

**ONTARIO
SUPERIOR COURT OF JUSTICE**

COMMERCIAL LIST

THE HONOURABLE
JUSTICE MCEWEN

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THURSDAY, THE 25th
DAY OF MAY, 2023

B E T W E E N:

TRUIST BANK, AS AGENT

Applicant

- and -

**KEW MEDIA GROUP INC. AND KEW MEDIA INTERNATIONAL
(CANADA) INC.**

Respondents

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985 C. B-3, AS AMENDED, AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, C. C-43, AS AMENDED**

FEE APPROVAL AND DISCHARGE ORDER

THIS MOTION, made by FTI Consulting Canada Inc. (“**FTI**”), in its capacity as the Court-appointed receiver and manager (FTI, in such capacity, the “**Receiver**”) of the undertaking, property and assets of Kew Media Group Inc. (“**KMG**”) and Kew Media International (Canada) Inc. (together with KMG, the “**Debtors**”), for an Order in substantially

the form set out at Tab 3 of the Receiver's Motion Record was heard by judicial videoconference via Zoom at Toronto, Ontario due to the COVID-19 pandemic.

ON READING the Receiver's Motion Record in respect of this motion, filed, the Receiver's Fifth Report dated May 5, 2023 (the "**Fifth Report**"), filed, the affidavit of Nigel Meakin sworn May 5, 2023 (the "**Meakin Affidavit**"), filed, the affidavit of Mike Noel sworn May 5, 2023 (the "**Noel Affidavit**"), filed, and the affidavit of Rahool Agarwal (the "**Agarwal Affidavit**") sworn May 2, 2023, filed;

AND UPON hearing the submissions of counsel for the Receiver, counsel for certain former directors and officers of the Respondents, counsel for the Applicant, counsel for Lloyd's London, the Respondent's insurers, and counsel to Alex Kan and Stuart Roth, the Class Action Plaintiffs, and those other parties present, no one appearing for any other person on the service list, although duly served as appears from the lawyer's certificates of service of Mike Noel signed May 8, 2023 and May 19, 2023, filed,

APPROVAL OF THE RECEIVER'S REPORTS AND ACTIVITIES

1. **THIS COURT ORDERS** that the Fourth Report dated September 29, 2021, and the Fifth Report, and the actions and activities of the Receiver described in such reports, be and they are hereby approved; provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

APPROVAL OF FEES AND DISBURSEMENTS OF RECEIVER AND COUNSEL FOR THE RECEIVER

2. **THIS COURT ORDERS** that the fees and disbursements of the Receiver for the period November 1, 2020, to April 14, 2023, as described in the Fifth Report and the Meakin Affidavit, are hereby approved.

3. **THIS COURT ORDERS** that the fees and disbursements of Torys LLP, counsel for the Receiver for the period November 1, 2020, to April 14, 2023, as described in the Fifth Report and the Noel Affidavit, are hereby approved.

4. **THIS COURT ORDERS** that the fees and disbursements of Lax O'Sullivan Liss Gottlieb LLP, counsel for the Receiver for the period December 31, 2020, to March 31, 2023, as described in the Fifth Report and the Agarwal Affidavit, are hereby approved.

5. **THIS COURT ORDERS** that the Subsequent Fees and Disbursements (as defined in the Fifth Report) are hereby approved, and neither the Receiver nor its legal counsel shall be required to seek a further approval by this Court of such fees and disbursements prior to or following the filing of the Receivership Termination Certificate (as defined below) and the termination of the within proceedings.

ADDITIONAL RELIEF

6. **THIS COURT ORDERS** that the Receiver is authorized to: (i) deliver to Goodmans LLP, legal counsel to the Debtors, the Transferred Records (as defined in the Fifth Report); and (ii) subject to any applicable law, destroy any copies of the Debtor Non-Tax Records (as defined in the Fifth Report) that are not Transferred Records (collectively, the "**Remaining Activities**").

DISCHARGE OF THE RECEIVER

7. **THIS COURT ORDERS** that, upon the filing by the Receiver of a certificate in the form attached as Schedule “A” hereto (the “**Receivership Termination Certificate**”) certifying that it has completed the Remaining Activities, FTI shall be discharged as Receiver, provided, however, that notwithstanding its discharge herein:

- (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein; and
- (b) the Receiver shall continue to have the benefit of the provisions of all orders made in this proceeding, including all approvals, charges, releases, protections and stays of proceedings.

8. **THIS COURT ORDERS AND DECLARES** that FTI is hereby released and discharged from any and all liability that FTI now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of FTI while acting in its capacity as Receiver in these proceedings, save and except its gross negligence or willful misconduct on the Receiver’s part. Without limiting the generality of the foregoing, FTI is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within proceedings, save and except for any gross negligence or willful misconduct on the Receiver’s part.

9. **THIS COURT ORDERS** that no action or other proceeding shall be commenced against the Receiver in any way arising from or related to its capacity or conduct as Receiver except with prior leave of this Court and on prior written notice to the Receiver. For greater certainty, and

without limiting the foregoing, upon its discharge becoming effective in accordance with this Order, the Receiver shall have no obligation to participate in or respond to the Class Action (as defined in the Fifth Report) or any matters ancillary or related thereto.

SEALING ORDER

10. **THIS COURT ORDERS** that the unredacted copies of the Meakin Affidavit, the Noel Affidavit and the Agarwal Affidavit shall be sealed, kept confidential and not form part of the public record, but rather shall be placed, separate and apart from all other contents of the Court File, in a sealed envelope attached to a notice that sets out the title of these proceedings and the statement that the contents are subject to this motion and sealing order, and remain under seal until further Order of this Court.

GENERAL

11. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada against all persons, firms, corporations, governmental, municipal and regulatory authorities against whom it may be enforceable.

12. **THIS COURT ORDERS AND REQUESTS** the aid and recognition of any court or any judicial, regulatory or administrative body in any province or territory of Canada and the Federal Court of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province to act in aid of and to be complementary to this Court in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and

to provide such assistance as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

13. **THIS COURT ORDERS** that this Order and all of its provisions are effective from the date it is made without any need for entry and/or filing.



A handwritten signature in black ink, appearing to read 'M. J. S.', is written above a horizontal line.

Schedule A – Form of Receivership Termination Certificate

Court File No. CV-20-00637081-00CL

RECEIVERSHIP TERMINATION CERTIFICATE

WHEREAS pursuant to an Order of Justice McEwen of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made on May 25, 2023 (the “**Fee Approval and Discharge Order**”), FTI Consulting Canada Inc. was discharged as the receiver and manager (the “**Receiver**”) of the undertaking, property and assets of Kew Media Group Inc. and Kew Media International (Canada) Inc., with such discharge to be effective upon the Receiver filing a certificate with this Court certifying that it has completed the Remaining Activities (as such term is defined in the Fee Approval and Discharge Order).

THE UNDERSIGNED HEREBY CERTIFIES as follows:

1. The Remaining Activities have been completed in accordance with paragraph 6 of the Discharge Order.

DATED at Toronto, Ontario this _____ day of _____, 2023.

FTI CONSULTING CANADA INC. solely in its capacity as Receiver, and not in its personal capacity

Per: _____
Name:
Title:

TRUIST BANK, AS AGENT

-and-

KEW MEDIA GROUP INC. AND KEW MEDIA INTERNATIONAL (CANADA) INC.

Applicant

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

FEE APPROVAL AND DISCHARGE ORDER

Torys LLP
79 Wellington St. W., 30th Floor
Box 270, TD South Tower
Toronto, ON M5K 1N2
Fax: 416.865.7380

David Bish (LSO #: 41629A)
Tel: 416.865.7353
Email: dbish@torys.com

Tony DeMarinis (LSO #: 29451Q)
Tel: 416.865.8162
Email: tdemarinis@torys.com

Adam M. Slavens (LSO #: 54433J)
Tel: 416.865.7333
Email: aslavens@torys.com

Mike Noel (LSO #: 80130F)
Tel: 416.865.7378
Email: mnoel@torys.com

Lawyers for FTI Consulting Canada Inc., the Court-appointed Receiver and Manager of Kew Media Group Inc. and Kew Media International (Canada) Inc.