

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL

File: No: 500-11-057679-199

SUPERIOR COURT
Commercial Division

Montreal, December 16, 2019

Present: The Honourable Marie-Anne Paquette,
J.S.C.

**IN THE MATTER OF THE COMPANIES'
CREDITORS ARRANGEMENT ACT, R.S.C. 1985,
c. C-36, AS AMENDED:**

INVESTISSEMENT QUÉBEC

Co-Applicant / Secured Creditor

- and -

FIERA PRIVATE DEBT INC.

Co-Applicant / Secured Creditor

- and -

FORTRESS GLOBAL ENTERPRISES INC.

- and -

FORTRESS SPECIALTY CELLULOSE INC.

- and -

FORTRESS BIOENERGY LTD.

- and -

FORTRESS XYLITOL INC.

- and -

9217-6536 QUÉBEC INC.

Debtors

- and -

DELOITTE RESTRUCTURING INC.

Monitor

FIRST DAY ORDER

ON READING the Applicants' *Application for the Issuance of a First Day Initial Order, an Amended and Restated Initial Order, a Receivership Order and a Claims Procedure Order* pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, C-36 (as amended the "**CCAA**") and the exhibits, the affidavit of Mr. Alejandro Morales filed in support thereof (the "**Application**"), the consent of Deloitte Restructuring Inc. to act as monitor (the "**Monitor**"), relying upon the submissions of counsel and being advised that the interested parties, including secured creditors who are likely to be affected by the charges created herein were given prior notice of the presentation of the Application;

GIVEN the provisions of the CCAA;

WHEREFORE, THE COURT:

1. **GRANTS** the Application.
2. **ISSUES** an order pursuant to the CCAA (the "**First Day Order**"), divided under the following headings:
 - Application of the CCAA and Procedural Consolidation
 - Effective Time
 - Stay of Proceedings against the Debtors and the Property
 - Stay of Proceedings against the Directors and Officers
 - Possession of Property and Operations
 - No Exercise of Rights or Remedies;
 - No Interference with Rights
 - Continuation of Services
 - Interim Financing (DIP)
 - Powers of the Monitor
 - General

Application of the CCAA and Procedural Consolidation

3. **ORDERS** the consolidation of these CCAA proceedings in respect of the Debtors and **ORDERS** that such consolidation shall be for administrative purposes only and shall not effect a consolidation of the assets and property of each of the

Debtors including, without limitation, for the purposes of any Plan or Plans that may be thereafter proposed.

Effective time

4. **DECLARES** that this First Day Order and all of its provisions are effective as of 12:01 a.m. Montreal time, province of Quebec, on the date of this First Day Order (the "**Effective Time**").

Stay of Proceedings against the Debtors and the Property

5. **ORDERS** that, until and including December 26, 2019, or such later date as the Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Debtors, or affecting the Debtors' business operations and activities (the "**Business**") or the Property (as defined herein below), including as provided in paragraph 9 hereinbelow except with leave of this Court. Any and all Proceedings currently under way against or in respect of the Debtors or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court, the whole subject to subsection 11.1 CCAA.
6. **ORDERS** that during the Stay Period (as may be extended from time to time by this honourable Court), Debtor Fortress Global Enterprises Inc. ("**Fortress**") is relieved from any and all continuous disclosure, reporting and filing obligations (including with respect to the preparation and mailing of financial statements and reports) of and audit committee requirements applicable to the Debtor Fortress as a result of its status as a reporting issuer in each of the provinces of Canada, pursuant to Canadian securities laws, rules, regulations, national instruments and policy statements, and the British Columbia *Business Corporations Act*, SBC 2002, c 57.

Stay of Proceedings against the Directors and Officers

7. **ORDERS** that during the Stay Period and except as permitted under subsection 11.03(2) of the CCAA, no Proceeding may be commenced, or continued against any former, present or future director or officer of the Debtors nor against any person deemed to be a director or an officer of the Debtors under subsection

11.03(3) CCAA (each, a “**Director**”, and collectively the “**Directors**”) in respect of any claim against such Director which arose prior to the Effective Time and which relates to any obligation of the Debtors where it is alleged that any of the Directors is under any law liable in such capacity for the payment of such obligation.

Possession of Property and Operations

8. **ORDERS** that, subject to paragraph 27 hereof, the Debtors shall remain in possession and control of their present and future assets, rights, undertakings and properties of every nature and kind whatsoever, and wherever situated, including all proceeds thereof (collectively the “**Property**”), the whole in accordance with the terms and conditions of this order.

No Exercise of Rights or Remedies

9. **ORDERS** that during the Stay Period, and subject to, *inter alia*, subsection 11.1 CCAA, all rights and remedies of any individual, natural person, firm, corporation, partnership, limited liability company, trust, joint venture, association, organization, governmental body or agency, or any other entity (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Debtors, or affecting the Business, the Property or any part thereof, are hereby stayed and suspended except with leave of this Court.
10. **DECLARES** that, to the extent any rights, obligations, or prescription, time or limitation periods, including, without limitation, to file grievances, relating to the Debtors or any of the Property or the Business may expire (other than pursuant to the terms of any contracts, agreements or arrangements of any nature whatsoever), the term of such rights, obligations, or prescription, time or limitation periods shall hereby be deemed to be extended by a period equal to the Stay Period. Without limitation to the foregoing, in the event that the Debtors become bankrupt or a receiver as defined in subsection 243(2) of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) is appointed in respect of the Debtors, the period between the date of the First Day Order and the day on which the Stay Period ends shall not be calculated in respect of the Debtors in determining the 30 day periods referred to in Sections 81.1 and 81.2 of the BIA.

No Interference with Rights

11. **ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, resiliate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, except with the written consent of the Debtors and the Monitor, or with leave of this Court.

Continuation of Services

12. **ORDERS** that during the Stay Period and subject to paragraph 14 hereof and subsection 11.01 CCAA, all Persons having verbal or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, utility or other goods or services made available 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 Debtors, and that the Debtors shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses, domain names or other services, provided in each case that the normal prices or charges for all such goods or services received after the date of the First Day Order are paid by the Debtors, without having to provide any security deposit or any other security, 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 Debtors, with the consent of the Monitor, or as may be ordered by this Court.
13. **ORDERS** that, notwithstanding anything else contained herein and subject to subsection 11.01 CCAA, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided to the Debtors on or after the date of this First Day Order, nor shall any Person be under any obligation on or after the date of the First Day Order to make further advance of money or otherwise extend any credit to the Debtors.

14. **ORDERS** that, without limiting the generality of the foregoing and subject to Section 21 of the CCAA, if applicable, cash or cash equivalents placed on deposit by the Debtors with any Person during the Stay Period, whether in an operating account or otherwise for itself or for another entity, shall not be applied by such Person in reduction or repayment of amounts owing to such Person as of the date of the First Day Order or due on or before the expiry of the Stay Period or in satisfaction of any interest or charges accruing in respect thereof; however, this provision shall not prevent any financial institution from: (i) reimbursing itself for the amount of any cheques drawn by Debtors and properly honoured by such institution, or (ii) holding the amount of any cheques or other instruments deposited into the Debtors' account until those cheques or other instruments have been honoured by the financial institution on which they have been drawn.

Interim Financing (DIP)

15. **ORDERS** that Debtors be and are hereby authorized to borrow, repay and reborrow from Investissement Québec (the "**Interim Lender**") such amounts from time to time as Debtors may be considered necessary or desirable, in consultation with the Monitor, up to a maximum principal amount of \$1,000,000 outstanding at any time, on the terms and conditions as set forth in the Interim Financing Term Sheet filed as Exhibit R-18 to the Application (the "**Interim Financing Term Sheet**") and in the Interim Financing Documents (as defined hereinafter), to fund the ongoing expenditures of Debtors and to pay such other amounts as are permitted by the terms of the Order and the Interim Financing Documents (as defined hereinafter) (the "**Interim Facility**");
16. **ORDERS** that the Monitor, on behalf of the Debtors, is hereby authorized to execute and deliver such credit agreements, security documents and other definitive documents (collectively the "**Interim Financing Documents**") as may be required by the Interim Lender in connection with the Interim Facility and the Interim Financing Term Sheet, and Debtors are hereby authorized to perform all of its obligations under the Interim Financing Documents;

17. **ORDERS** that the Debtors shall pay to the Interim Lender, when due, all amounts owing (including principal, interest, fees and expenses, including without limitation, all reasonable fees and disbursements of counsel and all other reasonably required advisers to or agents of the Interim Lender on a full indemnity basis (the “**Interim Lender Expenses**”)) under the Interim Financing Documents and shall perform all of its other obligations to the Interim Lender pursuant to the Interim Financing Term Sheet, the Interim Financing Documents and the Order;
18. **DECLARES** that all of the Property of Debtors is hereby subject to a charge and security for an aggregate amount of \$1,200,000 (such charge and security is referred to herein as the “**Interim Lender Charge**”) in favour of the Interim Lender as security for all obligations of Debtors to the Interim Lender with respect to all amounts owing (including principal, interest and the Interim Lender Expenses) under or in connection with the Interim Financing Term Sheet and the Interim Financing Documents. The Interim Lender Charge shall have the priority established by paragraph 23 and following of this Order.
19. **ORDERS** that the claims of Investissement Québec, either in its capacity as Interim Lender pursuant to the Interim Financing Documents, or in its capacity as pre-filing lender, shall not be compromised or arranged pursuant to the Plan or these proceedings and the Interim Lender, in that capacity, shall be treated as an unaffected creditor in these proceedings and in any Plan;
20. **ORDERS** that the Interim Lender may:
 - (a) notwithstanding any other provision of the Order, take such steps from time to time as it may deem necessary or appropriate to register, record or perfect the Interim Lender Charge and the Interim Financing Documents in all jurisdictions where it deems it is appropriate; and
 - (b) notwithstanding the terms of the paragraph to follow, refuse to make any advance to Debtors if the Debtors fail to meet the provisions of the Interim Financing Term Sheet and the Interim Financing Documents;

21. **ORDERS** that the Interim Lender shall be entitled to take any and all enforcement steps under the Interim Financing Documents and the Interim Lender Charge and otherwise permitted at law upon a default by the Debtors under the Interim Financing Term Sheet and Interim Financing Document, without having to send any demands under Section 244 of the BIA;
22. **ORDERS** that, subject to further order of this Court, no order shall be made varying, rescinding, or otherwise affecting paragraphs 15 to 21 hereof unless either (a) notice of a motion for such order is served on the Interim Lender by the moving party within seven (7) days after that party was served with the Order or (b) the Interim Lender applies for or consents to such order

Priorities and General Provisions Relating to the Interim Lender Charge

23. **DECLARES** that the Interim Lender Charge shall rank in priority to any and all other hypothecs, mortgages, liens, security interests, priorities, charges, encumbrances or security of whatever nature or kind (collectively, the "**Encumbrances**") affecting the Property charged by such Encumbrances.
24. **ORDERS** that, except as otherwise expressly provided for herein, the Debtors shall not grant any Encumbrances in or against any Property that rank in priority to, or pari passu with the Interim Lender Charge unless the Debtors obtains the prior written consent of the Monitor and the prior approval of the Court.
25. **DECLARES** that the Interim Lender Charge shall attach, as of the Effective Time, to all present and future Property of the Debtors, notwithstanding any requirement for the consent of any party to any such charge or to comply with any condition precedent.
26. **DECLARES** that the Interim Lender Charge and the rights and remedies of the Interim Lender shall be valid and enforceable and shall not otherwise be limited or impaired in any way by: (i) these proceedings and the declaration of insolvency made herein; (ii) any Application for a receiving order filed pursuant to the BIA in respect of the Debtors or any receiving order made pursuant to any such Application or any assignment in bankruptcy made or deemed to be made in respect of the Debtors; or (iii) any negative covenants, prohibitions or other

similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any agreement, lease, sub-lease, offer to lease or other arrangement which binds the Debtors (a "**Third Party Agreement**"), and notwithstanding any provision to the contrary in any Third Party Agreement:

- (a) the creation of the Interim Lender Charge shall not create or be deemed to constitute a breach by the Debtors of any Third Party Agreement to which it is a party; and
- (b) the Interim Lender shall not have liability to any Person whatsoever as a result of any breach of any Third Party Agreement caused by or resulting from the creation of the CCAA Charges.

Powers of the Monitor

27. **ORDERS** that Deloitte Restructuring Inc. is hereby appointed to monitor the business and financial affairs of the Debtors as an officer of this Court (the "**Monitor**") and that the Monitor, in addition to the prescribed powers and obligations, referred to in Section 23 of the CCAA:

- (a) shall, without delay, unless already performed in accordance with the First Day Order, (i) publish once a week for two (2) consecutive weeks or as otherwise directed by the Court, in LaPresse+ and the Globe and Mail National Edition and (ii) within five (5) business days after the date of this Order (A) post on the Monitor's website at www.insolvencies.deloitte.ca/Fortress (the "**Website**") a notice containing the information prescribed under the CCAA, (B) make this Order publicly available in the manner prescribed under the CCAA, (C) send, in the prescribed manner, a notice to all known creditors having a claim against the Debtors of more than \$1,000, advising them that the Order is publicly available, and (D) prepare a list showing the names and addresses of such creditors and the estimated amounts of their respective claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder;
- (b) shall monitor the Debtors' receipts and disbursements;

- (c) shall assist the Debtors, to the extent required, in dealing with its creditors and other interested Persons during the Stay Period;
- (d) shall assist the Debtors, to the extent required, with the preparation of its cash flow projections and any other projections or reports and the development, negotiation and implementation of the Plan;
- (e) shall advise and assist the Debtors, to the extent required, to review the Debtors' business and assess opportunities for cost reduction, revenue enhancement and operating efficiencies;
- (f) shall assist the Debtors, to the extent required, with their restructuring efforts and in their negotiations with their creditors and other interested Persons and with the holding and administering of any meetings held to consider the Plan;
- (g) shall report to the Court on the state of the business and financial affairs of the Debtors or developments in these proceedings or any related proceedings within the time limits set forth in the CCAA and at such time as considered appropriate by the Monitor or as the Court may order;
- (h) shall report to this Court and interested parties, including but not limited to creditors affected by the Plan, with respect to the Monitor's assessment of, and recommendations with respect to, the Plan;
- (i) may retain and employ such agents, advisers and other assistants as are reasonably necessary for the purpose of carrying out the terms of the Order, including, without limitation, one or more entities related to or affiliated with the Monitor;
- (j) may engage legal counsel to the extent the Monitor considers necessary in connection with the exercise of its powers or the discharge of its obligations in these proceedings and any related proceeding, under the Order or under the CCAA;

- (k) may act as a "foreign representative" of the Debtors or in any other similar capacity in any insolvency, bankruptcy or reorganisation proceedings outside of Canada;
- (l) may give any consent or approval as may be contemplated by the Order or the CCAA; and
- (m) may hold and administer funds in connection with arrangements made among the Debtors, any counter-parties and the Monitor, or by Order of this Court; and
- (n) execute and deliver the Interim Financing Documents on behalf of the Debtors, as provided for by this Order;
- (o) may perform such other duties as are required by the Order or the CCAA or by this Court from time to time.

Unless expressly authorized to do so by this Court, the Monitor shall not otherwise interfere with the business and financial affairs carried on by the Debtors, and the Monitor is not empowered to take possession of the Property nor to manage any of the business and financial affairs of the Debtors nor shall the Monitor be deemed to have done so

28. **ORDERS** that the Debtors and their Directors, officers, employees and agents, accountants, auditors and all other Persons having notice of the First Day Order shall forthwith provide the Monitor with unrestricted access to all of the Business and Property, including, without limitation, the premises, books, records, data, including data in electronic form, and all other documents of the Debtors in connection with the Monitor's duties and responsibilities hereunder.
29. **DECLARES** that the Monitor may provide creditors and other relevant stakeholders of the Debtors with information in response to requests made by them in writing addressed to the Monitor and copied to the Debtors' counsel. In the case of information that the Monitor has been advised by the Debtors is confidential, proprietary or competitive, the Monitor shall not provide such

information to any Person without the consent of the Debtors unless otherwise directed by this Court.

30. **DECLARES** that if the Monitor, in its capacity as Monitor, is deemed to have carried on the business of the Debtors or continues the employment of the Debtors' employees, the Monitor shall benefit from the provisions of section 11.8 of the CCAA.
31. **DECLARES** that no action or other proceedings shall be commenced against the Monitor relating to its appointment, its conduct as Monitor or the carrying out the provisions of any order of this Court, except with prior leave of this Court, on at least seven days notice to the Monitor and its counsel. The entities related to or affiliated with the Monitor referred to in subparagraph 27(i) hereof and the legal counsels referred to in subparagraph 27(j) shall also be entitled to the protection, benefits and privileges afforded to the Monitor pursuant to this paragraph.
32. **ORDERS** that, subject to the powers granted to the Monitor pursuant to the terms of this First Day Order, nothing contained herein shall require the Monitor to occupy or to take control, or to otherwise manage all or any part of the Property. The Monitor shall not, as a result of this Order, be deemed to be in possession of any of the Property within the meaning of environmental legislation, the whole pursuant to the terms of the CCAA.
33. **ORDERS** that the Debtors shall pay the reasonable fees and disbursements of the Monitor, the Monitor's legal counsel, the Debtors' legal counsel and other advisers, directly related to these proceedings, the Plan and the Restructuring, whether incurred before or after the First Day Order, and shall provide each with a reasonable retainer in advance on account of such fees and disbursements, if so requested.

General

34. **DECLARES** that the First Day Order and any proceeding or affidavit leading to the First Day Order, shall not, in and of themselves, constitute a default or failure to comply by the Debtors under any statute, regulation, licence, permit, contract,

permission, covenant, agreement, undertaking or other written document or requirement.

35. **DECLARES** that, except as otherwise specified herein, the Debtors and the Monitor are at liberty to serve any notice, proof of claim form, proxy, circular or other document in connection with these proceedings by forwarding copies by prepaid ordinary mail, courier, personal delivery or electronic transmission to Persons or other appropriate parties at their respective given addresses as last shown on the records of the Debtors and that any such service shall be deemed to be received on the date of delivery if by personal delivery or electronic transmission, on the following business day if delivered by courier, or three business days after mailing if by ordinary mail.
36. **DECLARES** that the Debtors and any party to these proceedings may serve any court materials in these proceedings on all represented parties electronically, by emailing a PDF or other electronic copy of such materials to counsels' email addresses, provided that the Debtors shall deliver "hard copies" of such materials upon request to any party as soon as practicable thereafter.
37. **ORDERS** that Exhibit R-19 filed in support of the Application be kept confidential and under seal until further order of this Court.
38. **DECLARES** that, unless otherwise provided herein, under the CCAA, or ordered by this Court, no document, order or other material need be served on any Person in respect of these proceedings, unless such Person has served a Notice of Appearance on the solicitors for the Debtors and the Monitor and has filed such notice with this Court, or appears on the service list prepared by the monitor or its attorneys, save and except when an order is sought against a Person not previously involved in these proceedings;
39. **DECLARES** that the First Day Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada.
40. **REQUESTS** the aid and recognition of any Court or administrative body in any Province of Canada and any Canadian federal court or administrative body and

any federal or state court or administrative body in the United States of America and any court or administrative body elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of the First Day Order.

41. **ORDERS** that a return hearing shall take place on December 26, 2019, at 12:00 PM by way of telephone conference, using the following coordinates:

1-855-878-4577

Local: 514-736-8209

Conference number: 7664107

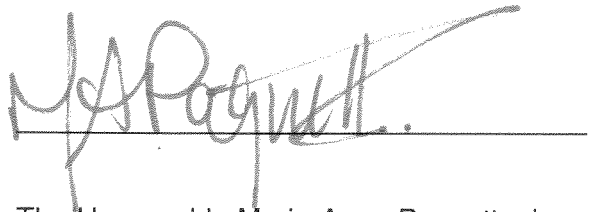
42. **ORDERS** that the full hearing on the orders sought in the Application shall take place on January 10, 2020, at 2:15 PM in room 16.12 of the Montreal Courthouse or at any other date determined by the Court and to be communicated to the service list.

43. **TAKES ACT** of the undertaking of the Monitor to file a sworn statement on further material developments, if any, by no later than 5:00 PM on December 23, 2019.

44. **ORDERS** the provisional execution of the First Day Order notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever.

WITHOUT COSTS.

Montreal, December 16, 2019

A handwritten signature in black ink, appearing to read 'M. Paquette', is written over a horizontal line. The signature is fluid and cursive.

The Honourable Marie-Anne Paquette, j.s.c.