

**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.**

**FINAL REPORT OF THE RECEIVER**

(Subsection 246(3) of the *Bankruptcy and Insolvency Act*)

**October 19, 2023**

**SIXTH 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**”).
5. On April 5, 2022, the Fourth Interim Report of the Receiver was issued pursuant to section 246(2) of the BIA for the period from August 1, 2021, to January 31, 2022 (the “**Fourth Interim Report**”).
6. On September 20, 2022, the Fifth Interim Report of the Receiver was issued pursuant to section 246(2) of the BIA for the period from February 1, 2022, to July 31, 2022 (the “**Fifth Interim Report**”).
7. On March 27, 2023, the Sixth Interim Report of the Receiver was issued pursuant to section 246(2) of the BIA for the period from August 1, 2022, to January 31, 2023 (the “**Sixth Interim Report**” and, collectively with the First Interim Report, the Second Interim Report, the Third Interim Report, the Fourth Interim Report and the Fifth Interim Report, the “**Interim Reports**”).
8. Copies 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://cfcanada.fticonsulting.com/kmg> (the “**Case Website**”).
9. This report is the Final Report of the Receiver (the “**Final Report**”) prepared pursuant to section 246(3) of the BIA. The purpose of the Final Report is to provide information in respect of the following:
  - (a) Activities undertaken by the Receiver since February 1, 2023;
  - (b) The Receiver’s final statement of receipts and disbursements;
  - (c) Details of the manner of distribution of the proceeds realized from the property of which the receiver had taken possession or control; and
  - (d) Details of the disposition of any property of which the receiver had taken possession or control and that is not accounted for in the final statement of receipts and disbursements.

## TERMS OF REFERENCE

10. In preparing the Sixth 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**").
11. Except as described in the Final 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 Fifth Interim Report in a manner that would comply with the procedures described in the Chartered Professional Accountants of Canada Handbook.
12. The Receiver has prepared the Final Report pursuant to section 246(3) of the BIA and the Final Report should not be relied on for any other purposes.
13. 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 FEBRUARY 1, 2023

### THE GT CLAIM

14. As reported previously, the Receiver had identified a potential claim against Grant Thornton LLP (“**GT Canada**”), 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**”)<sup>1</sup>.
15. Also as reported previously, on February 9, 2021, pursuant to powers granted in paragraph 3(i) of the Receivership Order and following consultation with the Company’s Secured Creditors, 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.
16. GT Canada delivered its Statement of Defence on February 22, 2022, and KMG delivered its Reply on March 23, 2022.
17. The parties had discussions about the terms of a discovery plan, but a discovery plan was not agreed.

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<sup>1</sup> The GT Action was subsequently discontinued as against GT UK on consent and on a without prejudice basis.

18. The Receiver determined that additional funding was required to continue to pursue the Receiver's Action and that the only logical potential source of such funding was the Secured Creditors. After the Receiver's Action and the Statement of Defence had been filed, the Secured Creditors re-assessed their interest in having the Receiver continue the Receiver's Action and informed the Receiver that they were not willing to provide the additional funding required to continue the Receiver's Action.
19. Accordingly, the Receiver commenced discussions with GT Canada for the withdrawal of the Receiver's Action and a consent Notice of Discontinuance was filed on May 18, 2023.

#### **SECURITIES CLASS ACTION PROCEEDING**

20. 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.
21. 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.
22. 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.
23. 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.
24. The Class Action Plaintiffs proposed mediation involving various parties including the Receiver and the Debtor Entities, the Company's insurers and counsel for certain former directors and officers of the Company. The resolution of the Class Action Motion would not generate any economic recovery for the Company's creditors. Accordingly, and in light of the costs that would be incurred to participate and of the potential inconsistencies and conflicts between the matters subject to mediation and the allegations set out in the GT Action, it was agreed that the Receiver would not participate in any mediation and that the mediation would not affect the Receiver's Action.
25. No mediation took place and on May 25, 2023, in conjunction with the Receiver's discharge, the Honourable Mr. Justice McEwen granted an Order *inter alia* approving and authorizing the execution of the Appointment and Consent to Defence of Class Action, to be executed by the Receiver, pursuant to which Steven Silver was empowered and authorized without limitation to:



- (a) On behalf of KMG, conduct the defence of the shareholder class action commenced against KMG, together with certain of KMG's former directors and officers bearing Court File Number CV-20-00644200CP (the "Class Action") in all respects and to represent KMG in the Class Action and in any other related litigation;
- (b) Without limiting the generality of the foregoing, to instruct Goodmans LLP, or such other counsel as Mr. Silver may appoint, on behalf of KMG with respect to the conduct of the Class Action and in any other related litigation;
- (c) Undertake and perform all such acts and things and to execute and deliver all such deeds, instruments and agreements as may be necessary, desirable or expedient under or in connection with the defence of the Class Action and any related litigation on behalf of KMG; and
- (d) Appear in the name of KMG and in its stead, and represent KMG, before any competent court, tribunal, legal or public authority or at any out-of-court proceedings, meetings or settlement discussions, including discussions that might involve compromising or settling any claims made against KMG related to the Class Action or any related litigation.

26. The Appointment and Consent to Defence of Class Action was executed by the Receiver on June 12, 2023.

#### **DISCHARGE OF THE RECEIVER AND APPROVAL OF ACCOUNTS**

27. On May 25, 2023, the Honourable Mr. Justice McEwen granted an Order (the “**Fee Approval and Discharge Order**”) *inter alia*:

- (a) Approving the activities, fees and disbursements of the Receiver;
- (b) Approving the fees and disbursements of the Receiver’s legal counsel;
- (c) Authorizing the delivery of certain books and records to Goodmans LLP, counsel to KMG, and the destruction of the remainder;

- (d) Discharging the Receiver on the filing of a certificate by the Receiver (the “**Receivership Termination Certificate**”) certifying that it has completed the Remaining Activities (as defined in the Fee Approval and Discharge Order).
28. The Receiver delivered the applicable books and records to Goodmans LLP, arranged for the destruction of the remainder and completed the Remaining Activities.
29. On October 19, 2023, the Receiver filed the Receivership Termination Certificate.

### FINAL STATEMENT OF RECEIPTS AND DISBURSEMENTS

30. The Receiver’s final statement of receipts and disbursements is as follows:

	<b>\$000</b>
<b>Receipts</b>	
Asset realizations	8,512.3
Sales tax refunds	714.0
Interest, net of bank charges	11.7
Miscellaneous receipts	0.0
<b>Total Receipts</b>	<b>9,238.0</b>
<b>Disbursements</b>	
Employee and contractor costs	417.7
Other operating disbursements	130.3
Interest and foreign exchange	61.2
Sales taxes paid	439.4
Receiver fees and expenses	2,827.3
Other professional fees and expenses	568.0
Inter-company funding	444.6
<b>Total Disbursements</b>	<b>4,888.5</b>
<b>Excess of Receipts over Disbursements</b>	<b>4,349.5</b>
Distributions to Secured Creditors	(4,349.5)
<b>Closing balance</b>	<b>0.0</b>

### DISTRIBUTION OF PROCEEDS

31. All proceeds realized, net of the costs and expenses of the Receivership, have been distributed to the Secured Lenders pursuant to Orders of the Court granted in the Receivership.

32. The estimated shortfall to Secured Creditors is in excess of US\$100 million. Accordingly, no funds were available for distribution to unsecured creditors.

**DISPOSITION OF PROPERTY NOT ACCOUNTED FOR IN THE FINAL STATEMENT OF RECEIPTS AND DISBURSEMENTS**

33. There was no property of which the receiver took possession or control that is not accounted for in the final statement of receipts and disbursements.

Dated this 19<sup>th</sup> day of October, 2023.

**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:

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Nigel D. Meakin, LIT  
Senior Managing Director