

**CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL**

SUPERIOR COURT
(Commercial Division)

(Sitting as a court designated pursuant to the
Companies' Creditors Arrangement Act, RSC 1985,
c. C-36)

No.: 500-11-061483-224

**IN THE MATTER OF THE COMPROMISE OR
ARRANGEMENT OF:**

FORMERXBC INC. (formerly **XEBEC ADSORPTION
INC.**)

-and-

11941666 CANADA INC. (formerly **XEBEC RNG
HOLDINGS INC.**)

-and-

APPLIED COMPRESSION SYSTEMS LTD.

-and-

1224933 ONTARIO INC. (formerly **COMPRESSED
AIR INTERNATIONAL INC.**)

-and-

FORMERXBC HOLDING USA INC. (formerly
XEBEC HOLDING USA INC.)

-and-

ENERPHASE INDUSTRIAL SOLUTIONS, INC.

-and-

CDA SYSTEMS, LLC

-and-

FORMERXBC ADSORPTION USA INC. (formerly
XEBEC ADSORPTION USA INC.)

-and-

FORMERXBC PENNSYLVANIA COMPANY
(formerly **THE TITUS COMPANY**)

-and-

FORMERXBC NOR CORPORATION (formerly
NORTEKBELAIR CORPORATION)

-and-

FORMERXBC FLOW SERVICES – WISCONSIN INC. (formerly **XBC FLOW SERVICES – WISCONSIN INC.**)

-and-

CALIFORNIA COMPRESSION, LLC

-and-

FORMERXBC SYSTEMS USA, LLC (formerly **XEBEC SYSTEMS USA, LLC**)

Debtors / Petitioners

-and-

DELOITTE RESTRUCTURING INC.

Monitor

**APPLICATION FOR THE ISSUANCE OF A STAY EXTENSION
AND SETTLEMENT PAYMENT APPROVAL ORDER**
(Sections 11 and 11.02 of the *Companies' Creditors
Arrangement Act*, RSC 1985, c C-36)

**TO THE HONOURABLE JUSTICE CHRISTIAN IMMER, J.S.C., SITTING IN
COMMERCIAL DIVISION, IN THE JUDICIAL DISTRICT OF MONTRÉAL, THE
DEBTORS / PETITIONERS RESPECTFULLY SUBMIT AS FOLLOWS:**

I. INTRODUCTION

1. The Debtors / Petitioners in this matter are FormerXBC Inc. (formerly Xebec Adsorption Inc.), 11941666 Canada Inc. (formerly Xebec RNG Holdings Inc.), Applied Compression Systems Ltd., 1224933 Ontario Inc. (formerly Compressed Air International Inc.), FormerXBC Holding USA Inc. (formerly Xebec Holding USA Inc.), Enerphase Industrial Solutions, Inc., California Compression, LLC, CDA Systems, LLC, FormerXBC Adsorption Inc. (formerly Xebec Adsorption USA Inc.), FormerXBC Pennsylvania Company (formerly The Titus Company), FormerXBC NOR Corporation (formerly Nortekbelair Corporation), FormerXBC Systems USA, LLC (formerly Xebec Systems USA, LLC), FormerXBC Flow Services – XBC Wisconsin Inc. (formerly XBC Flow Services – Wisconsin Inc.) (collectively, the “**Petitioners**”).
2. By the present *Application for the Issuance of a Stay Extension and Settlement Payment Approval Order* (the “**Application**”), the Petitioners are seeking the issuance of an order, substantially in the form of the draft order communicated herewith as **Exhibit P-1** (the “**Draft Order**”) *inter alia*:

- (a) extending the Stay Period (as defined below) until December 15, 2023 (the “**Extension Date**”); and
- (b) authorizing a payment to be made out of transaction proceeds held by the Monitor pursuant to a settlement agreement (the “**UK Settlement**”) entered into between Xebec Holding UK Limited (“**Xebec UK**”) and Gary Ashton and Robert Thompson (collectively, the “**Tiger Sellers**”).

II. PROCEDURAL BACKGROUND

- 3. On September 29, 2022, at the Petitioners’ request, the Court issued a First Day Initial Order (the “**FDIO**”) pursuant to the CCAA and a Bidding Procedures Order (the “**Bidding Procedures Order**”), as appears from the Court record.
- 4. The FDIO, *inter alia*:
 - (a) appointed Deloitte Restructuring Inc. as monitor of the Petitioners’ CCAA proceedings (the “**Monitor**”);
 - (b) ordered a stay of proceedings in respect of the Petitioners and their directors and officers until October 7, 2022, as extended thereafter (the “**Stay**”); and
 - (c) declared that Québec is the “center of main interest” of the Petitioners and, accordingly, authorized the Petitioners to apply, as they may consider necessary or desirable, to any other court, tribunal, regulatory, administrative or other body, wherever located, for orders to recognize and/or assist in carrying out the terms of the Initial Order and any subsequent Orders rendered by this Court in the context of these proceedings, including, without limitation, orders under Chapter 15 of the United States Bankruptcy Code 11 U.S.C. §§ 101-1532.
- 5. The Bidding Procedures Order, *inter alia*, approved the proposed Sale and Investment Solicitation Process (the “**SISP**”) and its implementation in accordance with the Procedures for the Sale and Investment Solicitation Process annexed thereto as Schedule “A”, as appears from the Court record.
- 6. The Bidding Procedures Order also approved the engagement of National Bank Financial Inc. to assist in the implementation of the SISP.
- 7. On October 20, 2022, at the Petitioners’ request, the Court issued an Amended and Restated Initial Order (the “**ARIO**”) pursuant to the CCAA, as appears from the Court record.
- 8. The ARIO, *inter alia*, extended the Stay until November 28, 2022.

9. On February 3, 2023, at the Petitioners' request, the Court issued a Second Amended and Restated Initial Order (the "**Second ARIO**"), pursuant to the CCAA, as appears from the Court record.
10. The Second ARIO, *inter alia*, extended the Stay until February 13, 2023.
11. On February 13, 2023, at the Petitioners' request, the Court issued a Third Amended and Restated Initial Order (the "**Third ARIO**"), pursuant to the CCAA, as appears from the Court record.
12. The Third ARIO, *inter alia*, extended the Stay until March 17, 2023.
13. On March 16, 2023, at the Petitioners' request, the Court issued a Fourth Amended and Restated Initial Order (the "**Fourth ARIO**"), pursuant to the CCAA, as appears from the Court record.
14. The Fourth ARIO, *inter alia*, extended the Stay until May 5, 2023.
15. On the same date, the Court also issued:
 - (a) an Approval, Vesting and Assignment Order with respect to the sale of substantially all assets of FormerXBC Pennsylvania Company (formerly The Titus Company) (the "**Fluid-Aire Transaction**");
 - (b) an Approval, Vesting and Assignment Order with respect to the sale of substantially all assets of FormerXBC Flow Services – XBC Wisconsin Inc. (formerly XBC Flow Services – Wisconsin Inc.) (the "**Total Energy Transaction**"); and
 - (c) an Approval, Vesting and Assignment Order with respect to the sale of substantially all assets of FormerXBC Systems USA, LLC (formerly Xebec Systems USA, LLC) (the "**EnergyLink Transaction**");

the whole as appears from the Court record.
16. On March 27, 2023, at the Petitioners' request, the Court issued a Fifth Amended and Restated Initial Order (the "**Fifth ARIO**"), pursuant to the CCAA, as appears from the Court record.
17. The Fluid-Aire Transaction, Total Energy Transaction and EnergyLink Transaction closed on March 20, March 23 and April 5, 2023, respectively.
18. On May 5, 2023, at the Petitioners' request, the Court issued an order extending the Stay to May 24, 2023, as appears from the Court record.
19. On the same date, at the Petitioners' request, the Court issued an order lifting the Stay for the sole purpose of authorizing the filing before the Superior Court of

Québec (Class Action Division) in file no. 500-06-001135-215 (*Maurice Leclair et al. v. FormerXBC et al.*) seeking approval of a settlement agreement therein.

20. On May 24, 2023, the Court issued an order (the “**Stay Order**”), extending the Stay to September 29, 2023 (the “**Stay Period**”), and an order establishing a claims bar date of July 24, 2023 (the “**Claims Bar Date**”) for the filing of proofs of claim with the Monitor and establishing the procedure for the filing and determination of such proofs of claim (the “**Claims Procedure Order**”), as appears from the Court record.
21. On the same date, the Court also issued an Approval, Vesting and Assignment Order with respect to the sale of the biostream assets of FormerXBC (FormerXBC Systems USA, LLC (formerly Xebec Systems USA, LLC) (the “**Biostreams Transaction**”).
22. On June 29, 2023, at the Monitor’s request, the Court issued the *Order to Approve a Proposed Allocation Plan* (the “**Allocation Order**”), approving, *inter alia*, a proposed methodology to allocate (i) the net proceeds held in trust by the Monitor, (ii) the intercompany transactions, and (iii) the restructuring costs, secured debt reimbursements and DIP financing, as appears from the Court record.

III. RESTRUCTURING EFFORTS SINCE THE ISSUANCE OF THE STAY ORDER

23. Since the issuance of the Stay Order, the Petitioners, have, *inter alia*:
 - (a) prepared a revised and updated cash flow statement covering the period until the Extension Date, in consultation with the Monitor;
 - (b) continued to wind down the Petitioners’ activities, in consultation with the Monitor;
 - (c) completed the negotiations with Western Midstream in connection with the sale of certain remaining assets and assumption of certain liabilities, in consultation with the Monitor;
 - (d) coordinated, with the assistance of U.S. counsel, the necessary recognition proceedings;
 - (e) assisted the Monitor in the context of the claims process;
 - (f) assisted the Monitor in the negotiation of the UK Settlement; with the approval of the payment thereunder being sought in the context of this Application;
 - (g) in consultation with the Monitor, held discussions with London RNG regarding the various contractual issues and assisted the Monitor in the preliminary review of the claim of London RNG;

- (h) continued efforts to finalize the Biostreams Transaction, with the assistance of the Monitor;
- (i) participated in discussions with the Monitor and EDC in connection with the filing of one or more plans of arrangement in this matter (collectively, the “**Plan**”); and
- (j) commenced the preparation of the Plan materials and the related documents, in consultation with the Monitor, which remain subject to further milestones and steps, including for instance the completion of the ongoing analysis of distribution scenarios to be performed by the Monitor following the issuance of the Allocation Order, as well as discussions with EDC in relation to its security, the whole as will be further detailed in the Eleventh Report of the Monitor to be filed in support of this Application.

Claims Process

- 24. Since the issuance of the Claims Procedure Order, the Petitioners have been assisting the Monitor in its review, determination and adjudication of Claims (as defined in the Claims Procedure Order).
- 25. The Monitor will provide a detailed status of the Claims received and their pursuant to the Claims Procedure Order in its report on this Application, including with respect to the treatment of D&O Claims filed as part of the Claims Process.
- 26. As previously disclosed to the Court, the Petitioners expect to be in a position to file one or more Plans in respect of the Petitioners, other than FormerXBC Inc.
- 27. At this time, it is expected that applications for the issuance of plans of arrangement and meeting orders should be filed in the fall of 2023, subject to ongoing developments, including with respect to the ongoing discussions with EDC.

Biostreams Transaction

- 28. Further to the approval of the Biostreams Transaction by this Honourable Court, the Petitioners have sought the recognition thereof by the United States Bankruptcy Court, District of Delaware (the “**US Court**”) pursuant to the Petitioners’ Chapter 15 proceedings.
- 29. The hearing on the recognition of the approval of the Biostreams Transaction is scheduled for October 5, 2023.
- 30. Closing of the Biostreams Transactions is expected shortly following the issuance of the recognition and approval order by the US Court.

IV. GROUNDS FOR THE EXTENSION OF THE STAY OF PROCEEDINGS

31. The Petitioners have acted and continue to act in good faith and with due diligence.
32. The Stay Period currently expires on September 29, 2023.
33. The extension of the Stay Period to the Extension Date (December 15, 2023) is required to provide the Petitioners, with the assistance of the Monitor, with sufficient time to, *inter alia*:
 - (a) continue to wind down the Petitioners' activities, in consultation with the Monitor;
 - (b) assist the Monitor with the completion of the analysis and review of claims filed as part of the claims process;
 - (c) continue ongoing negotiations with certain parties, such as London RNG;
 - (d) assist, when necessary, with the ongoing preparation of distribution scenarios subsequent to the issuance of the Allocation Order; and
 - (e) finalize discussions with EDC and the preparation of the Plan materials, and present an application for the issuance of a Meeting Order to this Court, well in advance of the expiry of the Stay Period.
34. The Petitioners have paid their suppliers, employees and other creditors for the sums due from the date of the Fifth ARIO in the ordinary course of business and intend to continue doing so.
35. The Petitioners' cash flow is sufficient to continue operations up to and until the Extension Date, as will appear from the eleventh report of the Monitor to be filed with the Court prior to the hearing hereon.
36. No creditor will be unduly prejudiced by the extension sought.

V. APPROVAL OF PAYMENT TO BE MADE PURSUANT TO THE UK SETTLEMENT

37. Pursuant to a share purchase agreement dated 11 June 2021 and made between the Sellers and Xebec UK (the "**SPA**"), Xebec UK purchased the entire issued share capital (the "**Shares**") of Tiger Filtration Limited from the Tiger Sellers.
38. The SPA provided for part of the consideration for the Shares to be deferred and paid to the Tiger Sellers as "Earn-out Payments", determined in accordance with the SPA.
39. As previously reported to the Court, in the context of the Petitioners' global restructuring and as part of the SISF approved by this Court, Xebec UK sold the Shares to a third-party buyer (the "**Tiger Transaction**").

40. Xebec UK has not paid any Earn-out Payments to the Tiger Sellers in relation to the period commencing on 1 July 2022 and ending on 30 June 2023 (the “**Earn-Out Claim**”).
41. The Sellers have asserted the Earn-Out Claim against Xebec UK.
42. The Monitor, in consultation with the Petitioners, has negotiated a settlement of the Earn-Out Claim, whereby the Tiger Sellers will receive an aggregate amount of £250,000 in full and final settlement of all of their claims against Xebec UK including the Earn-Out Claim, other than an excluded claim relating to a proof of claim filed against FormerXBC Inc. in the amount of £20,000, as appears from the UK Settlement, communicated herewith, *under seal*, as **Exhibit P-2**.
43. The settlement agreement also provides for a full and final mutual release between the Tiger Sellers, Xebec UK, FormerXBC Inc. and all of their parents, subsidiaries, affiliates, assigns, transferees, successors, representatives, principals, agents, officers or directors in relation to the Earn-Out Claim, and to any other matter arising out of the relationship between the parties to the settlement agreement and between the released parties pursuant to same.
44. The amount of £250,000 provided by the UK Settlement is less than the estimated amount that had been included in the Monitor’s report that led to the Allocation Order (the “**Proposed Allocation Method Report**”) regarding a potential settlement of this third-party claim against Xebec UK.
45. The settlement of the Earn-Out Claim is expected to allow for the subsequent orderly wind-down of Xebec UK, as the only known claim that will remain against the latter is the intercompany claim of FormerXBC Inc. This wind-down will further resolve the issues pertaining to the subrogation rights of Xebec UK following the repayment of the NBC debt out of the proceeds of the Tiger Transaction.
46. The Petitioners submit that the UK Settlement is fair and reasonable, and is in the best interests of its stakeholders. EDC, in its capacity as secured creditor of FormerXBC Inc., has been informed of the payment to be made pursuant to the UK Settlement and is in agreement with same.
47. While Xebec UK is not a Petitioner in these proceedings, given that the funds necessary to make the payment under the Settlement are in the hands of the Monitor, the Petitioners are seeking the approval of the payment contemplated by the UK Settlement by this Court.

VI. ANCILLARY RELIEF

48. Paragraph 14 of the Claims Procedure Order provides for an obligation of the Monitor to send to each Scheduled Employee his/her Notice of Scheduled Employee’s Claim, together with a Claims Package, by no later than 5:00 p.m. (Montréal time) on June 22, 2023.

49. The Monitor has complied with this obligation in accordance with the Claims Procedure Order, subject to the caveats below.
 - (a) Former employees of FormerXBC Inc. and individuals compensated by the WEPP
50. Considering the Proposed Allocation Method Report and the determination that no Plan will be filed by FormerXBC Inc. at this stage, the Monitor, in consultation with the Petitioners has determined that it was not necessary to send notices to Scheduled Employees of FormerXBC Inc. and to Scheduled Employees who had been compensated further to the Wage Earner Protection Program (the “WEPP”) and who would consequently not receive an additional distribution in the context of the CCAA proceedings, unless and until FormerXBC Inc. files a plan.
51. The Petitioners respectfully submit that sending additional notices to these Scheduled Employees would be confusing and inefficient and would add no value; as such, respectfully seeks that this Court declare that providing such a notice is not required for those former employees further to paragraph 14 of the Claims Process Order.
 - (b) Other former employees
52. Further to its review, the Monitor identified one (1) former employee of Applied Compression Systems Ltd. who had not received a Notice of Scheduled Employee Claim and who had failed to apply for relief pursuant to the WEPP, such that he currently has an Employee Claim.
53. The Petitioners are informed that the Monitor has attempted on numerous occasions to make contact with this individual and that, should it not be successful in contacting this person, it will issue a Notice of Scheduled Employee’s Claim, providing an additional delay of thirty (30) days to file a Notice of Dispute, as the case may be.
54. The Monitor has also identified four (4) former employees of FormerXBC Pennsylvania Company (formerly The Titus Company) who have not received a Notice of Scheduled Employee’s Claim who are not eligible for the WEPP; two (2) of those individuals have filed a proof of claim as part of the Claims Process (each for an amount that is higher than the amount that would have appeared on their applicable Scheduled Employee’s Claim), but two (2) others have not filed any proof of claim.
55. Given the detrimental impact of the Claims Procedure Order for the two (2) individuals who have not filed a proof of claim, the Monitor will issue to these individuals a Notice of Scheduled Employee’s Claim, providing an additional delay of thirty (30) days to file a Notice of Dispute, as the case may be.
56. In light of the foregoing, the Petitioners respectfully seeks that this Court declare that paragraph 14 of the Claims Procedure Order will apply, *mutatis mutandis*, to

such individuals having received the Notice of Scheduled Employee's Claim after the initial deadline provided therein, thereby allowing a thirty (30) day delay following the issuance of the Notice of Scheduled Employee's Claim to send a Notice of Dispute, unless such Scheduled Employee has filed a Proof of Claim against the Debtors (as such terms are defined in the Claims Procedure Order), the whole as further detailed in the Draft Order.

VII. SEALING ORDER IN RESPECT OF THE UK SETTLEMENT

57. The Petitioners are seeking for an order declaring that the UK Settlement be kept strictly confidential and under seal.
58. The sealing is justified considered that the UK Settlement contains a confidentiality clause and is entered into with an individual, and the amount of the payment to be made out of the proceeds held by the Monitor is disclosed and is the only relevant information for the stakeholders in the CCAA proceedings.

VIII. CONCLUSION

59. The Monitor has informed the Petitioners that it supports the issuance of the order sought herein and it will file a report confirming same.
60. The Petitioners respectfully seek provisional execution of the order to be rendered on the present Application notwithstanding appeal, considering that the relief sought herein is beneficial for the Petitioners' stakeholders, and a stay of execution thereof would be detrimental to the Petitioners' creditors.
61. For the reasons set forth above, the Petitioners respectfully submit that it is both appropriate and necessary that this Honourable Court render the order sought herein.

FOR THESE REASONS, MAY IT PLEASE THIS HONOURABLE COURT TO:

GRANT the present *Application for the Issuance of a Stay Extension and Settlement Approval Order*;

ISSUE an order substantially in the form of the Draft Order communicated in support of the Application as **Exhibit P-1**;

ORDER the provisional execution of the order to be rendered on the Application notwithstanding appeal and without security;

THE WHOLE WITHOUT COSTS, save in the event of contestation.

MONTREAL, September 25, 2023

Osler, Hoskin & Harcourt LLP

Osler, Hoskin & Harcourt LLP

Mtre. Sandra Abitan | Mtre. Julien Morissette |
Mtre. Ilya Kravtsov | Mtre. Sophie Courville-Le
Bouyonnec

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Our file: 1233913

AFFIDAVIT

I the undersigned, Dimitrios Vounassis, domiciled for the purpose hereof at 1000 De La Gauchetière Street West, Suite 2100, Montréal, Québec, H3B 4W5, solemnly declare the following:

1. I am the President and CEO of FormerXBC Inc. (formerly Xebec Adsorption Inc.) and a duly authorized representative of the Debtors / Petitioners for the purposes hereof.
2. I have taken cognizance of the attached *Application for the Issuance of a Stay Extension and Settlement Payment Approval Order* (the “**Application**”).
3. All of the facts alleged in the Application of which I have personal knowledge are true.
4. Where I have obtained facts alleged in the Application from others, I believe them to be true.

AND I HAVE SIGNED:



Dimitrios Vounassis

SOLEMNLY DECLARED BEFORE ME BY
TECHNOLOGICAL MEANS IN SAINT-
CONSTANT, QUÉBEC, ON SEPTEMBER
25, 2023.



Lyne St-Amour
Commissioner for Oaths for the Province of
Québec

**NOTICE OF PRESENTATION
COMMERCIAL DIVISION**

TO: SERVICE LIST (See attached)

1. PRESENTATION OF THE PROCEEDING

TAKE NOTE that the *Application for the Issuance of a Stay Extension and Settlement Payment Approval Order* will be presented for adjudication before the Commercial Division of the Superior Court of Québec, in Courtroom **15.11** of the Montréal Courthouse during the virtual calling of the roll on **September 29, 2023, at 9:30 a.m.**

2. HOW TO JOIN THE HEARING

The contact information to join the hearing in room 15.11 is as follows:

By Teams: by clicking on the link available at <http://www.tribunaux.qc.ca> ("*Liens TEAMS pour rejoindre les salles du Palais de justice*"):

You must then enter your name and click "Join now" ("*Rejoindre maintenant*"). To facilitate the process and the identification of participants, we ask that you enter your name in the following manner:

Attorneys: Mtre Name, Surname (name of party represented)

Trustees: Name, Surname (trustee)

Superintendent: Name, Surname (superintendent)

Parties not represented by an attorney: Name, Surname (specify: plaintiff, defendant, applicant, respondent, creditor, opposing party, or other)

Persons attending a public hearing may simply indicate "public".

By telephone:

Canada, Québec (Charges will apply): +1 581-319-2194

Canada (Toll-free): (833) 450-1741

Conference ID: 508 117 984#

By VTC videoconference: teams@teams.justice.gouv.qc.ca

Videoconference ID: 1115629941

In person: If and only if you do not have access to one of the above-mentioned technological means. You may then go to room 15.11 of the Montréal Courthouse located at:

1, Notre-Dame Street East, Montréal, Québec.

3. DEFAULT TO PARTICIPATE IN THE HEARING

TAKE NOTICE that in accordance with the Second Amended and Restated Initial Order, if you wish to contest this Application, you must serve responding materials or a notice stating the objection to the Application and the grounds for such objection in writing to the Petitioners and the Monitor, with a copy to all persons on the Service List, no later than **5:00 P.M. on September 26, 2023**, and participate at the hearing, failing which, judgment may be rendered during the presentation of the proceeding, without further notice or delay.

4. OBLIGATIONS

4.1 Duty of cooperation

TAKE NOTE that the parties are duty-bound to cooperate and, in particular, to keep one another informed at all times of the facts and particulars conducive to a fair debate and make sure that relevant evidence is preserved (s. 20, *Code of Civil Procedure*).

4.2 Dispute prevention and resolution processes

TAKE NOTE that the parties must consider private prevention and resolution processes before referring their dispute to the courts, which are namely negotiation, mediation or arbitration, for which the parties call on a third party (*Code of Civil Procedure*, art. 2).

DO GOVERN YOURSELF ACCORDINGLY.

MONTREAL, September 25, 2023

Osler, Hoskin & Harcourt LLP

Osler, Hoskin & Harcourt LLP
Attorneys for the Debtors / Petitioners

**CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL**

SUPERIOR COURT
(Commercial Division)

(Sitting as a court designated pursuant to the
Companies' Creditors Arrangement Act, RSC 1985,
c. C-36)

No.: 500-11-061483-224

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CALIFORNIA COMPRESSION, LLC

-and-

**FORMERXBC SYSTEMS USA, LLC (formerly
XEBEC SYSTEMS USA, LLC)**

Debtors / Petitioners

-and-

DELOITTE RESTRUCTURING INC.

Monitor

LIST OF EXHIBITS

EXHIBIT P-1: Draft Order

EXHIBIT P-2: Settlement Agreement, *under seal*

MONTRÉAL, September 25, 2023

Osler, Hoskin & Harcourt LLP

Osler, Hoskin & Harcourt LLP
Attorneys for Debtors / Petitioners

EXHIBIT P-1

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-11-061483-224

DATE: September 29, 2023

BEFORE THE HONOURABLE CHRISTIAN IMMER, J.S.C.

IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF:

**FORMERXBC INC. (FORMERLY XEBEC ADSORPTION INC.)
11941666 CANADA INC. (FORMERLY XEBEC RNG HOLDINGS INC.)
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FORMERXBC PENNSYLVANIA COMPANY (FORMERLY THE TITUS COMPANY)
FORMERXBC NOR CORPORATION (FORMERLY NORTEKBELAIR CORPORATION)
FORMERXBC FLOW SERVICES – WISCONSIN INC. (FORMERLY XBC FLOW
SERVICES – WISCONSIN INC.)
CALIFORNIA COMPRESSION, LLC
FORMERXBC SYSTEMS USA, LLC (FORMERLY XEBEC SYSTEMS USA, LLC)**
Debtors / Petitioners

and

DELOITTE RESTRUCTURING INC.
Monitor

Draft

**ORDER EXTENDING THE STAY OF PROCEEDINGS, APPROVING A SETTLEMENT
PAYMENT AND OTHER ANCILLARY RELIEF**

- [1] **CONSIDERING** the *Application for the Issuance of a Stay Extension and Settlement Payment Approval Order* (the “**Application**”) pursuant to the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended (“**CCAA**”) and the exhibits and the affidavit of Mr. Dimitrios Vounassis, filed in support thereof;
- [2] **CONSIDERING** the Eleventh Report of the Monitor dated September [●], 2023;
- [3] **CONSIDERING** the Settlement Agreement filed in support of the Application as Exhibit P-2 (the “**Settlement Agreement**”);
- [4] **CONSIDERING** the submissions of counsel;
- [5] **CONSIDERING** the testimony of the representative of the Monitor;
- [6] **GIVEN** the provisions of the CCAA;
- [7] **GIVEN** the Fifth Amended and Restated Initial Order rendered by the Court on March 27, 2023 (the “**Fifth ARIO**”);
- [8] **GIVEN** the Claims Procedure Order rendered by the Court on May 24, 2023 (the “**Claims Procedure Order**”);

THE COURT HEREBY:

- [9] **GRANTS** the Application.

STAY EXTENSION

- [10] **EXTENDS** the Stay Period (as defined in the Fifth ARIO) to and including December 15, 2023 at 11:59 p.m. (Montreal time).

SETTLEMENT PAYMENT APPROVAL

- [11] **ORDERS** that the parties to the Settlement Agreement are authorized and directed to comply with all of their obligations thereunder.

Draft

- [12] **ORDERS** that Monitor is hereby authorized and directed to make the payment contemplated in the Settlement Agreement in accordance with the terms therewith, out of the net transaction proceeds it holds in trust following transactions completed as part of the CCAA Proceedings (the “**Settlement Payment**”).
- [13] **ORDERS** that, notwithstanding:
- (a) the pendency of these CCAA proceedings;
 - (b) any applications for any bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) in respect of one or more of any of the Debtors / Petitioners or any of their respective predecessors, successors or heirs (collectively, the “**Identified Parties**”), and any bankruptcy order issued pursuant to any such applications; and
 - (c) any subsequent assignment in bankruptcy made in respect of any of the Identified Parties,

the payment of the Settlement Payment shall be binding on any trustee in bankruptcy that is now or that may be appointed in respect of any of the Identified Parties and shall not be void or voidable by creditors of any of the Identified Parties, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA, the CCAA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial laws.

CLARIFICATION OF THE CLAIMS PROCEDURE ORDER

- [14] **DECLARES** that paragraph 14 of the Claims Procedure Order does not apply to Scheduled Employees of FormerXBC Inc. and **DISPENSES** the Monitor from the obligation to send the Notice of Scheduled Employee’s Claim, together with a Claims Package (as such terms are defined in the Claims Procedure Order) to such employees.
- [15] **DECLARES** that, for any Scheduled Employee that has received or will have received a Notice of Scheduled Employee’s Claim after June 22nd, 2023, paragraph 14 of the Claims Procedure Order will apply, *mutatis mutandis*, thereby providing a thirty (30) day delay following the issuance of the Notice of Scheduled Employee’s Claim to send a Notice of Dispute, unless such Scheduled Employee has filed a Proof of Claim against the Debtors (as such terms are defined in the Claims Procedure Order).

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SEALING

[16] **ORDERS** that Exhibit P-2 to the Application shall be filed under seal and kept confidential until further order of this Court.

GENERAL

[17] **DECLARES** that this Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada.

[18] **REQUESTS** the aid and recognition of any Court, tribunal, regulatory or administrative body in any Province of Canada and any Canadian federal court or in the United States of America, including without limitation the United States Bankruptcy Court for the District of Delaware, and any court or administrative body elsewhere, to give effect to this Order and to assist the Petitioners, the Monitor and their respective agents in carrying out the terms of this Order.

[19] **ORDERS** the provisional execution of this Order notwithstanding appeal and without security.

[20] **THE WHOLE WITHOUT COSTS.**

Christian Immer, J.S.C.

MTRE SANDRA ABITAN
MTRE JULIEN MORISSETTE
MTRE ILIA KRAVTSOV
MTRE SOPHIE COURVILLE-LE BOUYONNEC
(OSLER HOSKIN & HARCOURT LLP)
COUNSEL TO THE PETITIONERS

Hearing date: September 29, 2023

Draft

EXHIBIT P-2
(under seal)

No: 500-11-061483-224

**SUPERIOR COURT
(Commercial Division)**

(Sitting as a court designated pursuant to the
Companies' Creditors Arrangement Act, RSC 1985, c.
C-36)

DISTRICT OF MONTRÉAL

**IN THE MATTER OF THE COMPROMISE OR
ARRANGEMENT OF:**

FORMERXBC INC. & AL

Debtors / Petitioners

and.

DELOITTE RESTRUCTURING INC.

Monitor

**APPLICATION FOR THE ISSUANCE OF A STAY
EXTENSION AND SETTLEMENT PAYMENT
APPROVAL ORDER, AFFIDAVIT, NOTICE OF
PRESENTATION, LIST OF EXHIBITS, EXHIBIT P-
1 (Sections 11 and 11.02 of the *Companies'*
Creditors Arrangement Act, RSC 1985, c C-36)**

ORIGINAL

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