

C A N A D A
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
COURT. No.: 500-11-057679-199

S U P E R I O R C O U R T
Commercial Division

**IN THE MATTER OF A PLAN OF
ARRANGEMENT OR COMPROMISE OF:**

INVESTISSEMENT QUÉBEC, a corporation duly constituted under the *Act respecting Investissement Québec* (CQLR c I-16.0.1), having its head office at 1195, avenue Lavigerie, suite 060, in the city of Quebec, Province of Quebec, G1V 4N3;

Co-Applicant / Principal Secured Creditor

- and -

FIERA PRIVATE DEBT INC., a legal person initially incorporated under Part IA of the *Québec Companies Act*, CQLR c C-38 and subsequently continued under the *Québec Business Corporations Act*, CQLR c S-31.1, having its head office located 400-1699 Le Corbusier blvd., in the city of Laval, Province of Quebec, H7S 1Z3, acting in its capacity, respectively, as manager and agent under the IAM Loan Agreement and under the Bridge Financing Agreement (as such terms are defined in the Application);

Co-Applicant / Secured Creditor

FORTRESS GLOBAL ENTERPRISES INC., a legal person duly incorporated under the *British Columbia Business Corporations Act*, SBC 2002, c 57 having its head office at 157 Chadwick Court, 2nd floor, in the city of North Vancouver, Province of British Columbia, V7M 3K2;

- and -

FORTRESS SPECIALTY CELLULOSE INC., a legal person initially incorporated under the *British Columbia Business Corporations Act*, SBC 2002, c 57 and subsequently continued under the *Canada Business Corporations Act*, RSC 1985, c C-44, having its head office located at 2500-1100 René-Lévesque Boulevard, in the city of Montreal, Province of Quebec, H3B 5C9;

- and -

FORTRESS BIOENERGY LTD., a legal person initially incorporated under the British Columbia *Business Corporations Act*, SBC 2002, c 57 and subsequently continued under the *Canada Business Corporations Act*, RSC 1985, c C-44, having its head office located at 2500-1100 René-Lévesque Boulevard, in the city of Montreal, Province of Quebec, H3B 5C9;

- and -

FORTRESS XYLITOL INC. a legal person initially incorporated under the British Columbia *Business Corporations Act*, SBC 2002, c 57, having its registered office located at 1000 Cathedral Place 925 West Georgia Street, Vancouver, Province of British Columbia V6C 3L2 Canada;

- and -

9217-6536 QUÉBEC INC. a legal person incorporated under the Quebec *Business Corporations Act*, RLRQ, C. S-31.1 having its head office located at 2500-1100 René-Lévesque Boulevard, in the city of Montreal, Province of Quebec, H3B 5C9;

Debtors

- and -

DELOITTE RESTRUCTURING INC., a company incorporated under the laws of Canada, having a place of business at 500-1190 av. des Canadiens-de-Montreal, in the city of Montreal, Province of Quebec, H3B 0M7

Monitor

**ELEVENTH REPORT TO THE COURT
SUBMITTED BY DELOITTE RESTRUCTURING INC.
IN ITS CAPACITY AS MONITOR ("THE MONITOR")**
(Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended)

INTRODUCTION

1. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars. Capitalized terms not otherwise defined are as defined in the Application for the Issuance of a First Day Order, an Amended and Restated Initial Order, a Receivership Order and a Claims Procedure Order under the *Companies' Creditors Arrangement Act* ("**CCAA**") dated December 13, 2019 (the "**Initial Application**"). These proceedings commenced under the CCAA by Fortress will be referred to herein as the "**CCAA Proceedings**".
2. On December 13, 2019, Investissement Québec ("**IQ**") and Fiera Private Debt Inc. (collectively, the "**Applicants**"), in their respective capacity as secured creditors of Fortress Global Enterprises Inc. ("**Fortress Global**"), Fortress Specialty Cellulose Inc. ("**Fortress Specialty**"), Fortress Bioenergy Ltd. ("**Fortress Bioenergy**"), Fortress Xylitol Inc.

("Fortress Xylitol") and 9217-6536 Québec Inc. ("9217") (collectively, "Fortress"), filed the Initial Application seeking, *inter alia*, the issuance of a First Day Initial Order, an Amended and Restated Initial Order in respect of Fortress pursuant to Sections 9, 11, 11.51, 11.52 of the CCAA, as well as a Claims Procedure Order and a Receivership Order pursuant to Section 243 of the *Bankruptcy and Insolvency Act*.

3. On December 13, 2019, the Monitor (as defined below) issued its First Report, which purpose was to provide information to the Court with respect to (I) Deloitte's qualification to act as Monitor; (II) the business, financial affairs and financial results of Fortress; (III) Fortress' main creditors; (IV) Fortress' solicitation process; (V) the proposed restructuring; (VI) the Key Employee Retention Program ("**KERP**"); (VII) the appointment of a receiver; (VIII) the charges sought in the First Day Order; (IX) the D&O Trust; (X) the Claims Procedure Order; (XI) payments to Essential Suppliers (as defined in the First Report); (XII) overview of the 22-week cash flow projections as of the date of the First Report, in accordance with section 23(1)(b) CCAA; and (XIII) the Monitor's conclusions and recommendations in the circumstances of the hearing and the motion presented by both Co-Applicants.
4. On December 16, 2019, the Superior Court of Quebec, Commercial Division (the "**Court**") partially granted the Initial Application and rendered a First Day Initial Order (the "**First Day Order**") which provided for, *inter alia*, (i) a stay of proceedings against Fortress until December 26, 2019 (the "**Stay Period**"); (ii) a stay of proceedings against the Directors and Officers; (iii) the appointment of Deloitte Restructuring Inc. as the monitor under the CCAA (the "**Monitor**"); (iv) the approval of the Interim Facility; and (v) the granting of an Interim Lenders' Charge.
5. On the same day, the Court also rendered a Receivership Order appointing Deloitte as receiver to a bank account opened in the name of Fortress Global for the sole purpose of allowing its employees to recover certain amounts which may be owing to them pursuant to the Wage Earners Protection Program Act ("**WEPPA**").
6. On December 19, 2019, the Applicants filed an Application for the Issuance of an Amended First Day Order, which was presentable by conference call on December 26, 2019.
7. On December 26, 2019, the above mentioned application was granted, and the Court rendered an Amended First Day Order which provided for, *inter alia*, (i) an extension of the Stay Period until January 10, 2020; (ii) an increase of the maximum principal amount of the Interim Facility to \$1.5M; (iii) an increase of the Interim Lender Charge to up to \$1.8M; and (iv) the payment of Essential Suppliers (as defined in the First Report) up to a maximum of \$250,000. On such date, the Court advised the parties that it would hear the Applicants' Application for an Amended and Restated First Day Order.
8. On January 8, 2020, the Monitor issued its Second Report. The purpose of the Second Report was to provide information to the Court on the activities of Fortress and of the Monitor since the commencement of the CCAA Proceedings and to support the Applicants' demand for the issuance of an Amended & Restated Initial Order.
9. On January 10, 2020, an Amended & Restated Initial Order was rendered by the Court (the "**Amended & Restated Initial Order**") which provided for, *inter alia*, (i) an extension of the Stay Period until May 2, 2020; (ii) an increase of the maximum principal amount of the Interim Facility to \$6M; (iii) an increase of the Interim Lender Charge to up to \$7.2M; (iv) a KERP and KERP Charge in an amount up to \$610,000; (v) a D&O Charge in an amount up to \$500,000; (vi) an Administration charge in an amount up to \$600,000; (vii) an Intercompany Advance Charge in an amount up to \$3M; and (viii) the undertaking of the Monitor to file a report to the Court on further material development every two months, and to post these reports on the Monitor's website.

10. On January 10, 2020, the Court also rendered a Claims Procedure Order (the "**Claims Procedure Order**") allowing the Monitor to conduct a process for the determination and, if applicable, adjudication of claims against Fortress. Pursuant to the Claims Procedure Order, a "Claims Bar Date" was set on March 16, 2020 at 5:00 p.m. (Montreal time).
11. Since January 10, 2020, the Monitor has filed eight (8) reports with the Court and served same to the Service List from time to time. Copies of all of the Monitor's reports are available on the Monitor's website.
12. On March 23, 2020, at the request of the Monitor, the Court rendered an order, essentially clarifying that the Stay Period applied to the proceedings involving regulatory bodies and commenced before the *Tribunal Administratif du Québec* bearing the court file number STE-Q-211461-1509 and suspending the proceedings commenced before the Court of Québec, criminal and penal division, district of Gatineau, in connection with the statements of offense bearing number 100400-1116574361, 1004400-1116574353, 100400-1116574346, 100400-1116574338 and 100400-1116574312 (the "**Penal Proceedings**") until May 2, 2020 (the "**Stay Order Regarding Regulatory Bodies**").
13. On May 1st, 2020, the Court extended the Stay Period, including the Stay Order Regarding Regulatory Bodies, up until August 11, 2020.
14. On June 8, 2020, Lauzon – Plancher de Bois Exclusif Inc. ("**Lauzon**") filed an application (the "**Lauzon Application**") seeking, *inter alia*, the amendment of the Initial Order, together with various declaratory orders, which was opposed by the Monitor, with the support of IQ.
15. On July 15, 2020, after a contested hearing which lasted 2 days, the Lauzon Application was rejected, in part, by the Court. As part of its order (the "**Lauzon Order**"), the Court essentially confirmed that the biomass stored on Lauzon's premises was the property of Fortress and ordered that the purchase agreement entered into between Lauzon and Fortress could not be terminated as will be discussed further below.
16. On August 10, 2020, the Court extended the Stay Period up to and including October 23, 2020 and increased the Interim Facility to \$8,000,000 and the Interim Lender's Charge to \$9,600,000.
17. On that same day, instead of specifically extending the Stay Order Regarding Regulatory Bodies, the Court reserved the parties' rights to make representations on the applicability or not of the Stay Period to the Penal Proceedings.
18. On October 23, 2020, the Court extended the Stay Period up to and including September 30, 2021 and increased the Interim Facility to \$17,000,000 and Interim Lender's Charge to \$20,400,000.
19. On December 18, 2020, following a motion from the Company supported by the Monitor, the Court rendered:
 - (i) the Order Approving a Charge in Favour of Hydro-Québec ("**Hydro-Québec Order**").
 - (ii) the Distribution and Assignment Order, essentially allowing the Monitor to distribute funds that were held in trust to Fortress employees' for their unpaid claims ("**Trust Order**").

20. In accordance with the Amended and Restated Initial Order, the Monitor hereby issues its eleventh report of the Monitor (the "**Eleventh Report**"). The purpose of the Eleventh Report is to provide the Court with an update with respect to the following:

- I. The request for the approval of a litigation funding agreement between Omni Bridgeway (Fund 5) Canada Investments Limited (the "**Litigation Funder**"), the Monitor, in its capacity as Monitor of Fortress Specialty and Cain Lamarre LLP (the "**Lawyers**") (the "**Litigation Funding Agreement**") and the request to transfer the Litigation to the CCAA Proceedings (page 5);
- II. The request for the approval of a priority charge in the amount of \$6,000,000 on the Litigation Proceeds (as defined in the Litigation Funding Agreement) in favour of the Litigation Funder and the Lawyers in order to secure the amounts which may become owing to them pursuant to the Litigation Funding Agreement (page 6);
- III. The request to authorize the Monitor to approve an agreement in principle to be entered into between the Monitor and the *Director of Criminal and Penal Prosecutions* (the "**DCPP**") to settle the Penal Proceedings (page 6); and
- IV. The Monitor's conclusions and recommendations (page 7).

I. REQUEST FOR THE APPROVAL OF THE LITIGATION FUNDING AGREEMENT, THE CREATION OF A LITIGATION FINANCING CHARGE AND THE TRANSFER OF THE LITIGATION TO THE CCAA PROCEEDINGS

21. As mentioned in previous reports, discussions were held with Omni to finance the resumption of a pending litigation between Fortress Specialty and Pompes Goulds.
22. Fortress Specialty filed an originating application in Québec Superior Court file number 500-17-082483-143 against Pompes Goulds claiming an amount of approximately \$17 million for restitution of the purchase price and damages in relation to the defect of two boiler feedwater pumps manufactured and sold to Fortress Specialty by Pompes Goulds (the "**Claim**").
23. Rather than filing a counter claim in response to Fortress Specialty's originating application, Pompes Goulds filed an originating demand against Fortress Specialty in Québec Superior Court file number 500-17-094108-167 claiming an amount of \$508,717.09 in connection with allegedly unpaid invoices (the "**Pompes Goulds' Claim**" and together with the Claim, the "**Litigation**")
24. Fortress Specialty's Claim represents a significant asset to the estate of Fortress.
25. Since the Tenth Report, Omni concluded its due diligence process and agreed to enter into the Litigation Funding Agreement in order to finance the Litigation.
26. The Litigation Funding Agreement provides for financing to fund the legal fees and disbursements of Fortress Specialty in respect of the Litigation and provides for the payment of a success fee to Omni and the Lawyers which is namely based on a multiple of the committed capital or a percentage of the proceeds to be received as a result of a judgment or a settlement in respect of the Claim or the Litigation (the "**Litigation Proceeds**"). A summary of the payment waterfall and a sample calculation regarding the distribution of the Litigation Proceeds are included in **Appendix A (under seal)**.

27. The Monitor agrees with terms and conditions of the Litigation Funding Agreement and the request for the approval of a Litigation Financing Charge for the following reasons (the "**Reasons**"):
- (i) The DIP Lender has informed the Monitor that it is not willing to fund the pursuit of the Claim and the Litigation;
 - (ii) In the Monitor's view, no creditor will be materially prejudiced as a result of the Litigation Funding Agreement as well as the creation of the Litigation Financing Charge, as the terms and conditions allow Fortress to move forward with the Litigation while operating within its budget and without asking for additional interim financing specifically for this purpose;
 - (iii) Given the current situation, without providing security to the Lawyers and the Litigation Funder, Fortress would be unable to pursue the Claim and resume the Litigation; and
 - (iv) The DIP Lender supports the approval of the Litigation Funding Agreement and of the Litigation Financing Charge.
28. The Monitor was informed that it could be years before the Litigation is adjudicated and the restructuring proceedings can be terminated. In order to expedite the adjudication of the Litigation, it is requested that the Litigation be transferred to the CCAA Proceedings.
29. In light of the fact that any proceeds to be recovered further to the adjudication of the Litigation will ultimately be distributed to Fortress' creditors, the Monitor supports this request.

II. REQUEST FOR THE CREATION OF A PRIORITY CHARGE FOR THE IN THE AMOUNT OF \$6,000,000 ON THE LITIGATION PROCEEDS IN FAVOUR OF THE LITIGATION FUNDERS AND THE LAWYERS

30. As mentioned above, the Litigation Funding Agreement includes various terms and conditions. Among other things, the Litigation Funding Agreement is conditional upon the creation of a first ranking litigation financing charge in favour of Omni and thereafter of the Lawyers in the amount of \$6,000,000 over only the litigation proceeds to secure their respective rights vis-à-vis the litigation proceeds or any portion thereof in accordance with the Litigation Funding Agreement (the "**Litigation Financing Charge**").
31. The Monitor supports the request for the issuance of an order establishing the Litigation Financing Charge for the Reasons listed above.

III. REQUEST TO AUTHORIZE THE MONITOR TO APPROVE AN AGREEMENT IN PRINCIPLE TO SETTLE THE PENAL PROCEEDINGS

32. As discussed in the Monitor's previous report, there were ongoing discussion between Fortress' legal counsel and the DCPD regarding the Penal Proceedings against Fortress.
33. Since the Tenth Report, Fortress' legal counsel and the DCPD have reached an agreement in principle on the terms of a settlement regarding the Penal Proceedings, which is conditional on the Monitor obtaining this Court's authorization to approve the agreement in principle to settle the Penal Proceedings on behalf of Fortress.

34. The Monitor believes that the terms of the agreement in principle are reasonable under the circumstances since they will allow Fortress not to use funds from the Interim Facility and consequently will not harm the execution of its restructuring initiatives.

IV. THE MONITOR'S CONCLUSIONS

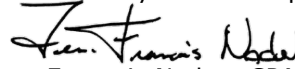
35. In light of the foregoing, the Monitor submits that it is appropriate, in the present circumstances, for this Court to grant the Application for the Issuance of an Order Approving: (i) a Litigation Funding Agreement; (ii) a Litigation Financing Charge; (iii) the Transfer of Certain Litigation Proceedings before the Superior Court (Commercial Division); and (iv) an Agreement in Principle to Settle Certain Penal Proceedings.

36. The Monitor respectfully submits to the Court this, its Eleventh Report.

DATED AT MONTREAL, this 17th day of June, 2021

DELOITTE RESTRUCTURING INC.

In its capacity as Court-Appointed Monitor of Fortress



Jean-François Nadon, CPA, CA, CIRP, LIT



Benoît Clouâtre, CPA, CA, CIRP, LIT

Appendix A
Under seal