

Superior Court  
(Commercial Division)

Canada  
Province of Québec  
District of Montréal  
No: 500-11-057679-199

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**In the matter of the *Companies' Creditors Arrangement Act* of:**

**INVESTISSEMENT QUÉBEC  
FIERA PRIVATE DEBT INC.**  
Secured Creditors

- and -

**FORTRESS GLOBAL ENTERPRISES INC.  
FORTRESS SPECIALTY CELLULOSE INC.  
FORTRESS BIOENERGY LTD.  
FORTRESS XYLITOL INC.  
9217-6536 QUÉBEC INC.**  
Debtors

- and -

**DELOITTE RESTRUCTURING INC.**  
Applicant/Monitor

- and -

**GOULDS PUMPS CANADA INC.**, a legal person duly incorporated, domiciled at 201-498 Eagle Street, North Cambridge, Ontario N3H 1C2, Canada  
**GOULDS PUMPS INC.**, a legal person duly incorporated, having its registered office at 240 Fall Street, Seneca Falls, New York, 13148, USA  
**ITT GOULDS PUMPS INC.**, a legal person duly incorporated, acting in the rights of Goulds Pumps LLC, a limited liability company, formally doing business as Goulds Pumps Inc., having its registered office at 240 Fall Street, Seneca Falls, New York, 13148, USA  
Mis-en-cause

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**Application for the Issuance of an Order Approving a Litigation Funding Agreement  
and a Litigation Financing Charge**  
(*Companies' Creditors Arrangement Act*, ss 11 and 11.2)

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To the Honourable Marie-Anne Paquette of the Superior Court, sitting in the Commercial Division for the District of Montréal, the Applicant respectfully submits:

## I. Introduction

1. By the present application (this “**Application**”), Deloitte Restructuring Inc., in its capacity as court-appointed monitor of Fortress (as defined hereinafter) (“**Deloitte**” or the “**Monitor**”) seeks the issuance of an order substantially in the form of the proposed order communicated herewith as **Exhibit A-1**:
  - (i) approving a Litigation Funding Agreement entered into between Omni Bridgeway (Fund 5) Canada Investments Limited (the “**Litigation Funder**”), the Monitor, in its capacity as Monitor of Fortress Specialty Cellulose Inc. (“**Fortress Specialty**”) and Cain Lamarre LLP (the “**Lawyers**”) (the “**Initial LFA**”) as amended pursuant to a Amendment No. 1 to Litigation Funding Agreement (the “**LFA Amending Agreement**” and together with the Initial LFA, the “**Litigation Funding Agreement**”) to finance the resumption of the litigation proceedings between Fortress Specialty and Goulds Pumps Canada Inc. and Goulds Pumps Inc. (collectively, “**Goulds Pumps**”) originally commenced before the Superior Court of Québec (Civil Division) under court file numbers 500-17-082483-143 and 500-17-094108-167 and the pursuit of the parties’ claims thereunder; and
  - (ii) approving 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 (ranking in first position) and the Lawyers (ranking in second position) in order to secure the amounts which may become owing to them pursuant to the Litigation Funding Agreement.

## II. Procedural background<sup>1</sup>

2. On December 16, 2019, the Superior Court of Québec (Commercial Division) (the “**Court**”) rendered a first day initial order commencing proceedings under the *Companies’ Creditors Arrangement Act* in respect of Fortress Global Enterprises Inc., Fortress Specialty, Fortress Bioenergy Ltd., Fortress Xylitol Inc. and 9217-6536 Québec Inc. (collectively, “**Fortress**”) (the “**First Day Order**”) and ordering, *inter alia*, that all claims against Fortress, Fortress’ Property and Fortress’ D&Os were stayed (the “**Stay**”) until December 26, 2019 (the “**Stay Period**”).
3. Since then, the Court has rendered several orders at the request of the applicants, Investissement Québec (“**IQ**”) and Fiera Private Debt Inc. (“**Fiera**”), including most recently an order *inter alia* extending the Stay Period up to and including March 31, 2022.

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<sup>1</sup> All capitalized terms not otherwise defined shall have the meanings ascribed to them in the Amended and Restated Initial Order.

### III. The Litigation Proceedings

4. On or about February 14, 2014, Fortress Specialty filed an originating application before the Québec Superior Court (Civil Division) under court file number 500-17-082483-143 against Goulds Pumps Canada Inc. claiming an amount of \$17,363,683.38, which was amended on June 25, 2014, to add Goulds Pump Inc. as defendant, for restitution of the purchase price and for damages in relation to the defect of two boiler feedwater pumps manufactured and sold to Fortress Specialty by Goulds Pumps (the “**Claim**”).
5. Rather than filing a counterclaim in response to Fortress Specialty’s originating application, Goulds Pumps Canada Inc. and ITT Goulds Pumps Inc. filed an originating demand against Fortress Specialty before the Québec Superior Court (Civil Division) under court file number 500-17-094108-167 claiming an amount of \$508,717.09 in connection with allegedly unpaid invoices (the “**Goulds Pumps’ Claim**” and together with the Claim, the “**Litigation Proceedings**”). Both claims have since been consolidated and are to be heard together in the same trial.
6. Given that Fortress Specialty’s Claim against Goulds Pumps represents a significant asset which should be realized for the benefit of Fortress, its creditors and other stakeholders, but that Fortress lacks the necessary liquidity, the Monitor is of the view that Fortress should obtain litigation funding to resume the Litigation Proceedings.

### IV. The Initial LFA Application

7. On June 16, 2021, the Monitor filed an 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 (the “**Initial LFA Application**”).
8. The Initial LFA Application was contested by Goulds Pumps on numerous grounds. On November 1, 2021, the Court rendered judgment on the Initial LFA Application (the “**Initial LFA Judgment**”) in which the court made the following findings with respect to the Initial LFA:
  - (i) the Court found that the Initial LFA would meaningfully facilitate access to justice (paragraphs 48 to 59) and that it preserved both the solicitor-client relationship and the autonomy of the Monitor (paragraphs 72 and 73);
  - (ii) the Court also concluded that under the circumstances, the approval of the Initial LFA was not contingent upon the advancement of the prospect of a viable CCAA plan (paragraphs 60 to 63), and that the Litigation Financing Charge could validly secure pre-filing obligations (paragraphs 64 to 71); and
  - (iii) the Court also considered the numerous issues that according to Goulds Pumps would go against the administration of justice and against the approval of the Initial LFA and of the Litigation Financing Charge. The only one of those issues that the Court deemed problematic was the fact that the Initial LFA would cover only the court costs to be incurred after the Initial LFA went into effect (paragraphs 74 to 94).

9. The Court concluded that, lacking the ability to adjust the terms of the agreement, it would refuse to approve the Initial LFA but added that “if the parties remain interested in presenting a LFA with the necessary adjustments to ensure that an eventual adverse costs award against Fortress in the Litigation Proceedings would be honoured for all legal costs, incurred before and after the LFA, the Court would welcome further representations” (paragraphs 95 and 96).
10. Following the Initial LFA Judgment, the Monitor approached the Litigation Funder to ask that the Initial LFA be amended:
- (i) to clarify the intent of the parties that it applies to all legal fees and disbursements incurred by Fortress potentially giving rise to court-ordered costs while the Litigation Funding Agreement is in effect, even if the CCAA Court issues an award for such costs after the Litigation Funding Agreement has been terminated; and
  - (ii) the Litigation Funder provide additional funding to cover, in the event of an eventual adverse costs award against Fortress in the Litigation Proceedings, not only those costs incurred by Goulds Pumps in connection with the Litigation Proceedings during the term of the Litigation Funding Agreement (as contemplated by the Initial LFA), but also such costs incurred by Goulds Pumps *prior* to the entry into of the Litigation Funding Agreement.
11. The Litigation Funder has agreed to the Monitor’s requests in exchange for necessary adjustments to the financial terms of the Initial LFA to account for the increased risk, and the amendments to the Initial LFA are set out in the LFA Amending Agreement, which is communicated herewith, under seal, as **Exhibit A-2**. A redacted copy of the LFA Amending Agreement is also communicated herewith as **Exhibit A-3**.

## V. The Initial LFA Application

12. The facility provided pursuant to the Litigation Funding Agreement, if approved, will provide the necessary financing to Fortress to fund its legal fees and disbursements associated with the resumption of the Litigation Proceedings and the pursuit of the Claim.
13. The Litigation Funding Agreement, *inter alia*:
- (i) provides for funds on a non-recourse basis to finance the legal fees and disbursements of Fortress in respect of the Litigation Proceedings and any appeal;
  - (ii) provides for the payment of a success fee to the Litigation Funder and the Lawyers which is 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 Proceedings (the “**Litigation Proceeds**”);
  - (iii) provides that the advances under the Litigation Funding Agreement are without interest;
  - (iv) provides that the Litigation Funder will cover an eventual adverse costs award against Fortress in the Litigation Proceedings, including for costs incurred prior to the entry into of the Litigation Funding Agreement;

(v) is conditional upon this Court's approval; and

(vi) is conditional upon the creation of a first ranking charge in favour of the Litigation Funder 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**");

the whole as appears from the Initial LFA (Exhibit A-2 (under seal) to the LFA Application) as amended pursuant to the LFA Amending Agreement (Exhibit A-2 (under seal)).

14. The Monitor is of the view that the terms and conditions of the Initial LFA as amended pursuant to the LFA Amending Agreement are reasonable in the circumstances and that the approval of the relief sought pursuant to this Application is the only alternative available in order to ensure the resumption of the Litigation Proceedings and the pursuit of the Claim for the benefit of Fortress's stakeholders.
15. The Monitor has also been advised that IQ is supportive of the approval of the Litigation Funding Agreement and of the Litigation Financing Charge.
16. Given that the LFA Amending Agreement (Exhibit A-2) contains certain sensitive and privileged information regarding the financing of the Litigation Proceedings which, if disclosed, could affect the Litigation Proceedings, the Monitor asks this Court to order that the LFA Amending Agreement is confidential and filed under seal.

**FOR THESE REASONS, MAY IT PLEASE THE COURT TO:**

**GRANT** the present *Application for the Issuance of an Order Approving a Litigation Funding Agreement and a Litigation Financing Charge* (the "**Application**");

**RENDER** an order substantially in the form of the order filed as Exhibit A-1 in support of the Application;

**THE WHOLE** without legal costs, save in case of contestation.

Montréal, November 19, 2021

*McCarthy Tétrault LLP*

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**McCarthy Tétrault LLP**

Lawyers for the Debtors

M<sup>re</sup> Alain N. Tardif

M<sup>re</sup> François Alexandre Toupin

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**Sworn Declaration**

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I, the undersigned, JEAN-FRANÇOIS NADON, authorized representative of the Monitor, domiciled for the purpose hereof at 1190, avenue des Canadiens-de-Montréal, Suite 500, in the city of Montréal, Province of Québec, H3B 0M7, solemnly affirm that all the facts alleged in the present *Application for the Issuance of an Order Approving a Litigation Funding Agreement and a Litigation Financing Charge* are true.

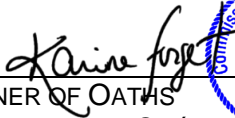
AND I HAVE SIGNED,



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**Jean-François Nadon**

SOLEMNLY AFFIRMED BEFORE ME BY  
TECHNOLOGICAL MEANS AT  
MONTRÉAL, this 19<sup>th</sup> day of November, 2021



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COMMISSIONER OF OATHS  
FOR THE PROVINCE OF QUÉBEC



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**Notice of Presentation  
Commercial**

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**TO: The Service List**

**1. PRESENTATION OF THE PROCEEDING**

**TAKE NOTICE** that the present *Application for the Issuance of an Order Approving a Litigation Funding Agreement and a Litigation Financing Charge* will be presented for adjudication before the Superior Court of Québec, sitting in the commercial division for the district of Montréal, **on a date and in a room to be communicated to the Service List subsequently.**



## 2. HOW TO JOIN THE VIRTUAL PRACTICE ROLL CALL

The coordinates for joining the room 16.04 virtual roll call are the following:

- a) **With Teams Tool:** by clicking on the link available on the website <http://www.tribunaux.qc.ca>;

You need at that time to inscribe your name and click on “Joining now”. In order to facilitate the progress and the identification of the participants, we are inviting you to inscribe your name by this manner:

The lawyers: Mtre First name, Last Name (name of the represented party)

The syndics: First name, Last Name (syndic’s name)

The superintendent: First name, Last name (superintendent’s name)

The parties non-represented by lawyers: First name, Last name (precise: Plaintiff, Defendant, Petitioner, Respondent, Creditor, Opponent or other)

For people who are assisting to a public hearing: the mention may be limited to entering: (public)

- b) **By telephone:**

Canada, Québec (paid number): + 1 581-319-2194

Canada (toll-free number): (833) 450-1741

Conference ID: 516 211 860#

- c) **By videoconference:** [teams@teams.justice.gouv.qc.ca](mailto:teams@teams.justice.gouv.qc.ca)

Conference VTC ID: 1149478699

- d) **In person:** If and only if you do not have access to one of these technological means above-identified. You can then go to room 16.04 of the Courthouse of Montreal, located at:

1 Notre-Dame Street East.

## 3. DEFAULT OF PARTICIPATING TO THE VIRTUAL ROLL CALL

**TAKE NOTICE** that if you wish to contest the proceeding you need to advise by written the instigator of the proceeding at the indicated coordinates in this Notice of Presentation at least 48 hours before the presentation date and participate to the virtual roll call. Failing that, a judgment could be rendered during the presentation of the proceeding, without any further notice or delay.

## 4. OBLIGATIONS

### 4.1 The Collaboration

**TAKE NOTICE** that you have the obligation to cooperate with the other party, in particular by informing each other, at all relevant times, of all facts and elements susceptible of promote a loyal debate and making sure you preserve the relevant evidence (*Civil Code of Procedure*, Art. 20).

#### 4.2 Preventing and Resolving Disputes Method

**TAKE NOTICE** that you must, before going to the Tribunal, considerate the recourse of all preventing and resolving disputes methods which are, among others, negotiation, mediation or arbitration, for which the parties appeal a third-party assistance (*Civil Code of Procedure*, Art. 2).

**DO GOVERN YOURSELVES ACCORDINGLY.**

Montréal, November 19, 2021

McCarthy Tétrault LLP

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**McCarthy Tétrault LLP**

Lawyers for the Monitor

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Mis-en-cause

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**List of Exhibits**

(Application for the Issuance of an Order Approving a Litigation Funding Agreement and a  
Litigation Financing Charge)

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<b>Exhibit A-1</b>	Draft Order Approving a Litigation Funding Agreement and a Litigation Financing Charge
<b>Exhibit A-2</b>	LFA Amending Agreement (Under seal)
<b>Exhibit A-3</b>	LFA Amending Agreement - Redacted version

Montréal, November 19, 2021

McCarthy Tétrault LLP

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**McCarthy Tétrault LLP**  
Lawyers for the Monitor

SUPERIOR COURT  
(COMMERCIAL DIVISION)

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**Application for the Issuance of an Order Approving a  
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Charge**

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