

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**

**EIGHTH 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 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.

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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 reports with the Court and served same to the Service List from time to time. The Monitor filed four (4) such Monitor's reports prior to this eighth report of the Monitor (the "**Eighth Report**"). 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 (the "**TAT Proceedings**") and suspending the proceedings commenced before the Court of Québec, criminal and penal division, district of Gatineau, in connection with the statements of offence bearing numbers 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 1, 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 and Interim Lender's Charge.
  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 TAT Proceedings and 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 and Interim Lender's Charge.
  19. In accordance with the Amended and Restated Initial Order, the Monitor hereby issues its Eighth Report. The purpose of the Eighth Report is to provide the Court with an update with respect to the following:
    - I. Claims against Directors and/or Officers of Fortress (page 5);
    - II. Request for an Order Allowing the Distribution of Funds Held in Trust and Assigning Claims to the Monitor (page 5);
    - III. Charge sought in favor of Hydro-Québec (page 7); and
    - IV. The Monitor's conclusions and recommendations (page 8).

**I. CLAIMS AGAINST DIRECTORS AND/OR OFFICERS OF FORTRESS**

20. As of March 16, 2020, the Claims Bar Date pursuant the Claims Procedure Order, the Monitor received 435 claims, out of which 30, totaling \$2.7M, included an amount against the Directors and Officers of Fortress (the "**D&O Claims**").
21. The Monitor evaluated the D&O Claims in order to assess their extent and, on November 19, 2020, sent a notice to the creditors whose basis for the alleged liability against the Directors and/or Officers was unclear, giving these creditors 10 days to specify the legal basis for their claims and requesting that they communicate any additional information and/or documentation in support of their claims, as the case may be.
22. Out of the 30 D&O Claims, the Monitor received additional information from only 2 creditors, which will require further analysis. These claims total an amount of \$388K. The 28 remaining D&O Claims have been rejected and notices of disallowance will be sent shortly for the portion of their claim against the Directors and/or Officers specifically.

**II. REQUEST FOR AN ORDER ALLOWING THE DISTRIBUTION OF FUNDS HELD IN TRUST AND ASSIGNING CLAIMS TO THE MONITOR**

Trust indenture

23. On or about December 13, 2019, the Monitor was made aware that Fortress entered into a Trust Indenture concurrently with the commencement of the CCAA proceedings to set aside an amount equal to the difference between obligations of Fortress to its employees and what would be covered by WEPPA, namely \$1,300,000 (the "**D&O Trust**"), and that these funds were to be used, if necessary, for the payment of:
  - (i) the employees' outstanding claims after the indemnity to be received from the WEPPA; and
  - (ii) claims against Fortress and for which its Directors and/or Officers may be held personally liable in such capacity.
24. The Monitor was informed that both Applicants of the CCAA proceedings did not object to the creation of the D&O Trust, which would not prejudice Fortress' creditors and stakeholders.
25. The Monitor understood that the existence of the D&O Trust provided additional protection to Fortress' employees and its remaining Directors and/or Officers, and ultimately benefited the employees for all claims which they could have against the Directors and/or Officers for unpaid salary and vacation, which would not have been paid from WEPPA or the D&O Insurance.
26. The Monitor was of the opinion that the D&O Trust, to which the Applicants did not object, was reasonable in the circumstances, and still is.
27. The Monitor understands that, as per the terms of the Trust Indenture, all employees with claims exceeding the maximum amount covered by the WEPPA were required to file a proof of claim against the D&Os.
28. The Monitor further understands that, once it was established that these employees' claims were Liability Claims and D&O Qualifying Claims (as per the terms of the Trust Indenture), a certificate executed by two Directors and/or Officers of Fortress was to be delivered to the trustee of the D&O Trust, who would then distribute the applicable portion of the D&O Trust funds to these employees to pay their claims. The Monitor would concurrently make a claim against the D&O Insurance in the same amounts.

29. In the event that a balance of the Trust Funds is available after the distribution to these employees, this balance would be used for payment of claims against Fortress and for which its Directors and/or Officers may be held personally liable in such capacity, if these claims are valid, or to defend these claims if they are not.

Employees' Unpaid Claims

30. As mentioned in the previous reports, following the CCAA proceedings, the Monitor completed the registration of the laid-off employees with for all admissible amounts due to laid-off employees for unpaid wages, unpaid vacation and for severance payments.

31. Following the CCAA proceedings, employees benefited from WEPPA to cover unpaid salary, unpaid vacations and severances. Since the eligibility period of the WEPPA is six months prior to the receivership, not all amount due to employees were covered.

**FORTRESS GLOBAL ENTREPRISES**  
**AMOUNT DUE TO EMPLOYEES**  
 (in \$CAD)

<u>Summary</u>	<u>Total amount due</u> <u>(salary &amp; vacations)</u>	<u>Amount paid by WEPPA</u> <u>(salary &amp; vacations)</u>	<u>Amount due via trust</u> <u>account</u>
Non-Unionized	282,054.48	105,865.11	176,189.37
Unionized	1,475,224.09	655,603.17	819,620.92
Head Office	52,125.81	11,094.23	41,031.58
	<u>1,809,404.39</u>	<u>772,562.51</u>	<u>1,036,841.87</u>

32. As illustrated in the table above, a balance of \$1,037M is still due to employees after payments from WEPPA, such that the use of funds from the D&O Trust is required. The amount of \$1,300M previously set aside in this trust, for this purpose, would be enough to cover these sums.

33. Initially, the amount that had been placed in trust was intended to pay amounts not covered by the WEPPA for all employees. However, given the terms of the Trust Indenture, Fortress' Directors and Officers who have unpaid vacations owing are not able to receive the payment from the D&O Trust. This is the main explanation for the variance with the amount initially placed set aside in the D&O Trust. The remaining balance will stay in the D&O Trust for the time being.

Necessity of the Order

34. As of this date, Fortress' employees and laid-off employees cannot file a notice of claim against the D&O Insurance for the portion of their claim exceeding the WEPPA because all of the statutory conditions for the D&Os to be liable for the employees' unpaid claims have not and cannot be met in light of the Stay.

35. Although the employees' unpaid claims were filed against and are acknowledged as being owed by Fortress, they cannot be paid by Fortress at this time.

36. In light of all of the above, the Monitor is of the view that it is necessary, to prevent further prejudice to the employees from the non-payment of their unpaid claims that the Proposed Distribution and Assignment Order be rendered.

37. The Monitor is also of the opinion that Fortress' creditors and other stakeholders would not be materially prejudiced by the Proposed Distribution and Assignment Order since Fortress entered into this trust indenture before the CCAA Proceedings and these sums were no longer part of Fortress' assets. Furthermore, the Interim Lender and main secured creditor supports the Application.
38. All Directors and/or Officers being part of the Trust Indenture as well as the trustee of the D&O Trust have been notified of the Application.
39. All the creditors having a D&O Claim were also notified of the Application.

Next steps

40. Following the issuance of the Order, as the case may be, the Monitor will obtain the signatures of two Directors and Officers of Fortress, Giovanni Iadeluca, Chief Executive Officer and Marco Veilleux, Vice President Business Development, allowing the trustee to release the requested amount from the D&O Trust.
41. The Monitor will then submit new notice of claim to the D&O insurer and, in the absence of a positive response from the Insurer within 15 days, will distribute the requested amount directly to the employees with an unpaid claim.

**III. CHARGE SOUGHT IN FAVOR OF HYDRO-QUÉBEC**

42. As mentioned in the previous reports, Hydro-Québec required, pursuant the terms of the supply agreements for the Cogen Facility, a guarantee from Fortress. This guarantee was previously provided by means of letters of credit totaling approximately \$840K. In the spring of 2020, Hydro-Québec drew on these letters of credit to cover pre-filing amounts claimed to Fortress regarding the Nanotech invoicing situation.
43. Given the current situation, it is not being possible for Fortress to find a financial institution that would agree to re-issue a letter of credit in favor of Hydro-Québec for the restart of the Cogen Facility.
44. Over the course of the last months, and particularly in the last few weeks given the fact that the Cogen Facility had to reopen due to the temperature, the Monitor has been in discussion with Hydro-Québec in order find a consensual solution to allow Fortress to continue to sell electricity to Hydro-Québec under the terms of the supply agreements for the Cogen Facility.
45. One of the potential solutions discussed and agreed with Hydro-Québec was for Fortress to grant to Hydro-Québec, with the consent of the Interim Lender, a priority charge over its property in the total amount of \$840,000 (the "**Hydro-Québec Charge**"), to guarantee the Fortress' obligations under the supply agreements for the Cogen Facility.
46. The Hydro-Québec charge would rank subordinate to the Administration Charge granted pursuant to the terms of the Amended and Restated Initial Order, but in priority to all other CCAA Charge (as defined in the Amended and Restated Initial Order), including the Interim Lender Charge (as increased by the Court on October 23, 2020), and to all other encumbrances attached to Fortress' property.
47. Fortress also agreed, further to discussions with the Monitor and in consultation with the interim Lender, to allow Hydro-Québec to proceed with a monthly holdback on the amounts that it will be owing to Fortress pursuant to the terms of their supply agreements during the four (4) periods during which the Cogen Facility is expected to be in operation, which holdback will be based on a percentage of the amounts which are anticipated to be owing by Hydro-Québec to Fortress every month, and will amount to approximately \$105K per month. The

amounts to be held back by Hydro-Québec (approximately \$420K) will then be remitted by Hydro-Québec to Fortress in the last month of operation of the Cogen Facility (which is expected to be March 2021). This amount will allow Fortress to operate within the budget presented in the Seventh Report and to be reimbursed once the Cogen Facility reverts to shutdown in spring 2021.

48. The Monitor supports the Applicants' request for the Hydro-Québec Charge in their Application for the Issuance of an Order Establishing a Charge in Favour of Hydro-Québec for the following reasons:

- (i) In the Monitor's view, no creditor will be materially prejudiced as a result of the Hydro-Québec Charge, as the charge allows Fortress to comply with the supply agreements for the Cogen Facility, to restart the Cogen Facility, to heat the plant and to preserve the assets which will enhance the recoveries of Fortress' secured creditors, suppliers and employees, as opposed to a situation where the assets are not preserved;
- (ii) Given the current situation, it is not being possible for Fortress to find a financial institution that would agree to re-issue a letter of credit in favor of Hydro-Québec; and
- (iii) The DIP lender and the Secured Creditors support Fortress' request.

#### **IV. THE MONITOR'S CONCLUSIONS AND RECOMMENDATIONS**

49. In light of the foregoing, the Monitor submits that it is appropriate, in the present circumstances, for this Court to allow the Application for the issuance of an Order Allowing the Distribution of Funds Held in Trust and Assigning Claims to the Monitor, to allow the Application for the Issuance of an Order Establishing a Charge in Favour of Hydro-Québec and to grant the Hydro-Québec Charge.

50. The Monitor respectfully submits to the Court this, its Eighth Report.

DATED AT MONTREAL, this 11 day of December, 2020

**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