

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.**

THIRD INTERIM REPORT OF THE RECEIVER

(Subsection 246(2) of the *Bankruptcy and Insolvency Act*)

August 26, 2021

THIRD 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**”, and collectively with the First Interim Report, the “**Interim Reports**”).

4. 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://cfcanada.fticonsulting.com/kmg> (the “**Case Website**”).
5. This report is the Third Interim Report of the Receiver (the “**Third Interim Report**”) prepared pursuant to section 246(2) of the BIA for the period from February 1, 2021 to July 31, 2021. The purpose of the Third Interim Report is to provide information in respect of the following:
 - (a) Activities undertaken by the Receiver since February 1, 2021;
 - (b) The Receiver’s interim statement of receipts and disbursements for the period from February 1, 2021 to July 31, 2021;
 - (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

6. In preparing the Third 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**”).
7. Except as described in the Third 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 Third Interim Report in a manner that would comply with the procedures described in the Chartered Professional Accountants of Canada Handbook.
- 8. The Receiver has prepared the Third Interim Report pursuant to section 246(2) of the BIA and the Third Interim Report should not be relied on for any other purposes.
- 9. Future oriented financial information reported or relied on in preparing the Third Interim Report is based on assumptions regarding future events. Actual results may vary from forecast and such variations may be material.
- 10. 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, 2021

REALIZATION OF PROPERTY

- 11. Since February 1, 2021, there have been no additional asset realizations other than the collection of post-receivership sales tax refunds for the months from January 2021 to June 2021.

INVESTIGATION INTO POTENTIAL CLAIMS

- 12. Since February 1, 2021, the Receiver has continued its investigation in respect of potential claims against the former directors and officers of KMG and other parties.
- 13. 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. CV-21-00656707-0000 (the “**Receiver’s Action**”), against Grant Thornton LLP (“**GT Canada**”), and Grant Thornton UK LLP and Grant Thornton UK LLC (“**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 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.

14. As outlined in the Statement of Claim dated March 11, 2021 (the “**Original Statement of Claim**”) in relation to the Receiver's Action, the Plaintiffs claim against the 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 Defendants to repay to the Plaintiffs all fees, payments, and monies paid to them by the Plaintiffs;
- (c) A declaration that any indemnity or limitation of liability provisions in favour of the 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 Plaintiffs' costs of this action; and
- (f) Such further and other relief as this Honourable Court permits.

15. On June 2, 2021, the Plaintiffs filed an Amended Statement of Claim (the “**Amended Statement of Claim**”) that revised the Original Statement of Claim and also provided certain additional information with respect to the Receiver's Action including the following:

- (a) KMG is entitled to sue the Defendants on its own behalf and on behalf of the individual companies in the KMG Group on the basis that the 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.

SECURITIES CLASS ACTION PROCEEDING

16. On July 14, 2020, the Court granted an Order (the “**Lift Stay Order**”) permitting the issuance and service of a statement of claim by Alex Kan and Stuart Rath as proposed representative plaintiffs (the “**Class Action Plaintiffs**”) in a putative securities class proceeding against KMG, and seven former officers and directors of KMG (the “**Class Action**”).
17. On January 18, 2021, the Court granted an Order, *inter alia*, extending the time for service of the Statement of Claim on KMG to July 13, 2021.
18. On July 6, 2021, legal counsel for the Receiver accepted service of the Statement of Claim on behalf of KMG.
19. On August 4, 2021, the Class Action Plaintiffs filed the Plaintiffs’ Motion Record (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 defense counsel for KMG in defense of the Class Action within 30 days.
20. It is the Receiver’s view that it has no obligation to retain defense counsel or defend the Class Action and that it is not in the interests of the estate or its creditors to do so.

SALES AND INCOME TAX AUDITS

21. 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.
22. In July 2021, CRA requested certain information for the purposes of undertaking an audit of certain corporate tax return filings of KMG.
23. The Receiver is working with CRA to endeavour to facilitate a timely completion of the tax audits.

INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS

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

	KMG	KMICI	Total
Receipts			
Sales tax refunds	31,853	-	31,853
Interest earned and other miscellaneous receipts	784	-	784
Total Receipts	32,638	-	32,638
Disbursements			
Other operating disbursements	5,329	-	5,329
Bank charges and foreign exchange	45	-	45
Sales taxes paid	27,644	-	27,644
Receiver fees and expenses	73,795	-	73,795
Other professional fees and expenses	135,565	-	135,565
Total Disbursements	242,378	-	242,378
(Shortfall)/Excess of Receipts over Disbursements	(209,740)	-	(209,740)
Opening balance	736,447	-	736,447
(Shortfall)/Excess of Receipts over Disbursements	(209,740)	-	(209,740)
Closing balance	526,707	-	526,707

PROPERTY THAT HAS NOT YET BEEN SOLD OR REALIZED

25. As of the date of the Third 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 Third 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 26th day of August, 2021.

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