

Rivas, Tyler

To: Robinson, Jim
Subject: RE: Kew Media Group

From: Rose Bozzelli <RBozzelli@tgf.ca>

Sent: Wednesday, July 15, 2020 8:47 AM

To: 'kenneth.kraft@dentons.com' <kenneth.kraft@dentons.com>; 'robert.kennedy@dentons.com' <robert.kennedy@dentons.com>; 'mark.freake@dentons.com' <mark.freake@dentons.com>; 'rchadwick@goodmans.ca' <rchadwick@goodmans.ca>; 'jpasquariello@goodmans.ca' <jpasquariello@goodmans.ca>; 'aharmes@goodmans.ca' <aharmes@goodmans.ca>; 'bwiffen@goodmans.ca' <bwiffen@goodmans.ca>; 'jwadden@goodmans.ca' <jwadden@goodmans.ca>; Meakin, Nigel <Nigel.Meakin@fticonsulting.com>; Vanderlaan, Toni <Toni.Vanderlaan@fticonsulting.com>; Robinson, Jim <Jim.Robinson@fticonsulting.com>; 'tdemarinis@torys.com' <tdemarinis@torys.com>; 'dbish@torys.com' <dbish@torys.com>; 'jcarhart@millierthomson.com' <jcarhart@millierthomson.com>; 'jdyck@millierthomson.com' <jdyck@millierthomson.com>; 'chris.burr@blakes.com' <chris.burr@blakes.com>; 'dconklin@goodmans.ca' <dconklin@goodmans.ca>; 'cfox@goodmans.ca' <cfox@goodmans.ca>
Cc: Paul Guy <PGuy@tgf.ca>; 'serge@kalloghlianmyers.com' <serge@kalloghlianmyers.com>; 'garth@kalloghlianmyers.com' <garth@kalloghlianmyers.com>; 'jforeman@foremancompany.com' <jforeman@foremancompany.com>; 'Sarah Bowden' <sbowden@foremancompany.com>; 'alegawolfe@foremancompany.com' <alegawolfe@foremancompany.com>; Fox, Carlie <cfox@goodmans.ca>
Subject: [EXTERNAL] FW: Kew Media Group

Good morning Counsel,

Please see endorsement of Justice Koehnen below and attached Lift Stay Order.

Thank you,
Legal Assistant to Paul D. Guy



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From: Koehnen, Mr. Justice Markus (SCJ) [<mailto:Markus.Koehnen@scj-csj.ca>]

Sent: Tuesday, July 14, 2020 11:01 AM

To: Paul Guy <PGuy@tgf.ca>; dbish@torys.com; dconklin@goodmans.ca; kenneth.kraft@dentons.com

Cc: JUS-G-MAG-CSD-Toronto-SCJ Commercial List <MAG.CSD.To.SCJCom@ontario.ca>

Subject: Kew Media Group

Counsel Present

Paul D. Guy, Serge Kalloghlian, Garth Myers, Jonathan Foreman, Sarah Bowden and Annie Legate-Wolfe for the Moving Parties, Alex Kan and Stuart Rath

David Bish for the Receiver, FTI Consulting Canada Inc.

David Conklin and Carlie Fox for Peter Sussman, David Fleck, Maurice Kagan and Patrice Merrin

Kenneth Kraft for Truist Bank as agent for the lending syndicate comprising Truist Bank, Bank of Montreal and Toronto-Dominion Bank

Nigel Meakin of FTI Consulting Canada Inc. also in attendance

Endorsement

This email constitutes my endorsement arising out of today's hearing and should be placed into the court file.

The applicants Alex Kan and Stuart Rath seek a lift stay order against Kew Media Inc. and certain of its former directors and officers for the purpose of commencing and prosecuting a class-action against them. A draft order has been negotiated and agreed to by the Receiver and has been provided to the service list. There is no opposition to the relief sought.

Lifting the stay requires an assessment of the totality of the circumstances and in particular the interests of the party seeking to lift the stay compared to the interests of the remaining creditors: *Romspen Investment Corporation v. Courtice Auto Wreckers*, 2017 ONCA 301.

There is prejudice to the class members if the action is not commenced in the future. Even with the suspension of limitation periods by reason of the Covid pandemic, the limitation period would expire shortly after September 11, 2020. Leave of the court will still be required for the claim to proceed under Part XXIII.1 of the Securities Act.

The only potential prejudice that exists by reason of the claim is to unsecured creditors. The purpose of the stay is not, however, to prevent the assertion of unsecured claims, like those of the plaintiffs, but to stabilize the company and prevent parties from seeking strategic or tactical advantage by virtue of speed. Lifting the stay to permit the action to proceed gives rise to no such concerns. As a result, I grant the relief requested and have signed the attached order.

Justice Markus Koehnen

Ontario Superior Court of Justice

361 University Ave.

Toronto, Ont.

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