

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.**

FIFTH INTERIM REPORT OF THE RECEIVER

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

September 20, 2022

FIFTH 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**” and, collectively with the First Interim Report, the Second Interim Report and the Third Interim Report, the “**Interim Reports**”).
6. 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**”).
7. This report is the Fifth Interim Report of the Receiver (the “**Fifth Interim Report**”) prepared pursuant to section 246(2) of the BIA for the period from February 1, 2022, to July 31, 2022. The purpose of the Fifth Interim Report is to provide information in respect of the following:
 - (a) Activities undertaken by the Receiver since February 1, 2022;
 - (b) The Receiver’s interim statement of receipts and disbursements for the period from February 1, 2022, to July 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

8. In preparing the Fifth 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**”).

9. Except as described in the Fifth 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 Fifth Interim Report in a manner that would comply with the procedures described in the Chartered Professional Accountants of Canada Handbook.
10. The Receiver has prepared the Fifth Interim Report pursuant to section 246(2) of the BIA and the Fifth Interim Report should not be relied on for any other purposes.
11. Future oriented financial information reported or relied on in preparing the Fifth Interim Report is based on assumptions regarding future events. Actual results may vary from forecast and such variations may be material.
12. 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, 2022

REALIZATION OF PROPERTY

13. Since February 1, 2022, there have been no additional asset realizations other than the collection of interest on funds held.

RECOVERY OF SALES TAXES

14. Sales tax refunds in respect of post-receivership payments have been withheld by Canada Revenue Agency (“**CRA**”) as corporate income tax returns had not been filed for 2019, 2020 and 2021. The Receiver sought and obtained a waiver for 2019, as the tax year ended prior to the commencement of the Receivership, and has engaged tax advisors to prepare and file the 2020 and 2021 returns in order to have the account hold released.
15. Based on the Receiver’s records, a net sales tax refund of approximately \$29,000 is owing by CRA as at the date of this Fifth Interim Report.

THE GT CLAIM

16. 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**”)¹.
17. 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.

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

18. GT Canada delivered its Statement of Defence on February 22, 2022, and KMG delivered its Reply on March 23, 2022. The parties have had discussions about the terms of a discovery plan, but a discovery plan has not yet been agreed to. No timetable has been set for the exchange of affidavits of documents or examinations for discovery.

SECURITIES CLASS ACTION PROCEEDING

19. 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.
20. 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.
21. 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.

22. 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.
23. Since February 1, 2022, there has been no substantive activity by the Class Action Plaintiffs in respect of the Class Action Motion. The Class Action Plaintiffs have 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. As 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, the Receiver has informed the other parties that the Receiver and the Debtor Entities would only participate under certain conditions, including:
- (a) Any costs being incurred being funded from sources outside the receivership; and
 - (b) Steps taken to ensure that the positions advanced by the Company in a mediation would not conflict with the allegations set out in the Receiver's Action.
24. To date, the parties have not been able to satisfy the Receiver's conditions for participation in the proposed mediation, nor have all relevant parties confirmed that they are willing to participate in a mediation.

INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS

25. The Receiver's interim statement of receipts and disbursements for the period from February 1, 2022, to July 31, 2022, is summarized as follows:

	KMG	KMICI	Total
Receipts			
Sales tax refunds		-	-
Interest earned and other miscellaneous receipts	459	-	459
Total Receipts	459	-	459
Disbursements			
Other operating disbursements	3,528	-	3,528
Bank charges and foreign exchange	109	-	109
Sales taxes paid	36,985	-	36,985
Receiver fees and expenses	69,789	-	69,789
Other professional fees and expenses	210,784	-	210,784
Total Disbursements	321,195	-	321,195
(Shortfall)/Excess of Receipts over Disbursements	(320,736)	-	(320,736)
Opening balance	356,338	-	356,338
(Shortfall)/Excess of Receipts over Disbursements	(320,736)	-	(320,736)
Closing balance	35,602	-	35,602

PROPERTY THAT HAS NOT YET BEEN SOLD OR REALIZED

26. As of the date of the Fourth Interim Report, the only known Property that may be realized by the Receiver is:
- Collection of additional post-receivership sales tax refunds; and
 - Potential recoveries from the Receiver's Action, the quantum and timing of which are unknown at this time; and
 - 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.
27. The other 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

28. 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

29. 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; and
 - (d) Seek Court approval of the activities, fees and expenses of the Receiver and its counsel, and to obtain discharge.
30. Given the nature of the Receiver's Action, the time to complete the administration of the Receivership cannot be reasonably estimated.
31. Creditors who wish to receive a copy of the Fifth 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 20th day of September, 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 D. Meakin, LIT
Senior Managing Director