

**SUPERIOR COURT
(COMMERCIAL DIVISION)**

Canada
Province of Québec
District of Montréal
No: 500-11-057679-199
Date: February 11, 2022

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

In the matter of the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 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.
GOULDS PUMPS INC.
ITT GOULDS PUMPS INC.**
Mis-en-cause

ORDER APPROVING A LITIGATION FUNDING AGREEMENT AND A LITIGATION FINANCING CHARGE

HAVING READ the *Application for the Issuance of an Order Approving an Amended Litigation Funding Agreement and a Litigation Financing Charge* (the "**Application**") filed by Deloitte Restructuring Inc., in its capacity as monitor to the Debtors (the "**Monitor**") pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 (the "**CCAA**"), the exhibits and the

affidavit filed in support thereof;

GIVEN the notification of the Application;

GIVEN the Initial Order rendered on December 16, 2019 (as amended and restated on January 10, 2020, the “**Initial Order**”);

GIVEN 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**”);

GIVEN the Application for the Issuance of an Order Approving a Litigation Funding Agreement and a Litigation Financing Charge dated November 19, 2021 (the “**Amended LFA Application**”);

GIVEN the judgments rendered on November 1, 2021, and on December 30, 2021, dismissing the Initial LFA Application and the Amended LFA Application, respectively;

GIVEN the absence of contestation to the present Application and the amendments made in response to the judgment of December 30, 2021;

GIVEN the provisions of the CCAA;

THE COURT:

[1] **GRANTS** the Application.

[2] **DECLARES** that all capitalized terms used but not otherwise defined in the present Order (this “**Order**”) shall have the meanings ascribed to them in the Initial Order or in the Application.

Notification

[3] **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 any further notification thereof.

[4] **PERMITS** notification of this Order at any time and place and by any means whatsoever, including by email.

Litigation Funding Agreement

[5] **AUTHORIZES** the Monitor, in its capacity as Monitor of Fortress Specialty Cellulose Inc. (“**Fortress Specialty**”), to enter into and execute the Litigation Funding Agreement with Omni Bridgeway (Fund 5) Canada Investments Limited (the “**Litigation Funder**”) and Cain Lamarre LLP (the “**Lawyers**”) filed as Exhibit A-2, under seal, in support of the Initial LFA Application (the “**Initial LFA**”), the Amendment No. 1 to Litigation Funding Agreement with the Litigation Funder and the Lawyers filed

as Exhibit A-2, under seal, in support of the Amended LFA Application (the “**First Amendment**”) and the Amendment No. 2 to Litigation Funding Agreement with the Litigation Funder and the Lawyers filed as Exhibit A-2 in support of the Application (the “**Second Amendment**” and together with the Initial LFA and the First Amendment, the “**Litigation Funding Agreement**”), with such non-material alterations, changes, amendments, deletions or additions thereto as may be agreed to, but only with the consent of the Monitor, in order to allow the funding of Fortress Specialty’s costs in connection with the Litigation Proceedings (as defined in the Application) and to pay such other amounts as are permitted by the terms of this Order and the Litigation Funding Agreement.

[6] **AUTHORIZES** the Monitor to execute and deliver any other documents ancillary to the Litigation Funding Agreement which could be required or useful to give full and complete effect thereto, including, without limitation, a retainer letter to be entered with the Lawyers (Exhibit D to the Litigation Funding Agreement) (the “**Retainer Letter**”) and with experts, as may be required or permitted pursuant to the Litigation Funding Agreement.

[7] **ORDERS** Fortress Specialty to perform all of its obligations set out under the Litigation Funding Agreement, including paying to the Litigation Funder, when due and from the Litigation Proceeds (as defined in the Litigation Funding Agreement), if any, those amounts payable to the Litigation Funder pursuant to the terms of the Litigation Funding Agreement.

[8] **DECLARES** that the Litigation Proceeds (as defined in the Litigation Funding Agreement), if any, are hereby subject to a charge, hypothec and security (collectively, a “**Charge**”) to the extent of the aggregate amount of \$6,000,000 (the “**Litigation Financing Charge**”) in favour of:

a) first, the Litigation Funder, to secure all obligations of Fortress Specialty to the Litigation Funder under or in connection with the Litigation Funding Agreement; and

b) second, the Lawyers, to secure all obligations of Fortress Specialty to the Lawyers under or in connection with the Litigation Funding Agreement and the Retainer Letter.

The Litigation Financing Charge shall have the priority established by paragraph [13] this Order.

[9] **ORDERS**, for greater certainty, that the Litigation Financing Charge shall not attach, affect or encumber any assets of the Debtors, other than the Litigation Proceeds, if any.

[10] **ORDERS** that the claims of the Litigation Funder and the Lawyers pursuant to the Litigation Funding Agreement shall not be compromised or arranged pursuant to any plan of compromise or arrangement under the CCAA or these proceedings and the Litigation Funder and the Lawyers, in such capacity, shall be treated as an unaffected creditors in these proceedings and in any plan of compromise or arrangement.

- [11] **ORDERS** that the Litigation Funder and the Lawyers may, notwithstanding any other provision of this Order or of the Initial Order, take such steps from time to time as they may deem necessary or appropriate to register, record or perfect the Litigation Financing Charge and the Litigation Funding Agreement in all jurisdictions where they deem it is appropriate.
- [12] **ORDERS** that the Litigation Funder and the Lawyers shall not take any enforcement steps under the Litigation Funding Agreement or the Litigation Financing Charge without providing at least five (5) business days' written notice (the "**Notice Period**") of a default thereunder to Fortress Specialty and the Monitor. Upon expiry of such Notice Period, the Litigation Funder and the Lawyers shall be entitled to take any and all steps under the Litigation Funding Agreement and the Litigation Financing Charge and otherwise permitted at law, but without having to send any demands under Section 244 of the *Bankruptcy and Insolvency Act*.
- [13] **ORDERS** that, with respect to the Litigation Proceeds (as defined in the Litigation Funding Agreement), if any, the Litigation Financing Charge shall rank in priority to: (a) any and all CCAA Charges granted by this Court pursuant to the Initial Order and the Order dated December 18, 2020, as such orders may have been or may be amended from time to time by order of this Court, and to (b) any and all other hypothecs, mortgages, liens, security interests, priorities, charges, encumbrances or security of whatever nature or kind (collectively, the "**Encumbrances**") affecting the Litigation Proceeds charged by such Encumbrances.
- [14] **ORDERS** that, subject to further order of this Court, no order shall be made varying, rescinding, or otherwise affecting paragraphs [5] to [13] of this Order unless either (a) an application for such order is served upon the Litigation Funder and the Lawyers by the moving party with a notice of at least seven (7) days before the application is presentable before the Court or (b) the Litigation Funder and the Lawyers apply for or consent to such order.
- [15] **DECLARES** that the Litigation Financing Charge and the rights and remedies of the Litigation Funder and the Lawyers, as applicable, shall be valid and enforceable and not otherwise be limited or impaired in any way by: (i) these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such application(s) or any assignment(s) in bankruptcy made or deemed to be made in respect of any 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:
- 15.1 the creation of any of the Litigation Financing Charge shall not create nor be deemed to constitute a breach by the Debtors of any Third Party Agreement to which any of the Debtor is a party; and
- 15.2 the beneficiaries of the Litigation Financing Charge shall not have any liability to any Debtors whatsoever as a result of any breach of any Third Party

Agreement caused by or resulting from the creation of the Litigation Financing Charge.

- [16] **DECLARES** that notwithstanding: (i) these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such application(s) or any assignment(s) in bankruptcy made or deemed to be made in respect of any of the Debtors; and (iii) the provisions of any federal or provincial statute, the payments or disposition of Property made by any of the Debtors pursuant to this Order and the granting of the Litigation Financing Charge, do not and will not constitute settlements, fraudulent preferences, fraudulent conveyances or other challengeable or reviewable transactions or conduct meriting an oppression remedy under any applicable law.
- [17] **DECLARES** that the Litigation Financing Charge shall be valid and enforceable as against the Litigation Proceeds, if any, and against all Persons, including, without limitation, any trustee in bankruptcy, receiver, receiver and manager or interim receiver of the Debtors.

General Provisions

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

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