "duty to defend", leave the Class with no prospect of recovery other than from the individuals named in the Class Action.

60. Consequently, the interests of the Secured Lenders and the Class are in conflict. In short, the Class Action Plaintiffs wish to cause the Secured Lenders to suffer a greater loss than would otherwise result, in order to avoid the risk of loss of coverage under the D&O Policy (which outcome is not certain, whether because the D&O Insurer may not ultimately assert that position or such position may, in any event, be legally valid in the circumstances).

61. From the perspective of the Receiver, KMG, the estate and its creditors, it is not necessary to defend the Class Action as doing so is not required to further the objectives of the Receivership or to complete the Receiver's mandate, the claim in the Class Action is not a claim advanced against the Receiver and the target of the Class Action, being the proceeds available from the D&O Policy, is not an asset in the Receivership. Accordingly, the issue for the Receiver in exercising its discretion as to whether or not to defend the Class Action is whether it is desirable to do so.

62. As already noted, defence of the Class Action offers no benefit or upside to the estate or KMG's creditors. There is, however, in the Receiver's view, considerable potential downside and a variety of significant problems or issues that would be created if the Receiver chose, or was Ordered by the Court, to defend the Class Action or to find counsel to do so. The Receiver has raised these issues in its discussions with counsel to the Class Action Plaintiffs in an effort to see whether there could be a solution that could appropriately and fairly balance the competing interests of the Secured Lenders and the Class. To date no such solution has been found. Those issues – each of which is considered hereafter – include:

(a) The costs involved;

(b) There being no controlling mind for KMG other than the Receiver;

(c) The inability to retain, instruct and pay defence counsel, if one could be found;

(d) The conflict with the GT Action;

(e) The conflict with the D&O Claims; and

(f) Protecting against the Receiver's being compelled to take positions it may not, in fact, believe to be true.

63. In the event that the Order sought by the Class Action Plaintiffs is granted, legal and professional costs would be incurred by the Receiver in finding counsel willing to act (if that is even possible) and negotiating the terms of engagement. Other than the Receiver, there is no one from whom defence counsel could obtain instructions, such that defence counsel would effectively be without a client. If the Receiver was to be instructing counsel in the defence, significant additional costs would be incurred and a host of other problems (discussed below) would arise. Even if an alternate controlling mind was appointed to instruct counsel in the defence, the Receiver would inevitably incur costs and be obligated to monitor and participate in the proceedings in order to ensure that the interests of the estate were not prejudiced by steps and positions taken in the defence.

64. KMG is a defunct company – its business and assets have been sold and it has no continuing directors, officers or employees. There is no one other than the Receiver to engage defence counsel, no one to instruct defence counsel if appointed, no one to provide facts or give evidence on behalf of KMG, no one to instruct on important issues (such as admissions and waivers of privilege), and no one to negotiate or approve any settlement. The Receiver cannot and should not act as the instructing or controlling mind in the Class Action as the defence of the Class Action is detrimental to the Receivership estate and its creditor for the various reasons set out in this Report. The Receiver should not be obligated by Court order to find counsel willing to defend KMG in circumstances in which counsel will have to make all decisions in respect of the litigation without having an actual client and to the potential detriment of KMG's creditors.

65. The Class Action Plaintiffs propose that defence counsel, if one can be found, will be paid solely by the D&O Insurer and not by KMG or the Receiver, and that the issue of defence costs is therefore economically neutral to the Receivership estate. As noted earlier, in the Receiver's view, costs beyond the simple fees of defence counsel will be incurred that may not be recoverable from the D&O Insurer. Furthermore, it is not clear that the suggestion in the Class Action Motion aligns with the D&O Policy terms, as the D&O Insurer has informed the Receiver that the insurance is indemnification-based (i.e. KMG must pay defence costs at first instance and then seek reimbursement from the D&O Insurer, with the attendant risk that reimbursement of some costs may be denied). It is, at best, uncertain that the Receiver could find counsel willing to act in such circumstances.

66. As noted earlier in this Report, the GT Action is the principal remaining asset of KMG other than the potential D&O Claims. The GT Action is fundamentally premised on wrongdoing by KMG and its principals that the auditor failed to detect. Presumably, any defence of the Class Action must necessarily deny wrongdoing by KMG and its principals, a position that is irreconcilably in conflict with the GT Action (thought this is not yet clear, as the D&O Insurer has not articulated what a contractually-required defence of KMG entails). KMG – through whatever controlling or instructing minds – should not be advancing potentially inconsistent legal positions in separate proceedings simultaneously (i.e. one in which wrongdoing by KMG and its principals is asserted and another in which wrongdoing by KMG and its principals is denied).

67. Similarly, decisions with respect to admissions, waiver of privilege, and settlements in the Class Action could have significant repercussions on the GT Action. It is simply untenable that KMG, through the Receiver, pursue the GT Action, while KMG – through the Receiver or otherwise – defends the Class Action and, as a result, may make and pursue fundamentally inconsistent decisions and legal strategies.

68. The Receiver has been in consultation with the Secured Lenders regarding the D&O Claims and, as noted earlier in this Report, put the D&O Insurer on notice of a potential claim. As at the date of this Report, no decision has been made on whether or not to commence and action with respect to the D&O Claims. Any action in respect of the D&O Claims would fundamentally be based on the same underlying premise as the Class Action – wrongdoing by the D&Os in question. Requiring KMG to defend the Class Action may again be unworkable in a situation in which the Receiver elects to advance claims of KMG against one or more of the Debtors' former director and/or officers.

69. In determining whether to initiate, prosecute, settle or defend claims pursuant to the powers granted in the Receivership Order, the Receiver has applied its business judgment. Historically, courts have given significant deference to a receiver's business judgment. Furthermore, in the Receiver's view, the Court-granted authority to admit a claim or deny a claim, or to bring a claim or defend a claim, should not be abdicated by the Receiver or assigned to another party outside the Receivership, especially in the circumstances where the request to do so results from one party simply being dissatisfied with the decision of the Receiver, a decision made with due consideration of the competing interests in play.

70. More fundamentally, it is critically important that the Receiver, an officer of the Court, maintain its integrity. As noted above, the Receivership has been premised since inception on unequivocal allegations of wrongdoing by KMG or its principals, allegations supported by the public record, including KMG's press releases and the withdrawal by the auditor of certain of its reports. The Class Action Plaintiffs strongly believe that KMG engaged in wrongdoing and that they have valid claims against KMG as a result. If the Receiver's assessment was that the Class Action Plaintiffs allegations are true, then it would be inappropriate for the Receiver, on behalf of KMG, to deny them in defending the Class Action and in doing so, make statements to the Court or file evidence that it believes to be untrue (and that would also be inconsistent with the allegations being made concurrently in the GT Action).

71. In the Receiver's view, it is a dubious proposition that a contractual "duty to defend" in an insurance contract can be constructed to require, in effect, that a defendant must knowingly

and intentionally advance a false position or lose insurance coverage. Such a contractual provision would be unconscionable. It is sensible that an insurer may require a defendant to contest a claim that the defendant believes to be without merit rather than admit it simply because there is available insurance coverage and that is the path of least resistance. But it cannot be that where a company is insolvent and without a controlling or instructing mind, a court-appointed receiver can be compelled to defend, or cause to be defended, on behalf of the insolvent company an action outside of the receivership proceedings and in so doing to make assertions and lead evidence that the receiver believes may be in whole or in part untrue, solely for the purpose of avoiding loss of insurance coverage otherwise available to shareholder litigants. In analogous circumstances, the court would undoubtedly take a dim view of any receiver that denied a claim notwithstanding that it believed the claim to be in fact valid, if it did so for ulterior purposes or advantage.

72. It should be noted that the Receiver has not admitted and is not admitting at this time the allegations of the Class Action Plaintiffs' claim are true, nor does it take any position as to the merits of the claim in the Class Action.

**CONCLUSION**

73. As noted earlier in this Report, the D&O Insurer has to date refused to provide a definitive position on the "duty to defend" and precisely what actions would satisfy that requirement. In the Receiver's view, having answers to those questions would greatly assist the parties, and the Court, in determining whether there is a reasonable solution available that would address the concern of the Class Action Plaintiffs about potential loss of coverage while avoiding the many problems and concerns that the Class Action Motion raises in the Receivership.

74. In the meantime, for the reasons set out above, the Receiver is of the view that the relief sought in the Class Action Motion regarding retention of counsel to defend the Class Action is inappropriate and the Receiver respectfully requests and recommends the this Honourable Court decline to issue such an Order.

The Receiver respectfully submits to the Court this, its Fourth Report.

Dated this 29th day of September, 2021.

FTI Consulting Canada Inc.
In its capacity as Receiver of certain assets of
Kew Media Group Inc. and Kew Media International (Canada) Inc.
And not in its personal or corporate capacity

Nigel D. Meakin
Senior Managing Director

# Appendix A

**Endorsement of Justice Koehnen in Respect of Receivership Order**

# COUNSEL SLIP

COURT FILE NO. CV-20-637081-CL

DATE: Friday, February 28, 2020

THE HONOURABLE: MR. JUSTICE KOEHNEN

No. ON LIST: 1
COURTROOM: 8-3 @ 330 UA

TITLE OF PROCEEDING T.B. -v- K.M.

| COUNSEL FOR: Plaintiff (s) Applicant (s) Petitioner (s) | Robert Kennedy, (Dentons Canada LLP) Mark Freake for Applicant (Truist Bank, as Agent) | Phone & Fax No T: 416-863-4456 F: 416-863-4592 E: robert.kennedy@dentons.com mark.freake@dentons.com |
|---|---|---|
| COUNSEL FOR: Defendant (s) Respondent (s) | | Phone & Fax No |

David Bish (torys LLP)
for FTI, proposed Receiver
t. 416-865-7353
f. 416-865-7380
dbish@torys.com

JEFF CARHART
for BMO Media Finance
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jcarhart@millerthomson.com

Jason Wadden jwadden@goodmans.ca
Bradley Wiffen bwiffen@goodmans.ca
for Kew Media Group Inc.
T: 416-979-2211
F: 416-979-1234

Court File Number: CV-20-637081-CL

**Superior Court of Justice**
Commercial List

# FILE/DIRECTION/ORDER

Truist Bank, As Agent
Plaintiff(s)

AND

Kew Media Group Inc et al.
Defendant(s)

Case Management ☐ Yes ☐ No by Judge: Koehnen J

| Counsel | Telephone No: | Facsimile No: |
|---|---|---|
| see counsel slip | | |
| | | |

☐ Order ☐ Direction for Registrar **(No formal order need be taken out)**
☐ Above action transferred to the Commercial List at Toronto **(No formal order need be taken out)**

☐ Adjourned to: ____________
☐ Time Table approved (as follows):

Truist seeks to appoint ~~FTI~~ FTI as Receiver and Manager of Kew Media Group Inc and some of its affiliates.

~~Truist [illegible]~~ Kew seeks an adjournment of the application to the middle of next week. Kew says it is entitled to 10 days notice of the Receivership application. It was served only last night

Feb. 28, 2020
Date

[signature]
Judge's Signature

☐ Additional Pages ________

Court File Number: ____________________

**Superior Court of Justice**
Commercial List

# FILE/DIRECTION/ORDER

**Judges Endorsment Continued**

Despite the very short service I grant the receivership order.

The applicant syndicated lenders are owed over $113,000,000.

The applicant and FTI have already been "in" the company for over 60 days working with management to prepare for a receivership or some other process of restructuring. During this period the situation of Kew has gone from bad to worse.

In December 2019 Kew advised its lenders that it had materially overstated information in its base borrowing certificates. The effect was that there was a collateral deficiency equal to approximately half of the $113,000,000 debt.



Judges Initials ____________

Court File Number: ______________________

**Superior Court of Justice**
Commercial List

# FILE/DIRECTION/ORDER

**Judges Endorsment Continued**

On January 15, 2020 Ken's auditors withdrew its audit reports for 2017, 2018 and 2019.

On January 16, 2020 the OSC cease traded Ken's shares for 15 days. On January 29 the OSC issued a permanent cease trade order.

The lenders have also become aware of numerous other breaches including the sale of certain U.S. subsidiaries without the required consent of the lenders and the diversion of payments that should have gone to the lenders but went to other parties instead.

Ken initiated a sales process. It resulted in non-binding letters of interest that would see the lenders suffer a significant shortfall.



Judges Initials ______________

Court File Number: ______________________

**Superior Court of Justice**
Commercial List

# FILE/DIRECTION/ORDER

**Judges Endorsment Continued**

Kew's subsidiaries in the U.K were put into administration in the U.K. this morning.

Kew remains a reporting issuer and will be required to disclose this application. That runs the serious risk of having suppliers and customers of KEW terminating contracts. If that occurs the situation of Kew will only worsen.

In addition notice of a receivership application risks jeopardizing those sales and potential sales that are in progress. Providing potential purchasers with certainty about who they should deal with can only improves the sale process.



Judges Initials ______________

Court File Number: ______________________

**Superior Court of Justice**
Commercial List

# FILE/DIRECTION/ORDER

**Judges Endorsment Continued**

The respondents have not pointed me to any specific prejudice that they will suffer because of the failure to receive 10 days notice.

This is not a situation where the receivership application has come out of the blue. FTI has been working with management for 60 days. That only occurs when there are significant problems. Although ~~the~~ Kew has had over 60 days to come up with proposals ~~the~~ counsel could not point me to any alternatives. The only thing counsel for Kew has pointed me to is that the board would like to meet to consider alternatives. I was not advised that the board ~~has~~ is has been working on alternatives that are coming to fruition.



Judges Initials ______________

Court File Number: ____________

**Superior Court of Justice**
Commercial List

# FILE/DIRECTION/ORDER

**Judges Endorsment Continued**

Counsel for Kew also suggested that we do not even know if the information in the banks' application is true. If that is the case Kew is not without a remedy. The material was served last night. It is a serious application on extremely short notice. If there is something materially misleading about the application materials, that may give directors or other stakeholders grounds to set the order aside.

In my view this is a case for which it is appropriate to dispense with the 10 days notice under the BIA. The defaults are material. Kew has known for at least 60 days that it needed options. I have been pointed to no options. Kew's U.K subsidiaries are already in administration.



Judges Initials ____________

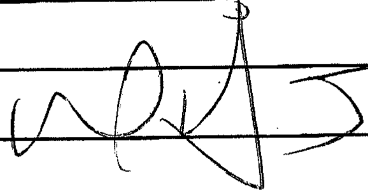
Court File Number:

**Superior Court of Justice**
Commercial List

# FILE/DIRECTION/ORDER

**Judges Endorsment Continued**

Further delay at this point creates a serious risk that customers and suppliers will flee thereby only exacerbating an already very serious situation



Roehren J

Page 7 of

Judges Initials

Court File No. CV-20-00637081-00CL

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

B E T W E E N:

**TRUIST BANK, AS AGENT**

Applicant

- and -

**KEW MEDIA GROUP INC., KEW MEDIA INTERNATIONAL (CANADA) INC. and ARCHITECT FILMS INC.**

Respondents

APPLICATION UNDER SUBSECTION 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

**UNOFFICIAL TRANSCRIPT OF THE ENDORSEMENT OF JUSTICE KOEHNEN**
**February 28, 2020**

---

*R. Kennedy and M. Freake of Dentons for the Applicant, Triust Bank, as Agent*

*D. Bish of Torys for FTI, Proposed Receiver*

*J. Carhart of Miller Thomson for BMO Media Finance*

*J. Wadden and B. Wiffen of Goodmans for the Respondent, Kew Media Group Inc.*

Truist seeks to appoint FTI as Receiver and Manager of Kew Media Group Inc. and some of its affiliates.

Kew seeks an adjournment of the application to the middle of next week. Kew says it is entitled to 10 days notice of the Receivership application. It was served only last night.

Despite the very short service I grant the receivership order.

The applicant syndicated lenders are owed over $113,000,000.

The applicant and FTI have already been "in" the company for over 60 days working with management to prepare for a receivership or some other process of restructuring. During this period the situation of Kew has gone from bad to worse.

In December 2019 Kew advised its lenders that it had materially overstated information in its base borrowing certificates. The effect was that there was a collateral deficiency equal to approximately half of the $113,000,000 debt.

On January 15, 2020 Kew's auditors withdrew its audit reports for 2017, 2018 and 2019.

On January 16, 2020 the OSC cease traded Kew's shares for 15 days. On January 29 the OSC issued a permanent cease trade order.

The lenders have also become aware of numerous other breaches including the sale of certain U.S. subsidiaries without the required consent of the lenders and the diversion of payments that should have gone to the lenders that went to the other parties instead.

Kew initialed a sales process. It resulted in non-binding letters of interest that would see the lenders suffer a significant short fall.

Kew's subsidiaries in the UK were put into administration in the UK this morning.

Kew remains a reporting issuer and will be required to disclose this application. That runs the serious risk of having suppliers and customers of Kew terminate contracts. If that occurs the situation of Kew will only worsen.

In addition, notice of a receivership application risks jeopardizing those sales or potential sales that are in progress. Providing potential purchasers with certainty about who they should deal with can only improve the sale process.

The respondents have not pointed me to any specific prejudice that they would suffer because of the failure to receive 10 days notice.

This is not a situation where the receivership application has come out of the blue. FTI has been working with management for 60 days. That only occurs when there are significant problems.

Although Kew has had 60 days to come up with proposals, counsel could not point me to any alternatives. The only thing counsel for Kew has pointed me to is that the board would like to meet to consider alternatives. It has not advised that the board has been working on alternatives that are coming to fruition.

Counsel for Kew also requested that we do not know if the information in the banks' application is true. If that is the case, Kew is not without a remedy. The material was served last night. It is a serious application on extremely short notice. If there is something materially misleading about the application materials, that may give directors or other stakeholders grounds to set the order aside.

In my view this is a case in which it is appropriate to disperse with the 10 days notice under the BIA. The defaults are material. Kew has known for at least 60 days that it needed options. I have been pointed to no options. Kew's UK subsidiaries are already in administration.

Further delay at this point creates a serious risk that customers and suppliers will flee thereby only exacerbating an already very serious situation.

Koehnen, J.

# Appendix B

**Notice to D&O Insurer**

TORYS LLP

79 Wellington St. W., 30th Floor
Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada
P. 416.865.0040 | F. 416.865.7380
www.torys.com

Tony DeMarinis
tdemarinis@torys.com
P. 416.865.8162

March 17, 2020

To the Persons Listed on Schedule "A"

**Re: Kew Media Group Inc. and Affiliates**

We are writing on behalf of our client, FTI Consulting Canada Inc., in its capacity as receiver and manager (the "Receiver") of all of the assets, undertakings and properties of Kew Media Group Inc. and Kew Media International (Canada) Inc. (collectively, "Kew") acquired for, or used in relation to a business carried on by Kew.

The Receiver has today received a copy of a written demand and notice of claim letter (the "Dentons Letter") addressed to you from Dentons Canada LLP, as counsel to Kew's lenders under a July 23, 2018 Amended and Restated Revolving Credit and Term Loan Agreement (a copy of which letter is attached as Schedule "B"). The letter references claims and possible claims against you and includes particulars of wrongful acts known to date by those lenders.

We also refer to various information and disclosure provided by Kew, including pursuant to a press release dated December 11, 2019 which referred to inaccurate information contained in reports to Kew's senior lenders and to the conduct of a detailed review of such matters.

Please be advised that the Receiver also intends to conduct its own investigations of these and other matters, which investigations may reveal claims, possible claims and wrongdoings additional to those referenced in the Dentons Letter and Kew's disclosure to date.

Based on all of the foregoing, on behalf of the Receiver we hereby notify you of claims and possible claims against you and in respect of which the Receiver intends to conduct investigations and have recourse to its rights and remedies under all applicable laws.

We request that you promptly take necessary and appropriate actions to notify all relevant insurers, advisors and other interested persons of these matters and to preserve and exercise any and all related rights and privileges of indemnity, guarantee and insurance that you may have.

Yours truly,

Tony DeMarinis

TD/cp

cc: The Persons listed on Schedule "C"

## SCHEDULE "A"

| | |
|---|---|
| Kew Media International Limited f/k/a<br>Content Media Corporation International<br>Limited<br>151 Shaftesbury Avenue<br>London, WC2H 8AL<br>United Kingdom | Kew Media Group Inc.<br>672 Dupont Street, Suite 400<br>Toronto, ON M6G 1Z6 |
| Kew Media Group<br>c/o Essential Media Group<br>419 Venice Way<br>Venice, CA 90291<br>USA<br>**Email: la@kewmedia.com** | Steven Silver<br>672 Dupont Street, Suite 400<br>Toronto, ON M6G 1Z6<br>**Email: stevensilver@mac.com** |
| David Fleck<br>672 Dupont Street, Suite 400<br>Toronto, ON M6G 1Z6<br>**AND**<br>Delaney Capital Management Ltd.<br>TD Bank Tower<br>4410—66 Wellington Street West<br>Toronto, ON M5K 1H1<br>**Email: dfleck@delaneycapital.com** | Stephen Pincus<br>672 Dupont Street, Suite 400<br>Toronto, ON M6G 1Z6<br>**Email: spincus@goodmans.ca**<br>**AND**<br>Goodmans LLP<br>Bay Adelaide Centre<br>333 Bay Street, Suite 3400<br>Toronto, ON M5H 2S7 |
| Peter Sussman<br>672 Dupont Street, Suite 400<br>Toronto, ON M6G 1Z6<br>Email: peter@275mac.com<br>**AND**<br>275 Macpherson Avenue, Suite 111<br>Toronto, On, M4V 1A4 | Mark Segal<br>672 Dupont Street, Suite 400<br>Toronto, ON M6G 1Z6<br>**AND**<br>26 Faye Court<br>Thornhill, ON L4J 5B6 |
| Geoffrey Webb<br>672 Dupont Street, Suite 400<br>Toronto, ON M6G 1Z6<br>**AND**<br>151 Shaftesbury Avenue<br>London, WC2H 8AL<br>United Kingdom | John Schmidt<br>672 Dupont Street, Suite 400<br>Toronto, ON M6G 1Z6<br>**AND**<br>19-21 Heddon Street,<br>London, W1B 4BG<br>United Kingdom |
| Erick Kwak<br>672 Dupont Street, Suite 400<br>Toronto, ON M6G 1Z6<br>**AND**<br>19-21 Heddon Street<br>London, W1B 4BG<br>United Kingdom | Nancy Tellem<br>672 Dupont Street, Suite 400<br>Toronto, ON M6G 1Z6<br>**AND**<br>11111 Santa Monica Blvd, Ste 800,<br>Los Angeles<br>CA 90025-6395 |

<table>
<tr><td>Madeline Cohen<br>672 Dupont Street, Suite 400<br>Toronto, ON M6G 1Z6</td><td>Maurice Kagan<br>672 Dupont Street, Suite 400<br>Toronto, ON M6G 1Z6<br>Email: Maishkaga37@gmail.com<br>AND<br>Canal Property Group<br>1 Romar Crescent<br>Toronto, ON, M6B 1R7</td></tr>
<tr><td>Julie Bristow<br>672 Dupont Street, Suite 400<br>Toronto, ON M6G 1Z6<br>AND<br>204-30 Elm Avenue<br>Toronto, ON M4T 1T7</td><td>Toby McCathie<br>672 Dupont Street, Suite 400<br>Toronto, ON M6G 1Z6<br>AND<br>19-21 Heddon Street,<br>London, W1B 4BG<br>United Kingdom</td></tr>
<tr><td>Patrice Merrin<br>672 Dupont Street, Suite 400<br>Toronto, ON M6G 1Z6<br>AND<br>92 Birch Ave,<br>Toronto ON, M4V1C8</td><td></td></tr>
</table>

# SCHEDULE "B"

DENTONS

Deepshikha Dutt
Partner

D +1 416 863 4550
deepshikha.dutt@dentons.com

Dentons Canada LLP
77 King Street West, Suite 400
Toronto-Dominion Centre
Toronto, ON, Canada M5K 0A1

dentons.com

March 17, 2020

**TO ALL OF ADDRESSEES' BELOW:**
**Sent by courier and email (where applicable)**

| | |
|---|---|
| Kew Media International Limited f/k/a<br>Content Media Corporation International Limited<br>151 Shaftesbury Avenue<br>London, WC2H 8AL<br>United Kingdom | Kew Media Group Inc.<br>672 Dupont Street, Suite 400<br>Toronto, ON M6G 1Z6 |
| Kew Media Group<br>c/o Essential Media Group<br>419 Venice Way<br>Venice, CA 90291<br>USA<br>**Email: la@kewmedia.com** | Steven Silver<br>672 Dupont Street, Suite 400<br>Toronto, ON M6G 1Z6<br>**Email: stevensilver@mac.com** |
| David Fleck<br>672 Dupont Street, Suite 400<br>Toronto, ON M6G 1Z6<br>**AND**<br>Delaney Capital Management Ltd.<br>TD Bank Tower<br>4410—66 Wellington Street West<br>Toronto, ON Canada M5K 1H1<br>**Email: dfleck@delaneycapital.com** | Stephen Pincus<br>672 Dupont Street, Suite 400<br>Toronto, ON M6G 1Z6<br>**Email: spincus@goodmans.ca**<br>**AND**<br>Goodmans LLP<br>Bay Adelaide Centre<br>333 Bay Street, Suite 3400<br>Toronto, ON<br>M5H 2S7 |
| Peter Sussman<br>672 Dupont Street, Suite 400<br>Toronto, ON M6G 1Z6<br>Email: peter@275mac.com<br>**AND**<br>275 Macpherson Avenue, Suite 111<br>Toronto, Ontario, M4V 1A4 | Mark Segal<br>672 Dupont Street, Suite 400<br>Toronto, ON M6G 1Z6<br>**AND**<br>26 Faye Court<br>Thornhill, ON L4J 5B6 |
| Geoffrey Webb<br>672 Dupont Street, Suite 400<br>Toronto, ON M6G 1Z6<br>**AND**<br>151 Shaftesbury Avenue<br>London, WC2H 8AL<br>United Kingdom | John Schmidt<br>672 Dupont Street, Suite 400<br>Toronto, ON M6G 1Z6<br>**AND**<br>19-21 Heddon Street,<br>London, W1B 4BG<br>United Kingdom |
| Erick Kwak<br>672 Dupont Street, Suite 400<br>Toronto, ON M6G 1Z6 | Nancy Tellem<br>672 Dupont Street, Suite 400<br>Toronto, ON M6G 1Z6 |

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| | |
|---|---|
| **AND**<br>19-21 Heddon Street<br>London, W1B 4BG<br>United Kingdom | **AND**<br>11111 Santa Monica Blvd, Ste 800,<br>Los Angeles<br>CA 90025-6395 |
| Madeline Cohen<br>672 Dupont Street, Suite 400<br>Toronto, ON M6G 1Z6 | Maurice Kagan<br>672 Dupont Street, Suite 400<br>Toronto, ON M6G 1Z6<br>Email: Maishkaga37@gmail.com<br>**AND**<br>Canal Property Group<br>1 Romar Crescent<br>Toronto, ON, M6B 1R7 |
| Julie Bristow<br>672 Dupont Street, Suite 400<br>Toronto, ON M6G 1Z6<br>**AND**<br>204-30 Elm Avenue<br>Toronto, ON M4T 1T7 | Toby McCathie<br>672 Dupont Street, Suite 400<br>Toronto, ON M6G 1Z6<br>**AND**<br>19-21 Heddon Street,<br>London, W1B 4BG<br>United Kingdom |
| Patrice Merrin<br>672 Dupont Street, Suite 400<br>Toronto, ON M6G 1Z6<br>**AND**<br>92 Birch Ave,<br>Toronto ON, M4V1C8 | |

Dear Sirs/Madams:

**Re: Written Demand and Notice of Claim from the Lenders**

<u>Background</u>

We are lawyers for Truist Bank, successor by merger to SunTrust Bank ("**Truist**") in its capacity as agent (in such capacity, the "**Agent**") for a syndicate of lenders comprising Truist, Bank of Montreal and The Toronto-Dominion Bank (collectively the "**Lenders**"). We write on behalf of the Agent and the Lenders.

Pursuant to an Amended and Restated Revolving Credit and Term Loan Agreement dated as of July 23, 2018 (as amended, supplemented or otherwise modified from time to time, the "**Loan Agreement**"), the Lenders made available to Kew Media Group Inc. ("**KMG**") and Kew Media International Limited (formerly known as Content Media Corporation International Limited) ("**KMIL**") as co-borrowers, loan facilities in the aggregate amount of US$110,000,000 which comprised: (i) a revolving facility in the amount of US$67,500,000 (the "**Revolver**"); and (ii) a term loan of US$42,500,000 (together the "**Loan Facilities**"). Pursuant to a Guaranty and Security Agreement dated as of July 28, 2017 (the "**Security Agreement**"), KMG (among others) granted security to the Agent over all of its present and future

Dentons Canada LLP
77 King Street West, Suite 400
Toronto-Dominion Centre
Toronto, ON, Canada M5K 0A1

dentons.com

personal property (collectively the "**Property**"). KMG has also pledged to the Agent all shares held by KMG in its directly held subsidiaries, including its directly held Canadian subsidiaries. Capitalized terms used herein and not otherwise defined shall have the respective meanings ascribed to them in the Loan Agreement.

Under the Loan Agreement, KMG and KMIL (collectively "**Kew Media**") were required to submit to the Agent a monthly calculation of their Borrowing Base, setting out the accounts receivable and other amounts available as collateral for the Loan Facilities. The maximum amount that could be borrowed by Kew Media under the Revolver from time to time, when taken together with the outstanding principal amount of the Term Loan, was based on the amount set out in the Borrowing Base calculations.

Over the course of 2019, Kew Media and its directors and officers, including but not limited, to Geoffrey Webb, Erik Kwak, Steven Silver, Peter Sussman, David Fleck, Maurice Kagan, Patrice Merrin, Stephen Pincus, John Schmidt, Mark Segal, Nancy Tellem, Madeline Cohen, Toby McCathie and Julie Bristow (collectively the "**Kew Media D&Os**" and together with Kew Media referred to as the "**Defaulting Parties**") have made, or caused or permitted to be made, misrepresentations, omissions and misstatements of the financial position of Kew Media and the value of the Collateral to the Agent and Lenders. In addition, the Defaulting Parties have also failed to disclose numerous business and financial transactions which were approved and undertaken by them in violation of the Loan Agreement and which have adversely impacted the liquidity and financial condition of Kew Media and the value of the Collateral. In reliance upon these misrepresentations, omissions and misstatements, the Agent and the Lenders provided the Defaulting Parties access to the Loan Facilities. In late 2019, through some of the Kew Media D&Os, public announcements and other sources, the Agent and the Lenders began discovering the various wrongful acts, misrepresentations and omissions of the Defaulting Parties. The Agent and the Lenders immediately put the Defaulting Parties on notice. On January 29, 2020, the OSC issued a permanent cease trade order regarding the publicly traded shares of KMG.

On February 27, 2020, the Agent and Lenders demanded that Kew Media immediately repay to the Agent and the Lenders all outstanding Obligations owing under the Loan Agreement and the other Loan Documents which the Defaulting Parties had accessed through the Loan Facilities (which outstanding Obligations, as of February 25, 2020 were US$113,786,709.50 plus interest and costs). Kew Media has failed to make that payment.

Pursuant to a court order dated February 28, 2020, FTI Consulting Canada Inc. was appointed as receiver for KMG and one of its Canadian subsidiaries and on February 28, 2020, Simon Kirkhope and Andrew Johnson, insolvency practitioners of FTI Consulting LLP, were appointed as UK administrators for KMIL and certain of its UK affiliates.

The Defaulting Parties are in breach of their obligations and duties to the Agent and Lenders under common law, statute, the Loan Agreement, the Security Agreement and all other applicable Loan Documents. Accordingly, the Agent on its behalf and on behalf of the Lenders, will be making a claim

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against the Defaulting Parties to seek the recovery of their loss which totals US $113,000,000 plus interest and costs (the "**Loss**").[1]

**Summary of Wrongful Acts Known to Date**

The full extent of any and all the wrongful acts, breaches, defaults, negligent and fraudulent misrepresentations and omissions committed by the Defaulting Parties is not known (collectively, the "**wrongful acts**"). Below is a list of some of the wrongful acts known to the Agent and the Lenders:

a. On or about December 10, 2019, Steven Silver and Mike Corrigan informed the Lenders that the Borrowing Base calculations of Kew Media as submitted by its CFO Geoff Webb had misrepresentations and misstatements going at least as far back as December 2018. The Borrowing Base had been significantly overstated and misrepresented by approximately US$50,000,000. Thereafter Kew Media issued a press release indicating that Mr. Webb was terminated and that a detailed investigation was being conducted to determine the extent of the overstatements and the actual indebtedness of Kew Media. The full extent of knowledge of Kew Media D&Os in regard to the overstatement is currently not known;

b. In early January 2020, the Defaulting Parties misrepresented to the Agent and the Lenders the status of the existing assets of Kew Media. In fact, the Defaulting Parties actively misled the Agent and the Lenders while Kew Media attempted to sell certain assets of Kew Media and its subsidiaries. No notice was provided to the Lenders nor was their consent sought, in each case as required by the Loan Agreement;

c. The Defaulting Parties assigned the entitlements (including certain payments) of KMIL under certain Distribution Agreements to parties other than the Lenders. The Defaulting Parties knew or ought to have known that such entitlements from these Distribution Agreements should have been made to the Lenders. The Defaulting Parties breached their obligations under the Loan Agreement and failed to inform the Agent and the Lenders of these acts;

d. The Defaulting Parties knowingly or negligently failed to inform the Agent and the Lenders of various deposit accounts that ought to have been covered under Control Account Agreements in favour of the Agent. In fact, knowing the above misrepresentation, the Defaulting Parties signed or authorized the signing of the Third Amendment to the Loan Agreement ("**Third Amendment**") which increased the amounts available to the Borrowers under the Loan Facilities;

e. In or around January 2020, the Agent and the Lenders also learned that the valuation of the Library of Kew Media was overstated and misrepresented. The amount of the overstatement is currently not known; and

f. The board of directors of KMG authorized transactions that were in their self interest rather than the interest of Kew Media or the Agent and Lenders and would have only come from funds otherwise made available pursuant to the Third Amendment. For example, KMG's board

[1] This is the amount known as of the date of the letter. This amount may vary and increase as further details of the wrongful acts, misrepresentations, misstatements and omissions by the Defaulting Parties come to light.

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authorized $515,000 to purchase a "tail" insurance policy which only provided a benefit to the directors.

In addition to the wrongful acts identified above, Kew Media D&Os knowingly or unknowingly failed to manage and oversee the business of Kew Media. They authorized transactions and acquisitions that were not properly valued and which over-extended the indebtedness of Kew Media. They also failed to implement proper checks and controls over management and various committees at Kew Media such that the above wrongful acts were not discovered until late 2019.

The Defaulting Parties have also failed to cooperate and provide information to the Agent and Lenders in accordance with their obligations under the Loan Agreement. The Agent and Lenders learned in or around January 15, 2020, that Grant Thornton LLP (KMG's external auditor) had withdrawn its audit reports ending December 31, 2017 and December 31, 2018 and interim audit reports for interim periods in 2017, 2018 and 2019. The Agent and Lenders relied upon these audit reports to assess the financial position of Kew Media and provide them access to the Loan Facilities. The extent of any misrepresentations in these audit reports are not yet known. It is also unknown whether any other advisors of the Defaulting Parties prepared or misrepresented any other information on their behalf to the Agent and Lenders.

On January 27, 2020, the Agent sent a letter to Kew Media specifically requesting that the letter be brought to the attention of the Kew Media D&Os. The letter outlined some of the above wrongful acts. To date, the Defaulting Parties have not contested any of these wrongful acts.

**Demand and Notice of Claim**

At this time, the Agent and the Lenders do not have sufficient information to determine the full extent of the wrongful acts, defaults and breaches that have occurred and may still be occurring under law including the *Business Corporations Act* (Ontario), the *Securities Act* (Ontario), the Loan Agreement, the Security Agreement or any other Loan Document. Accordingly, the Agent and the Lenders are putting the Defaulting Parties and their insurers (to the extent known) on notice of the Agent's and the Lenders' claim. The Agent and the Lenders intend to take all steps necessary to recover the full extent of the Loss, and specifically reserve all rights of the Agent and the Lenders in connection with the Loss.

We ask that you bring this demand and notice to the attention of all relevant insurers, advisors and parties that you may be aware of (and not listed here) and that may be unknown to the Agent and the Lenders.

Regards,
**Dentons Canada LLP**

Deepshikha Dutt
DD/cm

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</table>

## SCHEDULE "C"

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# Appendix C

## Letter to D&O Insurer

TORYS LLP

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www.torys.com

David Outerbridge
douterbridge@torys.com
P. 416.865.7825

September 3, 2020

**CONFIDENTIAL**

**BY EMAIL**

Roderic McLauchlan
Clyde & Co
401 Bay Street
Suite 2500, P.O. Box 25
Toronto, ON M5H 2Y4

Dear Mr. McLauchlan:

**Re: Request for confirmation of insurance coverage**
**Insured: Kew Media Group Inc. ("Kew")**
**Policy No.: FINMW1900173 (the "D&O Policy")**
**Your reference: 10209506**

I write to you in your capacity as counsel for certain underwriters at Lloyd's London ("**Underwriters**") subscribing to the above-noted D&O Policy issued to Kew.

We are writing on behalf of our client, FTI Consulting Canada Inc., in its capacity as receiver and manager (the "**Receiver**") of all of the assets, undertakings and properties of Kew acquired for, or used in relation to a business carried on by, Kew.

The Receiver understands that Underwriters have been given notice of claims by plaintiff counsel in relation to proposed class actions against Kew and its directors and officers, that have been consolidated in Ontario Superior Court of Justice Court File No. CV-20-00644200-00CP (*Alex Kan and Stuart Rath v. Kew Media Group Inc. et al.*) (the "**Action**").

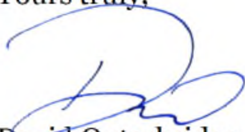
Please confirm whether insurance coverage to Kew and its directors and officers has been confirmed and will be provided by Underwriters under the D&O Policy in connection with the Action, or in connection with any other proposed class proceeding relating to Kew.

If Underwriters are funding Defence Costs, Investigation Costs or other costs (as defined in the D&O Policy) under a reservation of rights, please advise and please share the Underwriters' reservation of rights position.

If coverage has been denied in whole or in part, please advise and share the Underwriters' written coverage position.

Please feel free to contact me with any questions.

Yours truly,



David Outerbridge

# Appendix D

**July 14 Lift Stay Order**

Court File No. CV-20-00637081-00CL

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

| | | |
|---|---|---|
| THE HONOURABLE | ) | TUESDAY, THE 14TH |
| | ) | |
| JUSTICE KOEHNEN | ) | DAY OF JULY, 2020 |

BETWEEN:

**TRUIST BANK, AS AGENT**

Applicant

- and-

**KEW MEDIA GROUP INC. and KEW MEDIA INTERNATIONAL (CANADA) INC.**

Respondents

**APPLICATION UNDER SUBSECTION 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**

**LIFT STAY ORDER**

**THIS MOTION**, made by Alex Kan and Stuart Rath (the proposed representative plaintiffs in a putative securities class proceeding against Kew Media Group Inc. ("**Kew Media**")) (collectively, the "**Plaintiffs**") for an Order:

(1) temporarily lifting the stay of proceedings in place as against Kew Media for the limited purposes of:

(i) issuing, filing and serving the proposed Statement of Claim (the "**Action**");

(ii) filing the Plaintiffs' Motion for Certification and Leave under Part XXIII.1 of the Ontario *Securities Act*;

(iii) serving (as necessary), filing, and hearing any motion(s) related to the service of the Statement of Claim and/or the Plaintiffs' Motion for Certification and Leave; and

(iv) serving (as necessary), filing and hearing any motions related to the court approval of a third-party adverse costs indemnity and disbursement funding agreement;

(2) appointing Thornton Grout Finnigan LLP, Kalloghlian Myers LLP and Foreman & Company as counsel to prosecute the Action and declaring that no other proceeding may be commenced in Ontario on behalf of Kew Media shareholders in respect of the subject matter of the Action without leave of this Court; and

(3) directing that FTI Consulting Canada Inc., in its capacity as the Court-appointed receiver (in such capacity, the "**Receiver**") of the undertaking, property and assets of, *inter alia*, Kew Media, disclose and produce to the Plaintiffs all potentially responsive insurance policies under which an insurer may be liable to satisfy all or part of any judgment against Kew Media or any of its Directors, Officers or advisors in the Action and ancillary information (the "**Insurance Policy Disclosure Relief**"), was heard this day in Toronto by way of judicial video conference via Zoom, with the Insurance Policy Disclosure Relief being adjourned on consent to July 21, 2020 at 2:15 pm.

**ON READING** the Plaintiffs' Motion Record (dated July 8, 2020), Supplemental Motion Record (dated July 10, 2020) and Factum (dated July 13, 2020), all filed;

**AND UPON** hearing the submissions of counsel for the Plaintiffs and the Receiver, no one else appearing for any other person on the Service List, although duly served as appears from the affidavits of service of Rose Bozzelli sworn July 8, 2020, July 10 and July 13, all filed:

**TIME FOR SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Plaintiffs' Motion Record and Supplemental Motion Record be and is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with any further service thereof.

**LIFT STAY**

2. **THIS COURT ORDERS** that the stay of proceedings (the "**Stay of Proceedings**") provided for in the Order of this Court appointing the Receiver in the within proceedings dated

February 28, 2020 (the "**Appointment Order**"), be and is hereby lifted for the sole and limited purpose of: (i) granting the Plaintiffs leave to issue and file with the court and serve the Statement of Claim in substantially the form attached hereto as **Schedule "A"** (the "**Statement of Claim**"); (ii) granting the Plaintiffs leave to file with the court the Plaintiffs' Motion for Certification and for Leave under Part XXIII.1 of the Ontario *Securities Act*; (iii) serving (as necessary), filing with the court and hearing any motion(s) related to the service of the Statement of Claim and/or the Plaintiffs' Motion for Certification and Leave under Part XXIII.1 of the Ontario *Securities Act*; and (iv) serving (as necessary), filing with the court and hearing any motions related to the court approval of a third-party adverse costs indemnity and disbursement funding agreement, provided that no further steps shall be taken in the Action in respect of Kew Media or the Receiver without further Order of this Court.

3. **THIS COURT ORDERS** that, subject to further Order of this Court, the Receiver shall not be required to participate in or defend the Action or any hearing authorized in paragraph 2 above, or to incur any costs in respect of the Action or such hearings. Subject to: (i) an agreement between the Plaintiffs and the Receiver; or (ii) further Order of this Court, the Plaintiffs and defendants in the Action shall not:

(a) seek, make, or obtain, whether directly or indirectly, as the case may be, any further claim, counterclaim or recovery from, against, or in respect of the Receiver, Kew Media or any other entity that is, or has assets, subject to the Appointment Order (collectively, the "**Receiver and Debtor Entities**");

(b) add any of the Receiver and Debtor Entities, other than Kew Media, to the Action;

(c) seek, or obtain, any costs awards, judgments or any relief of any kind against, or in respect of the Receiver and Debtor Entities in the Action; or

(d) seek, or obtain, any discovery from, or examination or participation of, the Receiver and Debtor Entities in the Action.

4. **THIS COURT ORDERS** that except as expressly provided for in this Order: (i) all other stays of proceedings provided for in the Appointment Order; and (ii) all rights and protections in favour of the Receiver, remain in full force and effect in accordance with the terms of the Appointment Order.

5. **THIS COURT ORDERS** that nothing herein shall affect the rights of the Plaintiffs or the putative class members in the Action to submit proofs of claim in the within proceedings or any other restructuring, insolvency, receivership, bankruptcy or other similar proceedings in respect of the subject matter of the Statement of Claim or otherwise, and to share in any distribution made in such proceedings to creditors in accordance with their respective entitlements, if any.

6. **THIS COURT ORDERS** that nothing herein shall affect the rights of the Plaintiffs or the putative class members in the Action as against the current and/or future defendants, named in or later added to the Statement of Claim, who are not subject to the Appointment Order.

7. **THIS COURT ORDERS** that to the extent that any statute of limitations or other notice or limitation period (or any other time period of similar effect) under Canadian law or any other applicable law, or any rule of civil procedure (a "**Limitation Period**") in connection with any of the claims against Kew Media that are the subject of the Statement of Claim (the "**Tolled Claims**") expires on or after the date hereof (the "**Effective Date**"), such Limitation Period shall be and is hereby tolled such that it ceases to continue running as of the Effective Date and, for greater certainty, that all time elapsing on or after the Effective Date shall not be counted in determining any such Limitation Period. Kew Media may not raise the expiration of any Limitation Period as a defence, estoppel, limitation or bar to any Tolled Claims as against them unless such Limitation Period had already expired prior to the Effective Date.

8. **THIS COURT ORDERS AND DECLARES** that this Order is not, and shall not be deemed to be, an acknowledgement of any merits or substance of the Action, and no party to the Action shall be deemed by virtue of this Order to have made any admission, acknowledgment or acquiescence of or to any liability in the Action. All rights, remedies and defences of the parties, including regarding whether the Stay of Proceedings should be lifted to permit the continuation of the Action, are expressly reserved.

9. **THIS COURT ORDERS AND DECLARES** that, subject to further Order of this Court, it retains exclusive jurisdiction with respect to the within proceedings, the Receiver, the assets, property and undertaking of Kew Media, and the other matters that are set out in or the subject of the Appointment Order (including, without limitation, the Stay of Proceedings).

**CARRIAGE**

10. **THIS COURT ORDERS** that Thornton Grout Finnigan LLP, Kalloghlian Myers LLP and Foreman & Company are hereby appointed to prosecute the Action.

11. **THIS COURT ORDERS** that no other action may be commenced in Ontario on behalf of Kew Media shareholders in respect of the subject matter of the Action without leave of this Court granted on notice to the Receiver and the Plaintiffs.

**GENERAL**

12. **THIS COURT MAKES NO ORDER** as to costs of this Motion.

13. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada against all persons, firms, corporations, governmental, municipal and regulatory authorities against whom it may be enforceable.

14. **THIS COURT ORDERS AND REQUESTS** the aid and recognition of any court or any judicial, regulatory or administrative body in any province or territory of Canada and the Federal Court of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province to act in aid of and to be complementary to this Court 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 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.

15. **THIS COURT ORDERS** that this order is effective from today's date and is not required to be entered.

____________________________________

**TRUIST BANK, AS AGENT**
Applicant

and

**KEW MEDIA GROUP INC. and KEW MEDIA INTERNATIONAL (CANADA) INC.**

Court File No.: CV-20-00637081-00CL

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

**LIFT STAY ORDER**

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**Lawyers for Alex Kan and Stuart Rath**

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<tr>
<td>TRUIST BANK, AS AGENT<br>Applicant<br><br>-and-<br>KEW MEDIA GROUP INC. and KEW MEDIA INTERNATIONAL (CANADA) INC.<br>Respondents</td>
<td>Court File No: CV-20-00637081-00CL</td>
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<td>ONTARIO<br>SUPERIOR COURT OF JUSTICE<br>(COMMERCIAL LIST)</td>
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<td>FOURTH REPORT OF THE RECEIVER</td>
</tr>
<tr>
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