

Superior Court
(Commercial Division)

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

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

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

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 among 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 an Amendment No. 1 to Litigation Funding Agreement (the "**First Amendment**" and together with the Initial LFA, the "**Amended LFA**") and pursuant to an Amendment No. 2 to Litigation Funding Agreement (the "**Second Amendment**" and together with the Amended LFA, the "**LFA**") 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 LFA) 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 LFA.

II. Procedural background¹

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**") 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/or Fiera Private Debt Inc. ("**Fiera**"), including most recently an order *inter alia* extending the Stay Period up to and including March 31, 2022.

¹ 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**”).
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 [litigation funding agreement] 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 [litigation funding agreement], 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 to respond to the findings of the Initial LFA Judgment. In exchange for necessary adjustments to the financial terms of the Initial LFA to account for the increased risk by the Litigation Funder, the parties agreed to amend the Initial LFA pursuant to the terms of the First Amendment.

V. The Amended LFA Application

11. On November 19, 2021, the Monitor filed an *Application for the Issuance of an Order Approving a Litigation Funding Agreement and a Litigation Financing Charge* (the “**Amended LFA Application**”).
12. The Amended LFA Application was contested by Goulds Pumps on numerous grounds. On December 30, 2021, the Court rendered judgment on the Amended LFA Application (the “**Amended LFA Judgment**”) in which the court found that the amendments provided by the First Amendment “properly respond to the findings of the Initial LFA Judgment”, but that in the event that the litigation funding agreement is terminated, “notice should be given to Goulds, even though the Court and distribution list would be informed of an application which the Monitor would present to the court in such event” (paragraphs 8 and 15).
13. The Court concluded that, lacking the ability to adjust the terms of the agreement, it would refuse to approve the Amended LFA, but added that “if the parties remain interested in presenting a [litigation funding agreement] with the necessary adjustments to provide for proper notice of termination to [Goulds Pumps], the Court would welcome further representations” (paragraphs 16 and 17).
14. Following the Amended LFA Judgment, the parties agreed to amend the Amended LFA pursuant to the terms of the Second Amendment to provide that, in the event that the LFA is terminated in accordance with the terms of Part 10 of Exhibit A, “the Monitor shall provide written notice of the effective date of such termination to [Goulds Pumps], through their counsel of record in the Litigation [Proceedings], as soon as reasonably practicable and no later than the business day following the effective date of such termination”. A copy of the Second Amendment is communicated herewith as **Exhibit A-2**.

VI. The Approval of the LFA

15. The facility provided pursuant to the LFA, 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.
16. The LFA, *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) provides that the Monitor will send Goulds Pumps a notice in the event of the termination of the LFA;
- (vi) is conditional upon this Court's approval; and
- (vii) 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 LFA (Exhibit A-2 (under seal) to the Initial LFA Application as amended pursuant to the First Amendment (Exhibit A-2 (under seal) to the Amended LFA Application) and to the Second Amendment (Exhibit A-2)).

17. The Monitor is of the view that the terms and conditions of the LFA 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.
18. A copy of the Second Amendment has been communicated to Goulds Pumps' counsel, who has informed us that they did not anticipate contesting the approval of the LFA, but reserved their right to make representations, if necessary, further to the notification and review of the Application.
19. The Monitor has also been advised that IQ is supportive of the approval of the LFA and of the Litigation Financing Charge.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present *Application for the Issuance of an Order Approving an Amended 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, February 11, 2022

McCarthy Tétrault LLP

McCarthy Tétrault LLP

Lawyers for the Monitor

M^{re} Alain N. Tardif

M^{re} François Alexandre Toupin

2500 - 1000 De La Gauchetière St. West

Montréal, QC H3B 0A2

Telephones: 514.397.4274

514.397.4210

Emails: atardif@mccarthy.ca

fatoupin@mccarthy.ca

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Sworn Declaration

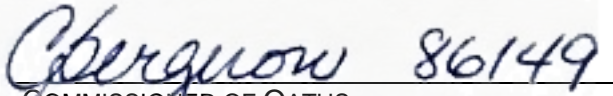
I, the undersigned, JEAN-FRANÇOIS NADON, authorized representative of the Monitor, domiciled for the purpose hereof at 1190, avenue des Canadiens-de-Montréal, Suite 500, in the city of Montréal, Province of Québec, H3B 0M7, solemnly affirm that all the facts alleged in the present *Application for the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

AND I HAVE SIGNED,



Jean-François Nadon

SOLEMNLY AFFIRMED BEFORE ME BY
TECHNOLOGICAL MEANS AT MONTRÉAL,
this 11th day of February, 2022



COMMISSIONER OF OATHS
FOR THE PROVINCE OF QUÉBEC

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**Notice of Presentation
Commercial**

TO: The Service List

1. PRESENTATION OF THE PROCEEDING

TAKE NOTICE that the present *Application for the Issuance of an Order Approving an Amended Litigation Funding Agreement and a Litigation Financing Charge* will be adjudicated by the Superior Court of Québec, sitting in the commercial division for the district of Montréal, **on the record and without a hearing** given:

- (a) 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* dated June 16, 2021 (the “**Initial LFA Application**”);
- (b) the *Application for the Issuance of an Order Approving a Litigation Funding Agreement and a Litigation Financing Charge* dated November 19, 2021 (the “**AmendedLFA Application**”);
- (c) the judgments rendered on November 1, 2021, and on December 30, 2021, dismissing the Initial LFA Application and the Amended LFA Application, respectively; and
- (d) the absence of contestation from Goulds Pumps Canada Inc., Goulds Pumps Inc. and ITT Goulds Pumps Inc.

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

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, February 11, 2022

McCarthy Tétrault LLP

McCarthy Tétrault LLP
Lawyers for the Monitor

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List of Exhibits

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

Exhibit A-1	Draft Order Approving a Litigation Funding Agreement and a Litigation Financing Charge
Exhibit A-2	Second Amendment

Montréal, February 11, 2022

McCarthy Tétrault LLP

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Lawyers for the Monitor

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M^{re} Alain N. Tardif – 514-397-4274
atardif@mccarthy.ca
M^{re} François Alexandre Toupin – 514-397-4210
fatoupin@mccarthy.ca
Our reference: 218443-528069

BC0847
MCCARTHY TÉTRAULT LLP
Suite 2500
1000 De La Gauchetière Street West
Montréal (Québec) H3B 0A2
Tel. : 514 397-4100
Fax : 514 875-6246
notification@mccarthy.ca