



Claim Form

In the

	<i>for court use only</i>
Claim No.	
Issue date	

Claimant

THINK ENTERTAINMENT plc (successor in title to the assets of
 Newscreen Media Group plc - formerly JUST GROUP plc)
 c/o Mark G. Hardy
 3 St. Mary's Square
 Bury St. Edmunds, IP33 2AJ



Defendant(s)

- | | | |
|------------------------------------|---|---|
| (1) THE ROYAL BANK OF SCOTLAND plc | | of 1 Princes Street, London EC2R 8PB |
| (2) DAVID PAUL HUDSON | } | |
| (3) JAMIE TAYLOR | } | all of 340 Deansgate, Manchester, M3 4LY |
| (4) BEGBIES TRAYNOR | } | |
| (5) MICHAEL VINCENT MCLOUGHLIN |] | |
| (6) ALLAN WATSON GRAHAM |] | all of 8 Salisbury Square, London, EC4Y 8BB |
| (7) KPMG llp |] | |

Brief details of claim

AGAINST THE FIRST DEFENDANT: (i) a detailed accounting of the source of all monies applied in the repayment of indebtedness of Just Group plc between January 9th and September 1st 2002 and (ii) Ordinary damages for loss and damage suffered as a result of the Defendant's breach of contract in failing to timeously ensure and/or direct the repayment of a £322,000 Escrow account to Just Group plc and/or the Claimant.
 AGAINST THE SECOND, THIRD AND FOURTH DEFENDANTS: (i) Ordinary damages for loss and damage resulting from the Defendants breach of contract in failing to take control of monies, including an Escrow amount of £322,000, as provided in the contract and (ii) exemplary damages for gross professional negligence
 AGAINST THE FIFTH, SIXTH AND SEVENTH DEFENDANTS: (i) Ordinary damages for losses suffered as a result of actions in breach of trust and/or fiduciary duty in failing to ensure that all monies held in trust were passed to and placed under the exclusive control of the Second and Third defendants (iii) exemplary damages for misapplying monies held on specific terms of trust

Value

- (i) The sum of £322,000 held in Escrow plus interest from 23rd August 2002 and
- (ii) the value of other monies improperly transferred and interest thereon and
- (iii) such other amounts as the Court shall consider fit and costs and expenses.

Defendant's name and address

£

Amount claimed	
Court fee	
Solicitor's costs	
Total amount	

The court office at

is open between 10 am and 4 pm Monday to Friday. When corresponding with the court, please address forms or letters to the Court Manager and quote the claim number.

Claim No.

Does, or will, your claim include any issues under the Human Rights Act 1998? Yes No

Particulars of Claim (attached)(to follow)

ATTACHED

Statement of Truth

*(I believe)(The Claimant believes) that the facts stated in these particulars of claim are true.

* I am duly authorised by the claimant to sign this statement

Full name MARK GREGORY HARDY

Name of claimant's solicitor's firm _____

signed _____ position or office held POWER OF ATTORNEY

*(Claimant)(Litigation friend)(Claimant's solicitor) (if signing on behalf of firm or company)

**delete as appropriate*

THINK ENTERTAINMENT plc
c/o Mark G. Hardy
3 St. Mary's Square
Bury St. Edmunds IP33 2AJ

email: thinkplc@gmail.com

Claimant's or claimant's solicitor's address to which documents or payments should be sent if different from overleaf including (if appropriate) details of DX, fax or e-mail.

IN THE HIGH COURT OF JUSTICE

CHANCERY DIVISION

THINK ENTERTAINMENT PLC
(as successor in title to the assets of Newscreen Media Group plc – formerly JUST GROUP plc)

- V -

- (1) THE ROYAL BANK OF SCOTLAND plc**
- (2) DAVID PAUL HUDSON**
- (3) JAMIE TAYLOR**
- (4) BEGBIES TRAYNOR**
- (5) MICHAEL VINCENT MCLOUGHLIN**
- (6) ALLAN WATSON GRAHAM**
- (7) KPMG llp**

PARTICULARS OF CLAIM

1. In January 2002, Just Group plc (“JUST”) and fifteen of its subsidiary companies were made the subject of Administration Orders under the provisions of the Insolvency Act 1986.
2. Two partners of KPMG llp, A.W. Graham and M.V. McLoughlin, were appointed as Joint Administrators (“KPMG”).
3. JUST owed its bankers, NatWest and/or Royal Bank of Scotland plc (“RBS”), approximately £10,000,000, repayment of which was secured by a Fixed and Floating charges on all the assets of JUST with cross guarantees between it and all its subsidiaries.
4. KPMG immediately sold off and/or realised the value of many of the assets of Just and its subsidiaries and repaid some mines to RBS.
5. Certain of the more than 55,000 shareholders of JUST formed an unincorporated entity “JUST Action Group” (“JAG”) and under JAG's auspices began intensive discussions with

KPMG to not only try and ascertain what had caused the collapse of JUST, but to see if they could salvage what they believed could be an ongoing and viable business from the assets that had not already been sold off or otherwise realised; in particular the intellectual property rights to two part completed animation series titled “Butt Ugly Martians” and “Jellikins”, and the possible recovery of substantial damages by way of legal action against former directors and advisers.

6. Those discussions culminated in an agreement that KPMG would be prepared to consider putting to a meeting of creditors a proposed “rescue” of JUST and two of its subsidiaries by way of a Creditors Voluntary Arrangement (“CVA”) under provisions of the Insolvency Act, if and only if the shareholders could show they had adequate financial resources.
7. The unsecured creditors were unlikely to realise any monies from continued administration or liquidation of JUST and its subsidiaries, and indicated their in principal willingness to convert their unsecured indebtedness to interest bearing Loan Notes having a principal value of 40% of the face value of prior debt.
8. By extensive use of letters, emails, internet bulletin boards, newspaper articles and Television appearances, representatives of JAG solicited new investment monies from the existing JUST shareholders by asking them to send money to the client account of JAG's appointed solicitors Mishcon de Reya (“MISHCON”) to show how much they would be prepared to invest if JUST was to have a rights issue or placing of its shares to support the rescue and enable the CVA to:
 - (a) repay RBS in full,
 - (b) ensure KPMG's estimated £1,300,000 fees as administrators were paid,
 - (c) procure payment in full of the estimated £198,000 of Preferential Creditors of JUST and

its two subsidiaries.

(d) provide for the costs of the Supervisors of the CVA (BEGBIES)

(e) and to leave enough working capital to take the business forward

9. By April 2002 more than £1,850,000 had been sent by shareholders to MISHCON, and accordingly KPMG felt able to put the proposal for a CVA to the formal meeting of the Creditors Committee of JUST. It was approved in principle by that meeting and KPMG were authorised to prepare the formal legal documents with two partners of Begbies Traynor (“BEGBIES”) as nominees for the role of Supervisors of the CVA.

10. In June 2002 BEGBIES submitted KPMG's formal CVA proposal to the High Court.

11. In early July 2002 KPMG realised that JUST did not have a quorum of at least 3 serving directors to enable a formal share offer to be proposed by the company; and accordingly KPMG procured the appointment of one representative of JAG (“JONES”) as a director of JUST, along with the former finance director (“CALDERBANK”) who was already retained by KPMG to assist them in the administrations, and another former director (“NEWCOMBE”). KPMG gave specific instructions that the directors were not to enter into any commitments without KPMG's express prior approval.

12. Following their appointment, and with the approval of KPMG, the directors sent a brief letter with an attached copy of the CVA document to all shareholders inviting them to conditionally subscribe for new shares by sending money and signed formal offer to purchase shares to MISHCON to a maximum total value of £5,694,000 and convening an Extraordinary General Meeting to:

(a) approve the share issue

(b) authorise the directors to bind the company to the terms and obligations of the CVA

13. Prior to the formal share offer, monies sent by some shareholders to MISHCON was already in excess of that needed to meet the monetary obligations to RBS, KPMG and BEGBIES as set out in the CVA document. The share offer was in any event fully subscribed.

14. The Creditors formally approved the CVA at a meeting on 2nd August 2002.

15. Immediately afterwards the shareholders approved all matters at the EGM.

16. The effect of the EGM was to immediately vest in JUST the title to all monies held by MISHCON from the proceeds of the previously conditional share issue.

17. On 23rd August 2002, and at the request of KPMG, JUST transferred from its monies held at MISHCON the sum of £1,850,000 (One Million Eight Hundred and Fifty Thousand Pounds) to KPMG in full satisfaction of all monies to enable the CVA contract to become effective in all regards.

18. That sum of £1,850,000 included £322,000 (Three Hundred and Twenty Two Thousand Pounds) which was to be placed in a separate Escrow account (“ESCROW”) under the sole control of BEGBIES, which monies were subject to specific trust obligations and the following condition as set out in the CVA document:

A further £322,000, which has been raised by Shareholders, will be held in escrow. These funds will not be utilised until the validity of the Bank's fixed charge on book debts has been agreed. The conduct of this matter will be determined solely by the Bank, but will be in any event settled not

more than 24 months from the date of approval of the Arrangement. In the event that the Bank's charge is not valid these funds will be passed to the Bank in reduction of its liability. The funds will be returned to the New Company only if the Bank's fixed charge on book debts is valid and to the extent that there is no remaining shortfall to the Bank. If such a shortfall exists, the funds will be used first to discharge any remaining shortfall to the Bank."

19. BEGBIES and KPMG failed to either set up or fund the Escrow as an interest bearing account at a clearing bank under the control of BEGBIES as required by the CVA contract.
20. The terms of the ESCROW required RBS to make a positive declaration as to the validity or otherwise of its Fixed Charge over the book debt realisations within the administrations of JUST and its subsidiaries. RBS was obligated to make that declaration in good faith and in accordance with consistent business practices and to advise the Escrow agent of the proper and immediate disposition of the ESCROW funds, in whole or in part, to either itself or JUST when it made that determination.
21. The sole purpose of the Escrow was to provide RBS with "insurance" against the possibility that its fixed charge against book debts was not was not valid and that it would have to rely, in part, on its floating charge as security for repayment of indebtedness.
22. It is apparent that shortly after the approval of the CVA by creditors and shareholders, RBS determined, and KPMG agreed, in order to be swiftly repaid in full, that its fixed charge against book debts was valid and KPMG paid some, but not all, of those realisations to RBS in late August 2002 as repayment of JUST's indebtedness.

23. Correspondence between the parties, particularly during 2008, has shown a confusing situation where none of RBS, KPMG or BEGBIES are able and/or willing to confirm exactly what occurred, save that RBS was repaid in full in August 2002 – a fact evidenced by a release of the Mortgage being filed by JUST with the Registrar of Companies in September 2002.
24. KPMG have sworn that the proceeds of book debt realisations were subject to the RBS Fixed Charge and some, but not all, of those realisations were paid to RBS under that fixed charge heading.
25. The records of KPMG's conduct of the various administrations as filed with the Registrar of Companies and/or as made available to JUST as sworn testimony in the High Court proceedings concerning one of the JUST subsidiaries, EDI Realisations Ltd (“EDI”), show beyond all doubt that asset realisations and CVA funding provided by JUST was more than enough meet all conditions and purposes of the CVA and that the ESCROW was not needed in any event, and that it should have been repaid to JUST no later than 2nd August 2004 if not previously.
26. The excess monetary position was in any event confirmed by KPMG in April 2004 when they told JUST that the directors could include upto £385,000 (Three Hundred and Eighty Five Thousand Pounds) as an asset of JUST because those monies were surplus in the EDI estate and would be repaid to JUST. The directors of JUST relied upon that representation and made sworn declarations of solvency in order to effect a corporate reorganisation under the provisions of s110 of the Insolvency Act, and hive down all the assets to a new company, NSMG(2004) plc subsequently renamed Think Entertainment plc (“THINK”), and place JUST in Members Voluntary Liquidation.

27. Despite endless requests in 2004 and 2005 for information and repayment of those surplus monies in order to enable THINK to pay its own creditors and avoid the conversion of the JUST liquidation from a Members to a Creditors liquidation, KPMG refused to hand over any monies or provide information as to why it was being withheld, save for stating that they could not make payment ahead of the handing down of the judgment of the House of Lords in the Re Spectrum Plus (“BRUMARK”) case.
28. BEGBIES never demanded or required KPMG to place any monies whatsoever, let alone the Escrow monies, in interest bearing account(s) at a recognised clearing bank contrary to their contractual obligations, and left KPMG a free hand to do with the monies whatever they saw fit and entirely in their own discretion.
29. In January 2003 KPMG transferred £548,000 (Five Hundred and Forty Eight Thousand Pounds) of the remaining CVA monies to six of the subsidiaries of JUST. Solicitors acting for KPMG have sworn that the transfers were made to pay creditors in those estates, which if it were true, is contrary to the provisions of the CVA that required any such payments to be made only by BEGBIES. In any event the filings made with the Registrar of Companies shows that averment to be entirely false as no payments have ever been made by KPMG or anyone else to any 3rd party creditors of any of the subsidiaries to which the transfers were made, and indeed considerable sums were left in some of those estates and passed to the Liquidators to the further loss and detriment of JUST and/or THINK.
30. THINK claims it has suffered loss and damage as a result of the failure of the Defendants to properly account for and/or deal with not only the £322,000 Escrow money, but also other monies that were clearly surplus to the express and/or implied contractual obligations between the parties and which should have been returned to JUST but were not.

31. THINK claims interest at the rate of 8% on the Escrow money from 23rd August 2002 to 27th February 2008, a total of £142,138.74, and at the daily rate of £70.57 thereafter.

Statement of Truth

The Claimant believes that the facts stated in these particulars of claim are true.

I am duly authorised by the claimant to sign this statement.

MARK GREGORY HARDY

by Power of Attorney