

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.**

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

August 25, 2020

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FIRST INTERIM REPORT OF THE RECEIVER
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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. This report has been prepared pursuant to section 246(2) of the BIA and is the first interim report of the Receiver (this “**Report**”). The purpose of this Report is to provide information in respect of the following:
 - (a) Activities undertaken since the Date of Receivership;

- (b) The Receiver's interim statement of receipts and disbursements for the period from February 28, 2020 to July 31, 2020;
- (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

3. In preparing this 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**").
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 any 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 pursuant to section 246 of the BIA and this Report should not be relied on for any 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 are as defined in the Receivership Order.

ACTIVITIES UNDERTAKEN SINCE THE DATE OF RECEIVERSHIP

CONTROL OF THE PROPERTY

8. On February 28, 2020, the Receiver took possession or control of the Property described in the Receiver's statement prepared pursuant to section 246 of the BIA (the "**Notice and Statement of Receiver**"). These steps included, but were not limited to, the following:
 - (a) Securing the Company's premises in Toronto, Ontario;
 - (b) Reviewing existing insurance policies to ensure appropriate and adequate coverage;
 - (c) Freezing the Company's bank accounts; and
 - (d) Securing the Company's books and records.

EMPLOYEE MATTERS

9. At the Date of Receivership, the Company employed nineteen individuals. The employment of nine of these individuals was terminated on the Date of Receivership. Four employees subsequently resigned, with the remaining six employees being terminated when their services were no longer required by the Receiver.
10. All required filings under the *Wage Earner Protection Program Act* ("**WEPPA**") have been made by the Receiver and former employees were notified of their eligibility or ineligibility for payments under WEPPA.

NOTICE AND STATEMENT OF RECEIVER

11. On or before March 3, 2020, the Receiver caused to be sent to the Superintendent of Bankruptcy and the known creditors of KMG and of KMICI:

- (a) A notice of the Receiver's appointment in the prescribed form in accordance with section 245(1)(b); and
- (b) A copy of the Notice and Statement of Receiver.

ESTABLISHMENT OF CASE WEBSITE AND RECEIVER CONTACTS

- 12. A copy of the Notice and Statement of Receiver as well as other documentation pertaining to the Receivership, including motion materials, Court Orders and the Receiver's Reports to the Court can be found on the website established by the Receiver <http://cfcanada.fticonsulting.com/kmg> (the "Case Website").
- 13. In addition, to the Case Website, the Receiver created a dedicated email address (KMG@fticonsulting.com), and a dedicated telephone number (416-649-8108 or 1-844-709-6730), at which the Receiver can be contacted.

REALIZATION OF THE PROPERTY

- 14. The assets of the Company consist primarily of the shares of subsidiaries held by KMG and sales tax receivables.
- 15. Paragraph 3(f) of the Receivership Order empowers and authorizes the Receiver to receive and collect all monies and accounts owing to the Company. Since the Date of Receivership, the Receiver has collected the pre-receivership sales tax refunds owing for January 2020 and February 2020, March 2020, and April 2020.
- 16. Paragraph 3(k) of the Receivership Order empowers and authorizes the Receiver, where the Receiver considers it necessary or desirable, to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business:
 - (a) Without the approval of this Court in respect of any transaction not exceeding \$2,500,000, provided that the aggregate consideration for all such transactions does not exceed \$10,000,000; and

- (b) With the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;
17. Since the Date of the Receivership, the Receiver has negotiated and completed the sale of the following KMG subsidiaries:
- (a) Architect Films Inc.;
 - (b) BGM Inc.;
 - (c) Big Timber Media Inc.;
 - (d) Frantic Films Corporation;
 - (e) Media Headquarters Film and Television Inc.;
 - (f) Sienna Films Inc.;
 - (g) TCB Media Rights Ltd.; and
 - (h) Our House Media Inc.
18. The sale of KMG's minority interest in 4East Media Inc. has been agreed, subject to execution of a definitive share purchase agreement.
19. In addition, the Receiver negotiated and completed the sale of the Company's office furniture and equipment.

LIAISON WITH UK ADMINISTRATOR

20. Kew Media Group UK Limited, a wholly-owned UK subsidiary of KMG (“**KMG UK**”), and its wholly-owned subsidiary, Kew Media International Limited (“**KMIL**”), are a guarantor and a co-borrower, respectively, under the secured loan agreements to which KMG and KMIL are a party. In parallel with the receivership application, KMG UK and KMIL were placed into administration pursuant to the UK’s *Insolvency Act 1986* on February 28, 2020 (the “**UK Proceedings**”). The Receiver and the joint administrators appointed in the UK Proceedings (the “**Administrators**”) have been liaising closely since their respective appointments. The Administrators completed the sale of substantially all of the assets of KMIL on or around May 6, 2020.

INTERIM DISTRIBUTION TO SECURED CREDITORS

21. On April 14, 2020, the Court granted an Order (the “**Repayment and Distribution Order**”), *inter alia*:
- (a) Authorizing the Receiver to repay any portion of the principal sums advanced to it pursuant to a Receiver’s Certificate plus interest accrued thereon; and
 - (b) Authorizing the Receiver, subject to the establishment of reasonable reserves in the discretion of the Receiver, to distribute from time to time to the Agent for the Secured Creditors certain proceeds of sale or other realizations by the Receiver on account of the obligations owing by the Company to the Secured Creditors.
22. Pursuant to the Repayment and Distribution Order, the Receiver has repaid the aggregate amount of \$1,084,646 owing under the Receiver’s Certificate and has made an interim distribution to the Agent in the amount of \$1,349,557.

NOTIFICATION OF POTENTIAL CLAIMS

23. On March 17, 2020, the Receiver received a copy of a written demand and notice of claim letter (the “**March 17 Dentons Letter**”) addressed to, amongst others, the former directors and officers of KMG (the “**D&O**”), from Dentons Canada LLP, counsel to the Syndicate. The March 17 Dentons Letter referenced claims and possible claims against the D&O and included particulars of wrongful acts known to the Syndicate. The March 17 Dentons Letter was copied to the relevant insurers.
24. The Receiver was also aware of various information and disclosure provided by KMG prior to the Date of Receivership, including pursuant to a press release dated December 11, 2019, which referred to inaccurate information contained in reports to the Syndicate.
25. On March 17, 2020, the Receiver’s Counsel wrote to the D&O to:
 - (a) Inform them that the Receiver also intends to conduct its own investigations of these and other matters, and that such investigations may reveal claims, possible claims and wrongdoings additional to those referenced in the March 17 Dentons Letter and KMG's disclosure to date;
 - (b) Notify them of claims and possible claims against them and in respect of which the Receiver intends to conduct investigations and have recourse to its rights and remedies under all applicable laws; and
 - (c) Request that the D&O promptly take necessary and appropriate actions to notify all relevant insurers, advisors and other interested persons of the matters and to preserve and exercise any and all related rights and privileges of indemnity, guarantee and insurance that they may have.

26. KMG held a Buyer-Side Representations and Warranties Policy issued by Chubb Insurance Company of Canada (the “**Rep Policy**”). On March 19, 2020, the Receiver’s Counsel provided to Chubb notice of Breach or possible Breach, as defined in the Rep Policy, and Forms of Claim Notice from the Receiver and on behalf of the Additional Insureds, as defined in the Rep Policy.
27. The Receiver’s investigation of potential claims and potential sources of recovery is ongoing.

INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS TO JULY 31, 2020

28. The Receiver’s interim statement of receipts and disbursements for the period from February 28, 2020 to July 31, 2020 were as follows:

	KMG	KMICI	Total
Receipts			
Sale of assets	8,376,803		8,376,803
Accounts receivable collection		97,115	97,115
Sales tax refunds	495,599		495,599
Interest earned	5,667		5,667
Receiver borrowings	1,070,560		1,070,560
Total Receipts	9,948,629	97,115	10,045,744
Disbursements			
Employee and contractor costs	634,938	83,040	717,978
Rent	28,672	30,081	58,753
Other operating disbursements	39,650	9,137	48,787
Bank charges and foreign exchange	47,458		47,458
Sales taxes paid	281,304	5,115	286,419
Repayment of Receiver borrowings	1,070,560		1,070,560
Interest paid	14,086		14,086
Receiver fees and expenses	1,186,844		1,186,844
Other professional fees and expenses	807,972		807,972
Inter-company funding	30,258	(30,258)	0
Interim distributions to secured creditors	1,349,557		1,349,557
Total Disbursements	5,491,299	97,115	5,588,414
Excess of Receipts over Disbursements	4,457,330	0	4,457,330

PROPERTY THAT HAS NOT YET BEEN SOLD OR REALIZED

29. As of the date of this report, the only known Property that may be realized by the Receiver is:
- (a) Collection of post-receivership sales tax refunds;
 - (b) KMG's minority interest in 4East Media Inc.; and
 - (c) Potential claims against the D&O and other parties;
30. In addition, KMG holds shares in a number of other subsidiaries and minority affiliates which are not expected to be realizable.

EXPECTED RECOVERIES FOR UNSECURED CREDITORS

31. Before any recoveries that may rise from potential claims against the D&O or other parties, the estimated shortfall to Secured Creditors is in excess of US\$95 million. Accordingly, there will be no funds available for distribution to unsecured creditors.

INFORMATION REGARDING THE COMPLETION OF THE RECEIVERSHIP

32. The intended plan for the completion of the Receivership is as follows:
- (a) Negotiate and execute definitive documentation for the sale of the Company's minority interest in 4East Media Inc. and complete the transaction;
 - (b) Complete the Receiver's investigation of potential claims against D&O and other parties, determine and execute appropriate plan to realize potential recoveries, if any;
 - (c) Complete all required statutory returns and filings;
 - (d) Obtain Court approval for the distribution of the net proceeds of realization of the shares of TCB Media Rights Ltd.;

- (e) Seek Court approval of the fees and expenses of the Receiver and obtain discharge.
33. The given the nature of the potential claims against the D&O and other parties, the time to complete the administration of the Receivership cannot be reasonably estimated.
34. Creditors who wish to receive a copy of this 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 25th day of August, 2020.

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