

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

TRUIST BANK, AS AGENT

Applicant

- and -

KEW MEDIA GROUP INC., 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**

MOTION RECORD
(Motion Returnable: July 14, 2020)

July , 2020

Thornton Grout Finnigan LLP
3200-100 Wellington St W
Toronto, ON M5K 1K7

Paul D. Guy (LSO# 49794K)
pguy@tgf.ca
Tel: (416) 304-0538
Fax: (416) 304-1313

Kalloghlian Myers LLP
200-250 University Avenue
Toronto, ON M5H 3E5

Serge Kalloghlian (LSO# 55557F)
serge@kalloghlianmyers.com
Tel: (647) 812-5615

Garth Myers (LSO# 62307G)
garth@kalloghlianmyers.com
Tel: (647) 969-4472
Fax: (647) 243-6620

Foreman & Company
4 Covent Market Place
London, ON N6A 1E2

Jonathan J. Foreman (LSO# 45087H)
jforeman@foremancompany.com

Sarah A. Bowden (LSO# 56835D)
sbowden@foremancompany.com

Anne E. Legate-Wolfe (LSO# 76832J)
alegatewolfe@foremancompany.com

Tel: (519) 914-1175
Fax: (226) 884-5340

Lawyers for the Plaintiffs

TO: THE SERVICE LIST

INDEX

Tab	Document	Pg. No.
1.	Notice of Motion dated July 7, 2020	1-7
2.	Affidavit of Garth Myers sworn July 7, 2020	8-11
A.	Receivership Order dated February 28, 2020	12-30

TAB 1

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

TRUIST BANK, AS AGENT

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**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**

NOTICE OF MOTION

Motion for: (1) an Order Lifting the Stay of Proceedings Against Kew Media to Permit (i) the Issuance of a Statement of Claim; (ii) the Filing of a Motion for Leave to Commence an Action Under Sections 138.3 and 138.8 of the *Securities Act* and Certification; (iii) Motions Related to Service; and (iv) Motions Related to the Approval of a Third Party Adverse Costs Indemnity and Funding Agreement; (2) Carriage of the Shareholder Class Proceeding on Behalf of Kew Media Shareholders; and (3) Production of Kew Media's Responsive Insurance Policies

(Motion Returnable: July 14, 2020)

ALEX KAN, GRYHORIY ZHURBA and STUART RATH, the Plaintiffs in a proposed securities class action against Kew Media Group Inc. ("**Kew Media**"), will bring a motion before the Honourable Mr. Justice Koehnen on July 14, 2020 by judicial video conference via Zoom at Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion will be heard orally by video conference via Zoom.

THE MOTION IS FOR:

1. An order substantially in the form attached hereto as **Schedule “A”**:
 - (a) lifting the stay of proceedings for the sole and limited purpose of:
 - (i) granting the Plaintiffs leave to issue, file and serve the Statement of Claim in the action styled *Kan et al. v. Kew Media Inc. et al.* (the **“Action”**);
 - (ii) granting the Plaintiffs leave to file with the Court the Plaintiffs’ Motion for Certification and for Leave under Part XXIII.1 of the Ontario *Securities Act*;
 - (iii) serving (as necessary), filing and hearing any motion(s) related to the service of the Statement of Claim and/or the Plaintiffs’ Motion for Certification and Leave under Part XXIII.1 of the Ontario *Securities Act*; and
 - (iv) serving (as necessary), filing and hearing any motion(s) related to the court approval of a third-party adverse costs indemnity and disbursement funding agreement;
 - (b) ordering that Thornton Grout Finnigan LLP, Kalloghlian Myers LLP and Foreman & Company are appointed as counsel to prosecute the Action;
 - (c) ordering that no other action may be commenced in Ontario on behalf of Kew Media shareholders in respect of the subject matter of the Action without leave of the Court granted on notice to the Receiver and the Plaintiffs; and

- (d) ordering that the Receiver disclose and produce to the Plaintiffs:
- (i) all potentially responsive insurance policies under which an insurer may be liable to satisfy all or part of a judgment against Kew Media or any of its Directors, Officers or advisors in the Action or to indemnify or reimburse a party to the Action for money paid in satisfaction of all or part of the judgment (the “**Insurance Policies**”);
 - (ii) the limits of insurance coverage on each Insurance Policies and the particulars of any erosion of those limits to date; and
 - (iii) any reservation of rights by the insurers in respect of the Insurance Policies.
2. Such further and other relief as counsel may advise and this Court deem just.

THE GROUNDS FOR THE MOTION ARE:

A. Background and KEW Media’s Insolvency

1. Kew Media was a publicly traded company with shares that traded on the Toronto Stock Exchange.
2. Kew Media issued a press release on December 11, 2019 disclosing that certain reports that had been provided to Kew Media and its senior lenders by Kew Media’s Chief Financial Officer contained inaccurate information regarding Kew Media’s working capital.
3. Kew Media’s share price dropped precipitously following these and other disclosures and its shares were cease traded by the Ontario Securities Commission on January 16, 2020.

4. The within receivership proceedings against Kew Media were commenced by its senior lenders and an order was granted on February 28, 2020 appointing FTI Consulting Canada Inc. as Receiver of all of the assets, undertakings and properties of Kew Media and certain related entities (the “**Receivership Order**”).
5. The Receivership Order includes a stay of all proceedings currently pending against Kew Media and precludes any new proceeding against Kew Media except with the written consent of the Receiver or leave of this Court.

B. Carriage

6. Alex Kan and Gryhoriy Zhurba retained Thornton Grout Finnigan LLP and Kalloghlian Myers LLP (“**TGF/KM**”) in April and May 2020 to commence a class proceeding against Kew Media in relation to damages they and other class members suffered arising from alleged misrepresentations in Kew Media’s public disclosure.
7. Alex Kan and Gryhoriy Zhurba delivered a Notice of Appearance in the Kew Media Receivership on June 19, 2020.
8. Foreman & Company was retained by Stuart Rath to commence substantially the same proceeding and delivered a Notice of Appearance in the Kew Media Receivership on June 22, 2020.
9. On June 27, 2020, TGF/KM sent a Notice of Motion for carriage and a lift stay order to the Receiver. Among other things, the relief sought would have granted carriage of the claims brought against Kew Media to Alex Kan and Gryhoriy Zhurba and appointed TGF/KM as class counsel.
10. On June 28, 2020, Foreman & Company sent a draft motion record to the Receiver. Among other things, the motion sought to lift the stay of proceedings to allow a proposed class action to be brought against Kew Media and to allow the plaintiff’s motion for certification and leave under the Ontario *Securities Act* to be filed.

11. On June 29, 2020, Sarah Bowden, a lawyer at Foreman & Company, served their client, Mr. Rath's motion record to lift the stay of proceedings on the Service List.
12. The issue of carriage as between TGF/KM and Foreman & Company has been resolved on terms, whereby TGF/KM and Foreman and Company have agreed to work together to advance the claims against Kew Media.

C. Lift Stay

i. Motion for Certification and Leave

13. Section 138.14 of the *Securities Act* prescribes a three-year limitation period for any claim brought under section 138.3 of the *Securities Act*, such as the claim asserted in the Action.
14. As a result of the Covid-19 pandemic, the limitation period under the *Securities Act* was suspended retroactive to March 16, 2020 by an Ontario Regulation made under the *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9. The suspension is scheduled to conclude on September 11, 2020.
15. Further, section 138.14(2) of the *Securities Act* provides that the limitation period is suspended on the date the notice of motion for leave under section 138.8 is filed with the court.

ii. Service of the Statement of Claim

16. Two of the defendants in the Action reside in the United Kingdom. A motion for substitute service or validating service may be necessary to effect service of the Statement of Claim.

iii. Third Party Adverse Costs Indemnity and Funding

17. TGF/KM and Foreman & Company anticipate seeking an adverse cost indemnity and funding for disbursements from a third-party funder. Any such funding agreement

would need to be approved by the court and leave is sought on the within motion for leave to lift the stay of proceedings to allow such a motion to be heard.

D. Production of Insurance

18. Insurance coverage, erosion and remaining limits are relevant to the conduct of the litigation and potential settlement discussions, particularly where the issuer is insolvent.
19. Requiring disclosure of insurance information encourages the parties to make practical and pragmatic decisions about the likelihood of recovery on the claims.
20. Early production of insurance policies at this stage is consistent with prior practice in class proceedings and consistent with this Court's jurisprudence.

E. Legislation

21. The *Class Proceedings Act, 1992*, S.O. 1992, c. 6, and in particular sections 12, 13 and 34.
22. The *Courts of Justice Act*, R.S.O. 1990, c. C.43, and in particular section 106.
23. The *Securities Act*, R.S.O. 1990, c. S.5, and in particular section 138.
24. The *Rules of Civil Procedure*, R.R.O. 1990, Reg 194, and in particular Rule 37.
25. Such further and other grounds as counsel may advise and this Court permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The affidavit of Garth Myers sworn July 7, 2020.
2. Such further materials as counsel may advise and this Court permit.

July 7, 2020

Thornton Grout Finnigan LLP
3200-100 Wellington St W
Toronto, ON M5K 1K7

Paul D. Guy (LSO# 49794K)
pguy@tgf.ca
Tel: (416) 304-0538
Fax: (416) 304-1313

Kalloghlian Myers LLP
200-250 University Avenue
Toronto, ON M5H 3E5

Serge Kalloghlian (LSO# 55557F)
serge@kalloghlianmyers.com
Tel: (647) 812-5615

Garth Myers (LSO# 62307G)
garth@kalloghlianmyers.com
Tel: (647) 969-4472
Fax: (647) 243-6620

Foreman & Company
4 Covent Market Place
London, ON N6A 1E2

Jonathan J. Foreman (LSO# 45087H)
jforeman@foremancompany.com

Sarah A. Bowden (LSO# 56835D)
sbowden@foremancompany.com

Anne E. Legate-Wolfe (LSO# 76832J)
alegatewolfe@foremancompany.com

Tel: (519) 914-1175
Fax: (226) 884-5340

Lawyers for the Plaintiffs

TO: THE SERVICE LIST

TAB 2

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

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**

**AFFIDAVIT OF GARTH MYERS
(Sworn July 7, 2020)**

I, Garth Myers, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am a partner with the law firm Kalloghlian Myers LLP, co-counsel for the Plaintiffs Alex Kan, Gryhoriy Zhurba and Stuart Rath in a proposed securities class action against Kew Media Inc. (“**Kew Media**”) (the “**Action**”). I have knowledge of the matters herein deposed. Where I make statements in this affidavit that are not within my personal knowledge, I have identified the source of the information and believe it to be true.

2. I swear this affidavit in support of the Plaintiffs’ motion for carriage, to lift the stay of proceedings against Kew Media, and for production of insurance policies. This affidavit touches on matters relating to Kalloghlian Myers LLP’s, Thornton Grout Finnigan LLP’s and Foreman & Company’s solicitor-client relationship with the Plaintiffs. No portion of this affidavit is meant to waive, nor should it be construed as a waiver of, solicitor-client, litigation or any other privilege.

3. Kew Media was a publicly traded company with shares that traded on the Toronto Stock Exchange.
4. Kew Media issued a press release on December 11, 2019 disclosing that certain reports that had been provided to Kew Media and its senior lenders by Kew Media's Chief Financial Officer contained inaccurate information regarding Kew Media's working capital.
5. Kew Media's share price dropped precipitously following these and other disclosures and its shares were cease traded by the Ontario Securities Commission on January 16, 2020.
6. The within receivership proceedings against Kew Media were commenced by its senior lenders and an order was granted on February 28, 2020 appointing FTI Consulting Canada Inc. as Receiver of all of the assets, undertakings and properties of Kew Media and certain related entities (the "**Receivership Order**"). Attached hereto as **Exhibit "A"** is a copy of the Receivership Order.
7. The Receivership Order includes a stay of all proceedings currently pending against Kew Media and precludes any new proceeding against Kew Media except with the written consent of the Receiver or leave of this Court.
8. Alex Kan and Gryhoriy Zhurba retained Thornton Grout Finnigan LLP and Kalloghlian Myers LLP ("**TGF/KM**") in April and May 2020 to commence a class proceeding against Kew Media in relation to damages they and other class members suffered arising from alleged misrepresentations in Kew Media's public disclosure.
9. Alex Kan and Gryhoriy Zhurba delivered a Notice of Appearance in the Kew Media Receivership on June 19, 2020.
10. Stuart Rath retained Foreman & Company to prosecute essentially the same claim and delivered a Notice of Appearance in the Kew Media Receivership on June 22, 2020.
11. On June 24, 2020, Jonathan Foreman of Foreman & Company wrote to the Receiver seeking the Receiver's written consent to lift the stay to issue a proposed class action against Kew Media. A copy of the plaintiff's draft Statement of Claim was enclosed in Mr. Foreman's June 24, 2020 letter.

12. On June 27, 2020, TGF/KM sent a Notice of Motion for carriage to the Receiver seeking an order granting carriage of the claims brought against Kew Media to Alex Kan and Gryhoriy Zhurba and appointing TGF/KM as class counsel. TGF/KM had previously provided to the Receiver a draft of a Statement of Claim.

13. On June 28, 2020, Foreman & Company sent a draft Motion Record to the Receiver. Among other things, the motion sought to lift the stay of proceedings to allow a proposed class action to be brought against Kew Media and to allow the Stuart Rath's motion for certification and leave under the Ontario *Securities Act* to be filed.

14. On June 29, 2020, Sarah Bowden, a lawyer at Foreman & Company, served Mr. Rath's Motion Record to lift the stay of proceedings on the Service List.

15. The issue of carriage as between TGF/KM and Foreman & Company has since been resolved on terms, whereby TGF/KM and Foreman & Company have agreed to work together to advance the claims against Kew Media and related parties.

16. Section 138.14 of the *Securities Act* prescribes a three-year limitation period for any claim brought under section 138.3 of the *Securities Act*, such as the claim asserted in the Action.

17. As a result of the Covid-19 pandemic, the limitation period under the *Securities Act* was suspended retroactive to March 16, 2020 by an Ontario Regulation made under *the Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9. The suspension is scheduled to conclude on September 11, 2020.

18. Further, section 138.14(2) of the *Securities Act* provides that the limitation period is suspended on the date the notice of motion for leave under section 138.8 is filed with the court.

19. Two of the defendants in the Action also are described in Kew Media's public disclosure as living in the United Kingdom (Geoffrey Webb and Sara Curran).

20. The United Kingdom Central Authority for foreign processes (<<https://www.hcch.net/en/states/authorities/details3/?aid=278>>) states as follows:

Please note the following information received from from [sic] the Authority for England and Wales: "The COVID-19 outbreak has inevitably led to delays in the service of documents from other Contracting States. For the moment service of judicial and extra-judicial documents is suspended, but as soon as we are able to do so, staff in the England and Wales Central Authority will work to complete requests for service as promptly as they can."

21. TGF/KM and Foreman & Company anticipate seeking an adverse cost indemnity and funding for disbursements from a third-party funder. Any such funding agreement will require approval by the court and leave is sought on this motion for leave to lift the stay of proceedings to allow such a motion to be heard.

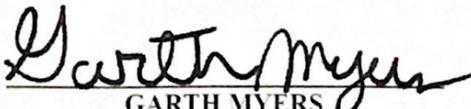
22. The Plaintiffs also seek from the Receiver disclosure and production of insurance coverage, information concerning the limits of insurance coverage on each policies, the particulars of any erosion of those limits to date and any reservation of rights by the insurers in respect of all potentially responsive insurance policies.

23. I swear this affidavit in support of the Plaintiffs' motion for carriage, to lift the stay of proceedings and for disclosure and production of the insurance policies and for no improper purpose.

SWORN BEFORE ME by video)
conference from the City of Toronto,)
in the Province of Ontario, to the City)
of Toronto, in the Province of)
Ontario, this 7th day of July, 2020)



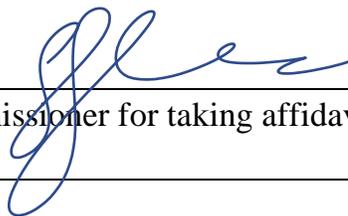
Commissioner for taking affidavits
SERGE KALLOGHLIAN
LSO # 55557F



GARTH MYERS

TAB 2A

This is Exhibit "A" referred to in the
Affidavit of Garth Myers sworn before me
this 7th day of July, 2020.

A handwritten signature in blue ink, appearing to be "J. Lee", written over a horizontal line.

A Commissioner for taking affidavits



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

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE)	FRIDAY, THE 28TH
)	
JUSTICE KOEHNEN)	DAY OF FEBRUARY, 2020

TRUIST BANK, AS AGENT

Applicant

- and -

**KEW MEDIA GROUP INC., KEW MEDIA INTERNATIONAL (CANADA) INC., AND
ARCHITECT FILMS 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

**ORDER
(appointing Receiver)**

THIS APPLICATION made by the Applicant, Truist Bank (“**Truist**”), in its capacity as agent for a syndicate of lenders consisting of Truist, Bank of Montreal and The Toronto-Dominion Bank, for an Order pursuant to section 243(1) 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 (the “**CJA**”) appointing FTI Consulting Canada Inc. (“**FTI**”) as receiver and manager (in such capacities, the “**Receiver**”) without security, of all of the assets, undertakings and properties of Kew Media Group Inc. (“**Kew**”), and Kew Media International (Canada) Inc. (“**KMICI**”), acquired for, or used in relation to a business carried on by Kew and KMICI (together, Kew and KMICI are the “**Debtors**”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Juan De Jesus-Caballero sworn February 27, 2020, and the Exhibits thereto, and on hearing the submissions of counsel for the Applicant, counsel for the Debtors, counsel for the Receiver, [and counsel for Bank of Montreal as financier to certain production subsidiaries of the Debtors] no one else appearing although duly served as appears from the affidavit of service of Amanda Campbell sworn February 27, 2020, and on reading the consent of FTI to act as the Receiver,

SERVICE

1 **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2 **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, FTI is hereby appointed Receiver, without security of all of the assets, undertakings and properties of the Debtors Kew and KMICI acquired for, or used in relation to a business carried on by Kew and KMICI, including all proceeds thereof (the "**Property**").

RECEIVER'S POWERS

3 **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent

security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate, and carry on the business of the Debtors Kew and KMICI, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtors Kew and KMICI;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors Kew and KMICI or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (g) to settle, extend or compromise any indebtedness owing to the Debtors;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby

conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) 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
 - (ii) 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;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required;

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors Kew and KMICI;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors Kew and KMICI;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have;
- (r) with the consent of the Applicant, to make such payments as the Receiver may deem necessary or appropriate to or for the benefit of employees, contractors, suppliers, counterparties, joint venture partners, consultants, advisors, and creditors of any direct or indirect subsidiary of the Debtors; and
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4 **THIS COURT ORDERS** that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “**Persons**” and each being a “**Person**”) shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant

immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5 **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6 **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information. *See para 6A attached vllk*

7 **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least

6A. THIS COURT ORDERS that the Receiver shall not destroy during its appointment any Records of the Debtors or any books, documents, contracts, orders, accounting and corporate records or any other papers, records or information of any kind related to the business or affairs of the Debtors' affiliates in the possession, custody or control of the Receiver, whether in hard copy or electronic form (the "Affiliate Records"). The Receiver shall, subject to applicable privacy law, provide the current and former directors and officers of the Debtors and their affiliates with reasonable access at their expense (excluding the costs of the Receiver or its counsel) to the Records and the Affiliate Records, and such directors and officers shall have the right to make and retain copies of such records at their expense (excluding the costs of the Receiver or its counsel). This paragraph may only be amended by Court order following reasonable notice to the directors and officers of the Debtor and its affiliates as of the date of this Order.

seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors. If the Receiver occupies and has the use and enjoyment of any premises that are subject to a real property lease entered into by the Debtors Kew and KMICI, the Receiver shall pay all amounts constituting rent or payable as rent under the real property lease (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Receiver and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

NO PROCEEDINGS AGAINST THE RECEIVER

8 **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

9 **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtors or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

10 **THIS COURT ORDERS** that all rights and remedies against the Debtors, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in

respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtors to carry on any business which the Debtors is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

11 **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

12 **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtors are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtors' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

13 **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this

Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the “**Post Receivership Accounts**”) and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

14 **THIS COURT ORDERS** that all employees of the Debtors shall remain the employees of the Debtors until such time as the Receiver, on the Debtors' behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

15 **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a “**Sale**”). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

16 **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

17 **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

18 **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of

this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19 **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

20 **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

21 **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed US\$2,200,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22 **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23 **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

24 **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

25 **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL <http://cfcanada.fticonsulting.com/kmg>.

26 **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the Debtors and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

27 **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

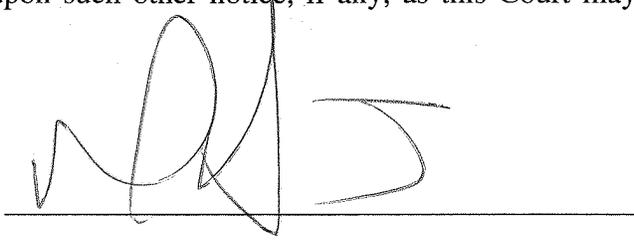
28 **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors.

29 **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents 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 to the Receiver, as an officer of this Court, 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.

30 **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

31 **THIS COURT ORDERS** that the Plaintiff shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtors' estate with such priority and at such time as this Court may determine.

32 **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end, positioned above a horizontal line.

SUPERIOR COURT OF JUSTICE
ENTERED
FEB 28 2020

COUR SUPÉRIEURE DE JUSTICE
ENTRÉ

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

33 THIS IS TO CERTIFY that FTI Consulting Canada Inc., the receiver (the "**Receiver**") of the assets, undertakings and properties Kew Media Group Inc. ("**Kew**") and Kew Media International (Canada) Inc. ("**KMICI**") acquired for, or used in relation to a business carried on by Kew and KMICI, including all proceeds thereof (collectively, the "**Property**"), appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the ___ day of February, 2020 (the "**Order**") made in an action having Court file number __-CL-_____, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of US\$_____, being part of the total principal sum of US\$_____ which the Receiver is authorized to borrow under and pursuant to the Order.

34 The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon. Interest is to be calculated at a rate equal to the Base Rate as defined in the Credit Agreement, plus 4.75%. Interest shall be calculated on the basis of a year of 365 days and paid for the actual number of days elapsed by capitalizing such interest to the principal balance of the advances made hereunder on the last day of each month.

35 Credit Agreement means the Amended and Restated Revolving Credit and Term Loan Agreement dated as of July 23, 2018 (as amended, supplemented or otherwise modified from time to time) among Truist Bank ("**Truist**"), as the Agent for syndicate of lenders comprising Truist, Bank of Montreal, and The Toronto Dominion Bank, as lenders, and Kew and Kew Media International Limited, as co-borrowers.

36 Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the

Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

37 All sums payable in respect of principal and interest under this certificate are payable at the office of the Agent in Charlotte, North Carolina.

38 Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

39 The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

40 The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 2020.

FTI Consulting Canada Inc., solely in its
capacity as Receiver of the Property, and not in
its personal capacity

Per: _____

Name:

Title:

TRUIST BANK, AS AGENT

- and -

KEW MEDIA GROUP INC., et al.

Applicant

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT TORONTO

**ORDER
(appointing Receiver)**

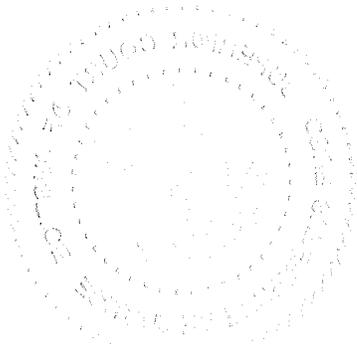
DENTONS CANADA LLP
77 King Street West, Suite 400
Toronto-Dominion Centre
Toronto, ON M5K 0A1

Kenneth Kraft (LSO # 31919P)
Tel: (416) 863-4374
Fax: (416) 863-4592
kenneth.kraft@dentons.com

Robert Kennedy (LSO # 474070)
Tel: (416) 367-6756
robert.kennedy@dentons.com

Mark A. Freake (LSO #63656H)
Tel: (416) 863-4456
mark.freake@dentons.com

Lawyers for the Applicant, Truist Bank, as Agent



TRUIST BANK, AS AGENT

Applicant

and **KEW MEDIA GROUP INC. and KEW MEDIA
INTERNATIONAL (CANADA) INC.**
Respondents

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced at Toronto

MOTION RECORD
(motion returnable on July 14, 2020)

Thornton Grout Finnigan LLP
3200-100 Wellington St W
Toronto, ON M5K 1K7

Paul D. Guy (LSO# 49794K)
pguy@tgf.ca
Tel: (416) 304-0538
Fax: (416) 304-1313

Kalloghlian Myers LLP
200-250 University Avenue
Toronto, ON M5H 3E5

Serge Kalloghlian (LSO# 55557F)
serge@kalloghlianmyers.com
Tel: (647) 812-5615

Garth Myers (LSO# 62307G)
garth@kalloghlianmyers.com
Tel: (647) 969-4472
Fax: (647) 243-6620

Foreman & Company
4 Covent Market Place
London, ON N6A 1E2

Jonathan J. Foreman (LSO# 45087H)
jforeman@foremancompany.com

Sarah A. Bowden (LSO# 56835D)
sbowden@foremancompany.com

Anne E. Legate-Wolfe (LSO# 76832J)
alegatewolfe@foremancompany.com

Tel: (519) 914-1175
Fax: (226) 884-5340

Lawyers for the Plaintiffs