

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

OSB Estate Names and Nos.:
Kew Media Group Inc. 31-458914
Kew Media International (Canada) Inc. 31-458915

**Kew Media Group Inc. and
Kew Media International (Canada) Inc.**

FOURTH INTERIM REPORT OF THE RECEIVER
(Subsection 246(2) of the *Bankruptcy and Insolvency Act*)

April 5, 2021

FOURTH INTERIM REPORT OF THE RECEIVER
(Subsection 246(2) of the *Bankruptcy and Insolvency Act*)

In the Matter of the Receivership of

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

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 the assets, property, and undertakings (the “**Property**”) of Kew Media Group Inc. (“**KMG**”) and Kew Media International (Canada) Inc. (“**KMIC**”, and collectively with KMG, the “**Company**”) acquired for, or used in relation to a business carried on by the Company. The application was brought pursuant to section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”), and section 101 of the *Courts of Justice Act*, R.S.O. 1990, C. C-43, as amended, and shall be referred to herein as the “**Receivership**”.
2. On August 25, 2020, the First Interim Report of the Receiver was issued pursuant to section 246(2) of the BIA for the period from the Date of Receivership to July 31, 2020 (the “**First Interim Report**”).
3. On February 12, 2021, the Second Interim Report of the Receiver was issued pursuant to section 246(2) of the BIA for the period from August 1, 2020 to January 31, 2021 (the “**Second Interim Report**”).

4. On August 26, 2021, the Third Interim Report of the Receiver was issued pursuant to section 246(2) of the BIA for the period from February 1, 2021 to July 31, 2021 (the “**Third Interim Report**”, and collectively, with the First Interim Report and Second Interim Report, the “**Interim Reports**”).
5. A copy of the Interim Reports, as well as other documentation pertaining to the Receivership, can be found on the website established by the Receiver at <http://cfcCanada.fticonsulting.com/kmg> (the “**Case Website**”).
6. This report is the Fourth Interim Report of the Receiver (the “**Fourth Interim Report**”) prepared pursuant to section 246(2) of the BIA for the period from August 1, 2021 to January 31, 2022. The purpose of the Fourth Interim Report is to provide information in respect of the following:
 - (a) Activities undertaken by the Receiver since August 1, 2021;
 - (b) The Receiver’s interim statement of receipts and disbursements for the period from August 1, 2021 to January 31, 2022;
 - (c) Details of the property of which the Receiver took possession or control that has not yet been sold or realized;
 - (d) Expected recoveries for unsecured creditors; and
 - (e) Information about the anticipated completion of the Receivership.

TERMS OF REFERENCE

7. In preparing the Fourth Interim Report, the Receiver has relied upon unaudited financial information of the Company, the Company’s books and records and discussions with various parties (collectively, the “**Information**”).
8. Except as described in the Fourth Interim 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 any financial forecasts and projections referred to in the Fourth Interim Report in a manner that would comply with the procedures described in the Chartered Professional Accountants of Canada Handbook.
- 9. The Receiver has prepared the Fourth Interim Report pursuant to section 246(2) of the BIA and the Fourth Interim Report should not be relied on for any other purposes.
- 10. Future oriented financial information reported or relied on in preparing the Fourth Interim Report is based on assumptions regarding future events. Actual results may vary from forecast and such variations may be material.
- 11. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars. Capitalized terms not otherwise defined are as defined in the Receivership Order or the Interim Reports.

ACTIVITIES UNDERTAKEN BY THE RECEIVER SINCE AUGUST 1, 2021

REALIZATION OF PROPERTY

- 12. Since August 1, 2021, there have been no additional asset realizations other than the collection of certain post-receivership sales tax refunds.

THE GT CLAIM

- 13. As reported previously, the Receiver had identified a potential 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 “**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**”).

14. Also as reported previously, on February 9, 2021, pursuant to powers granted in paragraph 3(i) of the Receivership Order, the Receiver caused KMG and KMIL (collectively, the “**Plaintiffs**”) to issue a Notice of Action to be heard in the Ontario Superior Court of Justice, Court File No. CV21-00656707-0000 (the “**Receiver’s Action**”), against the Defendants, as the former auditors for the KMG Group for damages suffered by the Plaintiffs on account of the Defendants’ failure to detect issues with the KMG Group’s financial information and financial reporting provided to the Plaintiffs’ stakeholders.
15. Since August 1, 2021, the Receiver has continued its investigations in support of the Receiver’s Action.
16. On January 5, 2022, the Receiver’s Action was discontinued as against GT UK, on consent and on a without prejudice basis. The Plaintiffs have the ability to revive the claim at a later stage if deemed advisable by the Receiver in consultation with counsel.

SECURITIES CLASS ACTION PROCEEDING

17. As reported in the Third Interim Report, on August 4, 2021, the Class Action Plaintiffs filed a motion (the “**Class Action Motion**”), for an Order, *inter alia*:
 - (a) Permanently lifting the stay of proceedings imposed by the Receivership Order as against KMG for the limited purpose of allowing the Class Action to proceed against KMG (the “**Permanent Lift Stay**”); and
 - (b) Directing the Receiver to facilitate the retention of defence counsel for KMG in defence of the Class Action within 30 days.
18. In its Fourth Report of the Receiver to the Court dated September 29, 2021 (the “**Fourth Report**”), a copy of which is available on the Case Website, the Receiver set out its analysis and views with respect to the Class Action Motion and stated:
 - (a) That although the Receiver took no position in respect of the Permanent Lift Stay due to potential complications regarding KMG’s insurance coverage availability, such relief is customary in comparable circumstances, and the Receiver and

counsel to the Class Action Plaintiffs had agreed upon a form of Lift Stay Order should the Court determine that it was appropriate to grant such relief; and

- (b) Compelling the Receiver to retain defence counsel for KMG in defence of the Class Action was both inappropriate and unworkable as it would impose significant cost and prejudice to KMG's creditors for the sole benefit of the Class Action Plaintiffs.

19. Accordingly, the Receiver respectfully requested that if the Permanent Lift Stay is granted, such relief should be in the form of Order agreed to by the Class Action Plaintiffs and the Receiver, and that the requested relief compelling retention of defence counsel and defence of the Class Action by or at the behest of the Receiver be denied.

20. On October 7, 2021, the Court issued an Order in respect of the Class Action Motion (the "**Lift Stay Order**"), which provided, amongst other things that:

- (a) The Stay of Proceedings be lifted for the sole and limited purpose of allowing the Class Action to proceed against KMG in the ordinary course so that the Class Action Plaintiffs may seek to establish their claim against KMG, provided that the Class Action Plaintiffs' claims, if established, may only be sought to be enforced against:
 - (i) Any insurers of KMG under applicable insurance policies; and
 - (ii) The other defendants in the Class Action other than KMG, but not against the Receiver or any present or future property, assets or undertaking of KMG;
- (b) Nothing contained in the Lift Stay Order prejudices, waives, or alters the rights or defences of any insurer that has issued an insurance policy to KMG;
- (c) Subject to further order of the Court, the Receiver shall not be required to participate in or defend the Class Action, or to incur any costs in respect of the Class Action. Subject to: (a) the Receivership Order; (b) an agreement between the Receiver and the Class Action Plaintiffs; and (c) further order of the Court, the Class Action Plaintiffs and defendants in the Class Action shall not:

- (i) Seek, make or obtain, whether directly or indirectly, as the case may be, any further claim, counterclaim, or recovery from the Receiver, KMG, or any other entity that is, or has assets, subject to the Receivership Order;
 - (ii) Add any of the Receiver and Debtor Entities, other than KMG, to the Class Action;
 - (iii) Seek, or obtain, any costs awards or any relief of any kind against, or in respect of the Receiver and Debtor Entities in the Class Action; or
 - (iv) Seek, or obtain, any discovery from, or examination or participation of, the Receiver and Debtor Entities in the Class Action, other than as provided for pursuant to paragraph 6(a) of the Receivership Order;
- (d) All other stays of proceeding provided for and all rights and protections in favour of the Receiver in accordance with the terms of the Receivership Order remain in full force and effect; and
- (e) The Lift Stay Order is not, and shall not be deemed to be, an acknowledgment of any merits or substance of the Class Action.
21. There has been no substantive activity by the Class Action Plaintiffs since that time of which the Receiver is aware in respect of their seeking a further order to amend the Lift Stay Order or otherwise seek further relief in respect of the subject matter of the Class Action Motion.

TAX AUDITS

22. In June 2021, the Canada Revenue Agency (“CRA”) requested certain information for the purposes of undertaking an audit of certain sales tax return filings of KMG. The Receiver responded to the CRA’s audit requests and is awaiting completion of the sales tax audit.
23. In July 2021, CRA requested certain information for the purposes of undertaking an audit of certain corporate tax return filings of KMG. The Receiver responded to the CRA’s audit requests and has been informed by CRA that it is taking no further steps at this time

with respect to the corporate tax return audit.

INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS

24. The Receiver's interim statement of receipts and disbursements for the period from August 1, 2021 to January 31, 2022 is as follows:

	KMG	KMICI	Total
Receipts			
Sales tax refunds	36,373	-	36,373
Interest earned and other miscellaneous receipts	524	-	524
Total Receipts	36,897	-	36,897
Disbursements			
Other operating disbursements	2,312	-	2,312
Bank charges and foreign exchange	37	-	37
Sales taxes paid	23,831	-	23,831
Receiver fees and expenses	35,920	-	35,920
Other professional fees and expenses	145,166	-	145,166
Total Disbursements	207,266	-	207,266
(Shortfall)/Excess of Receipts over Disbursements	(170,369)	-	(170,369)
Opening balance	526,707	-	526,707
(Shortfall)/Excess of Receipts over Disbursements	(170,369)	-	(170,369)
Closing balance	356,338	-	356,338

PROPERTY THAT HAS NOT YET BEEN SOLD OR REALIZED

25. As of the date of the Fourth Interim Report, the only known Property that may be realized by the Receiver is:
- (a) Collection of additional post-receivership sales tax refunds; and
 - (b) Potential recoveries from the Receiver's Action, the quantum and timing of which are unknown at this time; and
 - (c) Potential recoveries from claims against any other parties that may be commenced by the Receiver, the quantum and timing of which are unknown at this time.
26. The remaining assets of KMG and KMICI consist primarily of interests in various subsidiaries and minority affiliates which in the Receiver's view have no realizable value.

EXPECTED RECOVERIES FOR UNSECURED CREDITORS

27. Before any potential recoveries that may arise from the Receiver's Action or from other claims that may be commenced by the Receiver, the estimated shortfall to Secured Creditors is expected to be in excess of US\$100 million. Accordingly, there will be no funds available for distribution to unsecured creditors unless recoveries from the Receiver's Action and any other claims that may be commenced by the Receiver exceed US\$100 million.

INFORMATION REGARDING THE COMPLETION OF THE RECEIVERSHIP

28. The current plan for the completion of the Receivership is as follows:
- (a) To continue to take appropriate steps to pursue potential recoveries from the Receiver's Action;
 - (b) To determine if there could be additional recoveries from claims against any other parties that may be commenced by the Receiver, and if so, take appropriate action to attempt to realize such recoveries;
 - (c) Complete all required statutory returns and filings;
 - (d) Seek Court approval of the activities, fees and expenses of the Receiver and its counsel, and to obtain discharge.
29. Given the nature of the Receiver's Action, the time to complete the administration of the Receivership cannot be reasonably estimated.
30. Creditors who wish to receive a copy of the Fourth Interim Report may request a copy from the Receiver at the following address:

FTI Consulting Canada Inc.
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, Ontario M5K 1G8

Attention: Jim Robinson
Email: kmg@fticonsulting.com

Dated this 5th day of April, 2022.

FTI CONSULTING CANADA INC.

solely in its capacity as Court-appointed receiver and manager of
Kew Media Group Inc. and Kew Media International (Canada) Inc.,
and not in its personal or corporate capacity



Per:

Nigel Meakin, LIT
Senior Managing Director