

CANADA

PROVINCE OF QUEBEC  
DISTRICT OF MONTRÉAL

File: No: 500-11-057679-199

SUPERIOR COURT  
Commercial Division

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Montreal, December 18, 2020

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

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**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**

## DISTRIBUTION AND ASSIGNMENT ORDER

**ON READING** the Monitor's *Application for the Issuance of an Order Allowing The Distribution Of Funds Held in Trust, the Assignment of Claims to the Monitor and Allowing the Monitor to Collect Same* dated December 11, 2020 (the "**Application**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, C-36 (as amended the "**CCAA**"), the affidavit of Mr. Jean-François Nadon as well as the exhibits filed in support thereof, including the report of the Monitor;

**GIVEN** the initial order rendered by this Court in the present matter on December 16, 2019, which was amended on December 26, 2019, and then amended and restated on January 10, 2020 (the "**Initial Order**");

**GIVEN** the Claims Procedure Order rendered by this Court in the present matter on January 10, 2020 (the "**Claims Procedure Order**");

**GIVEN** the orders rendered by this Court in the present matter on March 23, 2019, May 1, 2020, August 10, 2020 and October 23, 2020;

**SEEING** the service of the Application;

**GIVEN** the provisions of the CCAA;

**WHEREFORE, THE COURT:**

[1] **GRANTS** the Application.

### **SERVICE**

[2] **ORDERS** that any prior delay for the presentation of the Application is hereby abridged and validated so that the Application is properly returnable today and hereby dispenses with further service thereof.

[3] **DECLARES** that sufficient prior notice of the presentation of this Application has been given by the Debtors to interested parties, including the creditors who received notices by email.

[4] **PERMITS** service of this Order at any time and place and by any means whatsoever.

**D&O TRUST RELATED RELIEF**

[5] **DECLARES** that the claims filed by the Debtors' past and current employees' (the "**Employees**") in accordance with the Claims Procedure Order in the total amount of \$1,036,841.87 for unpaid salary and vacations (the "**Employees' Unpaid Claims**") all constitute claims in respect of debts not exceeding six months wages payable to each Employee for services performed for the Debtors.

[6] **DECLARES** that given their insolvency, had the Debtors been sued or if they were sued for the Employees' Unpaid Claims, execution would have been returned or would return unsatisfied.

[7] **DECLARES** that Gerald Gaetz, Ezra Gardner, Giovanni Iadeluca, Joe Nemeth, Anil Wirasekara, Kurt Loewen, Ken Leung and Marco Veilleux (the "**Global D&Os**"), as directors and officers of the debtor Fortress Global Enterprises Inc. ("**Fortress Global**") are jointly and severally, or solidarily, liable to the Employees of Fortress Global for their portion of the Employees' Unpaid Claims pursuant to section 96 of the *Employment Standards Act*, RSBC 1996, c 113, and that the Employees' Unpaid Claims therefore constitute or are deemed to constitute "*Liability Claims*" as defined in the *Trust Indenture* entered into between the Debtors and TSX Trust Company (the "**Trustee**") as at December 13, 2019 (the "**Trust Indenture**"), which was filed, under seal, as Exhibit R-3 to the Application.

[8] **DECLARES** that Marco Veilleux, Kurt Loewen and Giovanni Iadeluca (the "**Specialty Directors**"), as directors of the debtor Fortress Specialty Cellulose Inc. ("**Fortress Specialty**") are jointly and severally, or solidarily, liable to the Employees of Fortress Specialty for their portion of the Employees' Unpaid Claims pursuant to section 119 of the *Canada Business Corporations Act*, RSC 1985, c C-44, and that the Employees' Unpaid Claims therefore constitute or are deemed to constitute "*Liability Claims*" as defined in the Trust Indenture.

[9] **AUTHORIZES** two (2) of the Global D&Os and/or Specialty Directors to sign the "*Certificate*" set out in Schedule A of the Trust Indenture (the "**Trust Certificate**"), which was filed as Exhibit R-8 to the Application, in order to allow the Trustee to proceed with

the partial release of the amounts currently held in the trust established pursuant to the terms of the Trust Indenture (the “**Trust**”), up to an amount of \$1,036,841.87 (the “**Requested Amount**”) and **DECLARES** that no liability whatsoever will be incurred by the Global D&Os and/or Specialty Directors in signing such Trust Certificate, nor by the Trustee in releasing the Requested Amount, nor by the Monitor in receiving and distributing the Requested Amount in accordance with the Trust Certificate.

[10] **ORDERS** that upon reception of an executed Trust Certificate in accordance with paragraph [9] hereof, the Trustee shall proceed with the release and transfer of the Requested Amounts to the Monitor and **ORDERS** that the Monitor shall be authorized to distribute, on behalf of the Trustee under the Trust Indenture, the Requested Amounts to the Employees holding Employee Unpaid Claims.

[11] **ORDERS** that upon the distribution of the Requested Amount to the Employees holding Employee Unpaid Claims:

(a) all rights and interests of the Employees in respect of such Employee Unpaid Claims shall be fully and irrevocably assigned to the Monitor, who will, in turn, be fully subrogated in such rights as against the Global D&Os and Specialty Directors (together, the “**D&Os**”); and

(a) all rights and interest of the D&Os against AIG Insurance Company of Canada (the “**D&O Insurer**”) pursuant to the insurance policy bearing number 2-880-15-88 (the “**D&O Insurance**”) issued by in favour of the D&O, which D&O Insurance was filed, under seal, as Exhibit R-2 to the Application, in connection with the Employee Unpaid Claims shall be fully and irrevocably assigned to the Monitor, who will, in turn, be fully subrogated in such rights as against the D&O Insurer pursuant to the D&O Insurance.

[12] **AUTHORIZES** the Monitor, upon or concurrently with the distribution of the Requested Amount to the Employees holding Employee Unpaid Claims, to file a claim pursuant to the D&O Insurance, and to take any action deemed necessary by the Monitor in order to recover from the D&O Insurer, the totality of the Requested Amount distributed in accordance with this Order.

- [13] **DECLARES**, for greater clarity, that, save for the right of the Monitor to file a claim pursuant to the D&O Insurance in accordance with paragraph 12 herein, nothing in the present order is affecting the rights of the D&O Insurer to assess coverage under the D&O Insurance in accordance with any terms, conditions, limitations or other conditions of said insurance policy.
- [14] **DIRECTS** the Monitor to pay back to the Trustee any and all amount recovered in the context of any recourse taken pursuant to this Order, less any expenses incurred while doing so.
- [15] **ORDERS** and **DECLARES** that the Employees holding the Employees' Unpaid Claim shall be entitled to receive distribution of their respective share of the Requested Amount in accordance with this Order in addition to any and all other amounts to which they are entitled under the Wage Earner Protection Program (collectively, the "**WEPP Entitlements**"), and that the distribution of the Requested Amount to the Employees holding the Employees' Unpaid Claim shall not result in any reduction of their respective WEPP Entitlements.

#### **GENERAL**

- [16] **DECLARES** that Exhibits R-2, R-3, R-5 and R-6 shall be kept confidential and under seal until further order of this Court.
- [17] **TAKES ACT** of the representations of the Debtors to the effect that, "as appears from Exhibit R-3, filed under confidential seal, the Trust Property (as defined in the Trust Indenture) in the amount of \$1,300,000.00 was transferred by the Debtors to the Trustee. Said funds came from a non operational account held at the Caisse Desjardins du Coeur-des-Vallées, Thurso Service Centre, in which the Debtors' management exclusively accumulated and held ever since the beginning of the operations of the Thurso Mill, substantial amounts for the sole purpose of insuring the payment of the legitimate claims of its Employees."
- [18] **DECLARES** that this Order shall have full force and effect in all provinces and territories in Canada.

[19] **ORDERS** the provisional execution of this Order notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever.

**THE WHOLE WITHOUT COSTS.**

Montreal, December 18, 2020

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