

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

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

Debtors / Petitioners

-and-

**DELOITTE RESTRUCTURING INC.**

Monitor

**APPLICATION OF THE MONITOR FOR AUTHORIZATION TO  
MAKE PAYMENTS IN CONNECTION WITH THE THIRD DIP  
FACILITY AND THE THIRD DIP CHARGE**

**(Section 11 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  
MONITOR, DELOITTE RESTRUCTURING INC., RESPECTFULLY SUBMITS AS  
FOLLOWS:**

**I. INTRODUCTION**

1. By the present Application, Deloitte Restructuring Inc., in its capacity as Court-appointed monitor (the "**Monitor**") is seeking the issuance of an order substantially in the form of the draft order communicated herewith as **Exhibit M-1**, authorizing the Monitor to proceed with the payment of amounts owed under the Third DIP Facility secured by the Third DIP Charge, from sale proceeds in respect of the transactions executed as part of the SISF, and providing for the ensuing discharge of the Third DIP Charge.

## II. PROCEDURAL BACKGROUND

2. On September 29, 2022, at the request of the Debtors / Petitioners (the “**Petitioners**”), 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.
3. The FDIO, *inter alia*:
  - (a) appointed 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 pursuant to the ARIO (as defined below), (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.
4. 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 appended thereto as Schedule “A” (the “**Bidding Procedures**”), as appears from the Court record.
5. The Bidding Procedures Order also approved the engagement of National Bank Financial Inc. (“**NBF**”) to assist in the implementation of the SISP.
6. On October 7, 2022, at the Petitioners’ request, the Court issued an Order Extending the Stay until October 20, 2022, as appears from the Court record.
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*:
  - (a) extended the Stay until November 28, 2022;
  - (b) approved a key employee retention plan, a key vice-president retention plan and a key executive incentive plan (collectively, the “**KERPs**”) and

granted a Court-ordered charge to secure the payment owed to the key employees in accordance with the KERPs; and

- (c) approved the interim financing facility (the “**DIP Facility**”) provided by the National Bank of Canada (“**NBC**”) and Export Development Canada (“**EDC**”, and collectively with NBC, the “**Interim Lenders**”) in accordance with the Interim Financing Term Sheet filed under seal as Exhibit P-2A in support of the Application for the Issuance of an Amended and Restated Initial Order, and granted a Court-ordered charge (the “**DIP Charge**”) in an amount sufficient to cover the potential exposure of the Interim Lenders under the DIP Facility.
9. On November 28, 2022, at the Petitioners’ request, the Court issued an Order Extending the Stay of Proceedings and Granting Ancillary Relief, which extended the Stay for a third time until February 3, 2023, as appears from the Court record.
10. 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.
11. The Second ARIO, *inter alia*:
  - (a) extended the Stay until February 13, 2023; and
  - (b) increased the Administration Charge to a maximum amount of \$3,000,000.
12. On the same date, the Court also issued the Approval and Vesting Order in respect of the assets of Applied Compression Systems Ltd. (the “**ACS AVO**”), the whole as appears from the Court record.
13. On February 10, 2023, the Monitor issued its Sixth Report to the Court Submitted by Deloitte Restructuring Inc. in its Capacity as Monitor (the “**Sixth Report**”).
14. 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.
15. The Third ARIO, *inter alia*:
  - (a) extended the Stay until March 17, 2023;
  - (b) approved the Second DIP Facility provided by EDC;
  - (c) granted the Second DIP Charge; and
  - (d) provided for a reduction mechanism of the Administration Charge, to take effect upon issuance of the Monitor’s certificate confirming, at the earliest

of (i) the receipt of the Initial Advance of the Second DIP Facility or (ii) of the payments of the net proceeds of the transaction, as further detailed at paragraph 72 of the Third ARIO.

(As these terms are defined in the Third ARIO).

16. On the same date, the Court also issued the GNR AVO and the Sullair AVO, as defined and as further described below.
17. The Ivys AVO, dated February 17, 2023, was also subsequently issued by the Court.
18. On February 21, 2023, in accordance with the Third ARIO, the Monitor issued a certificate confirming that the initial advance of \$1,250,000 by EDC contemplated in the Third ARIO had been received and the Administration Charge was accordingly reduced to \$2,250,000.
19. 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.
20. The Fourth ARIO, inter alia:
  - (a) extended the Stay until May 5, 2023 (the "**Stay Period**");
  - (b) declared that the certificates of the Monitor to be issued and filed in the Court record pursuant to the Monitor Payments Order (as defined below) shall validly reduce and/or discharge the CCAA Charges, as applicable, without the necessity of any amendment to the Monitor Payments Order or of any other orders of the Court.
  - (c) approved an amendment to the list of participants in the KERPs.
21. 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.

22. On March 16, 2023, at the Monitor’s request, the Court issued an Order Authorizing the Monitor to Pay Certain Amounts Owed to Beneficiaries of CCAA Charges (the “**Monitor Payments Order**”), as appears from the Court record.

23. The Monitor Payments Order, *inter alia*:

- (a) authorized the Monitor to pay from the net proceeds of the previously closed transactions, amounts owed under the DIP Charge, Second DIP Charge and the Transaction DIP Charge, as and when they become due;
- (b) declared that upon making payments under the DIP Charge, Second DIP Charge and Transaction Charge, and receiving confirmation of the respective parties of the reimbursement of the obligations secured by these charges, the Monitor shall notify and file with the Court record a certificate confirming and effecting the cancellation and discharge of the DIP Charge, the Second DIP Charge and the Transaction Charge;
- (c) authorized the Monitor to pay from the net proceeds of the previously closed transactions, amounts owed under the KERP as and when they become due; and
- (d) declared that upon making payments under the KERP Charge, the Monitor shall notify and file with the Court record a certificate confirming and effecting the reduction and/or cancellation and discharge of the KERP Charge, as the case may be.

24. 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.

25. The Fifth ARIO, *inter alia*:

- (a) approved the Third DIP Facility provided to the Petitioners pursuant to a Third DIP Term Sheet (as defined in the Fifth ARIO) dated as of March 22, 2023, negotiated between the Petitioners and EDC pursuant to which EDC agreed to provide interim financing to the Petitioners, and granting a Third DIP Charge (as defined in the Fifth ARIO) in an amount sufficient to cover the potential exposure of EDC under the Third DIP Facility; and
- (b) declared that upon the disbursement of the initial advance of \$1,500,000 by EDC as contemplated in the Third DIP Term Sheet and the issuance by

the Monitor of a certificate confirming same, the Administration Charge shall be reduced to an amount equal to \$1,250,000 and upon the disbursement of the second advance of \$1,950,000 by EDC and the issuance by the Monitor of a certificate confirming same, further reduced to an amount equal to \$1,000,000.

26. The Fluid-Aire Transaction, Total Energy Transaction and EnergyLink Transaction closed on March 20, March 23 and April 5, 2023, respectively.
27. On April 13, 2023, in accordance with the Fifth ARIO, the Monitor issued a certificate confirming that the initial advance of \$1,500,000 by EDC contemplated in the Fifth ARIO had been received and the Administration Charge was accordingly reduced to \$1,250,000.
28. On April 28, 2023, the Petitioners issued a draw notice of the second advance of \$1,950,000 under the Third DIP Facility, and are expecting to receive disbursement of same prior to the hearing on this Application.

### III. SUMMARY OF TRANSACTIONS APPROVED BY THE COURT AS PART OF THE SISF, TO DATE

#### A. Approval and Vesting Orders issued by the Court

29. As indicated above, and as of the present date, the Court has issued the following Approval and Vesting Orders:
  - (a) the ACS AVO;
  - (b) the GNR AVO;
  - (c) the Sullair AVO;
  - (d) the Ivys AVO;
  - (e) the Approval, Vesting and Assignment Order with respect to the Fluid-Aire Transaction (the “**Fluid-Aire AVO**”);
  - (f) the Approval, Vesting and Assignment Order with respect to the Total Energy Transaction (the “**Total Energy AVO**”); and
  - (g) the Approval, Vesting and Assignment Order with respect to the EnergyLink Transaction (the “**EnergyLink AVO**”);(collectively, the “**AVOs**”).

**B. Closing of transactions and Monitor's certificates evidencing receipt of sale proceeds from purchasers**

30. Following the issuance by the Court of the AVOs, the parties to the transactions thereto, with the assistance of the Monitor, proceeded with the closing of such transactions.
31. As provided for under the AVOs, following the Monitor's receipt of confirmation from the purchaser and the seller(s) of the (i) execution of the purchase agreement, the (ii) payment of the purchase price, and the (iii) satisfaction and/or waiver of all conditions to closing of these transactions, the Monitor was to issue and notify a certificate of completion in respect of same.
32. Consequently, the Monitor issued the following certificates and filed same in the Court record, confirming the closing of the seven abovementioned transactions in accordance with the AVOs:
  - (a) February 7, 2023: Certificate of the Monitor in respect of the transaction relating to Applied Compression Systems Ltd.;
  - (b) February 15, 2023: Certificate of the Monitor in respect of the transaction relating to GNR LP;
  - (c) February 21, 2023: Certificate of the Monitor in respect of the transaction relating to CDA Systems, LLC and California Compression LLC;
  - (d) February 27, 2023: Certificate of the Monitor in respect of the transaction relating to of Xebec Adsorption Inc. and Compressed Air International Inc.;
  - (e) March 21, 2023: Certificate of the Monitor in respect of the Fluid-Aire Transaction;
  - (f) March 24, 2023: Certificate of the Monitor in respect of the Total Energy Transaction; and
  - (g) April 5, 2023: Certificate of the Monitor in respect of the EnergyLink Transaction.

as appears from copies of these certificates filed in the Court record.

33. Several other sale transactions that did not require specific court authorization, being under the threshold of \$750,000 per transaction and \$2,500,000 in the aggregate, as provided in the Fifth ARIO, have also been concluded, with the proceeds from same having been paid to the Monitor.
34. As a result of the closing of the transactions mentioned above and as will be further reported to the Court by the Monitor in its ninth report, the Monitor currently holds in its account the remaining net proceeds from such transactions, excluding sums paid

in accordance with orders issued by this Court, including in accordance with the Monitor Payments Order, as detailed below (the “**Net Proceeds**”).

**IV. THE MONITOR PAYMENTS ORDER ISSUED PREVIOUSLY BY THIS COURT AND THE RELIEF SOUGHT HEREIN**

35. On March 16, 2023, as indicated above, the Court issued the Monitor Payments Order.
36. Following the issuance of the Monitor Payments Order, the Monitor issued several certificates confirming and effecting the reduction and/or discharge of certain CCAA Charges, as evidenced by the following Monitor’s certificates, which were notified to the service list and filed in the Court record:
  - (a) March 17, 2023: Second Reduction of the Administration Charge to an amount of \$1,500,000;
  - (b) March 23, 2023: Cancellation and Discharge of the Transaction Charge;
  - (c) March 23, 2023: Cancellation and Discharge of the DIP Charge;
  - (d) March 23, 2023: Cancellation and Discharge of the Second DIP Charge;
  - (e) March 24, 2023: Reduction of the KERP Charge to an amount of \$400,000;
  - (f) April 13, 2023: Third Reduction of the Administration Charge to an amount of \$1,250,000;
  - (g) April 13, 2023: Second Reduction of the KERP Charge to an amount of \$100,000.

**A. Authorization to make payments in relation to the Third DIP Charge**

37. As at the present date, pursuant to the Fifth ARIO and the priority set forth at para. 75 therein, and following payments made in accordance with the Monitor Payments Order, subject to a further amended order issued by this Court, the CCAA Charges currently in place are the following:
  - (a) Administration Charge, in the amount of \$1,250,000 (which is expected to be reduced to \$1,000,000 upon the disbursement of the second advance of \$1,950,000 under the Third DIP Facility);
  - (b) D&O Charge, in the amount of \$3,700,000;
  - (c) Third DIP Charge, in the amount of \$4,100,000; and
  - (d) KERP Charge, in the amount of \$100,000.



38. Paragraph 30 of the Fifth ARIO provides that the Monitor shall file with the Court the Intercompany Transactions Report and the Proposed Allocation (as such terms are defined in the Fifth ARIO), prior to the distribution of the Net Proceeds, excluding for distribution or payment made in respect of amounts owing under the CCAA Charges, such as the payment sought to be made in reimbursement of the Third DIP Facility and the previous payments made to beneficiaries of the CCAA Charges in accordance with the orders of this Court.
39. As contemplated by the Fifth ARIO, these payments made in respect of amounts owing under CCAA Charges, including the one in reimbursement of the Third DIP Facility contemplated by the present Application, will form part and be taken into consideration in the Intercompany Transactions Report and the Proposed Allocation, which are under preparation by the Monitor and are expected to be filed in the coming weeks.
40. As part of the order sought herein, the Monitor thereby, seeks authorization to use a portion of the Net Proceeds to pay amounts owed by the Petitioners to EDC as beneficiary of the Third DIP Charge, as and when they become due.
41. The Monitor proposes to proceed with such payment, in accordance with the provisions of the attached Draft Order, and in a manner similar, *mutatis mutandis*, to the mechanism set forth by the Court pursuant to the Monitor Payments Order.
42. The order sought herein would allow for the use of the Net Proceeds in order to pay the amounts owing to EDC as beneficiary of the Third DIP Charge, so as to (i) cease incurring interest and fees in connection with the Third DIP Facility, (ii) avoid the necessity to extend the maturity date of the Third DIP Facility, and (iii) eliminate the Third DIP Charge upon payment of the obligations guaranteed by said charge.
43. The balance of Net Proceeds after the payment of the Third DIP Facility in accordance with the order sought herein will remain in trust with the Monitor until further order of the Court.

## **B. Effect of the order sought herein on the CCAA Charges**

### **i. Cancellation and discharge of the Third DIP Charge**

44. Upon reimbursement of the Third DIP Facility, and the receipt by the Monitor of a confirmation of same by the Interim Lenders, the Monitor will issue a certificate which will confirm and effect the discharge and cancellation of the Third DIP Charge.

## **C. Execution Notwithstanding Appeal**

45. The Monitor respectfully submits that it is justified to seek provisional execution of the order to be issued on the present Application notwithstanding appeal,

considering that a stay of execution thereof would be detrimental to the restructuring process.

46. For the reasons set forth above, the Monitor respectfully submits 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 of the Monitor for Authorization to Make Payments in Connection with the Third DIP Facility and Third DIP Charge* (the “**Application**”);

**ISSUE** an order substantially in the form of the draft order communicated in support of the Application as **Exhibit M-1**;

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

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

MONTRÉAL, April 28, 2023



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**McCarthy Tétrault LLP**

Mtre. Jocelyn T. Perreault

Mtre. Marc-Étienne Boucher

Attorneys for the Monitor

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Our file: 115185-565089

**SOLEMN DECLARATION**

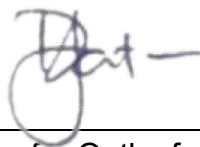
I the undersigned, Jean-François Nadon, CPA, CA, CIRP, LIT, exercising my profession at Deloitte Restructuring Inc., 1190, Avenue des Canadiens-de-Montréal, Suite 500, Montreal, QC, Canada H3B 0M7, solemnly declares the following:

1. I am a Partner at Deloitte Restructuring Inc. and a duly authorized representative of the Monitor for the purposes hereof and in said capacity;
2. I have taken cognizance of the attached *Application of the Monitor for Authorization to Make Payments in Connection with the Third DIP Facility and the Third DIP Charge* (the “**Application**”).
3. All of the facts alleged in the Application of which I have personal knowledge are true.
4. Where the facts alleged in the Application have been obtained from others, I believe them to be true.

AND I HAVE SIGNED:

  
\_\_\_\_\_  
Jean-François Nadon

SOLEMNLY DECLARED BEFORE ME BY  
VIRTUAL MEANS IN MONTRÉAL,  
QUÉBEC, ON APRIL 28, 2023.





\_\_\_\_\_  
Commissioner for Oaths for the Province of  
Québec

**NOTICE OF PRESENTATION  
COMMERCIAL DIVISION**

**TO: SERVICE LIST**

**1. PRESENTATION OF THE PROCEEDING**

**TAKE NOTE** that the *Application of the Monitor for Authorization to Make Payments in Connection with the Third DIP Facility and Third DIP Charge* will be presented for adjudication before the Commercial Division of the Superior Court of Québec, in Courtroom **15.04** of the Montréal Courthouse during the virtual calling of the roll on **May 5, 2023, at 9:30 a.m.**

**2. HOW TO JOIN THE VIRTUAL CALLING OF THE ROLL**

The contact information to join the virtual calling of the roll in room 16.04 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: 516 211 860#

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

**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 15.09 of the Montréal Courthouse located at:

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

### **3. DEFAULT TO PARTICIPATE IN THE VIRTUAL CALLING OF THE ROLL**

**TAKE NOTICE** that in accordance with the Third 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 March 13, 2023**, and participate at the virtual calling of the roll, 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.**

MONTRÉAL, April 28, 2023



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**McCarthy Tétraut LLP**  
Attorneys for the Monitor

**CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL**

**SUPERIOR COURT**  
(Commercial Division)

(Sitting as a court designated pursuant to the  
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No.: 500-11-061483-224

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

Debtors / Petitioners

-and-

**DELOITTE RESTRUCTURING INC.**

Monitor

<b>LIST OF EXHIBITS</b>
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**Exhibit M-1:** Draft Order

MONTRÉAL, April 28, 2023



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**McCarthy Tétrault LLP**  
Attorneys for the Monitor

No: 500-11-061483-224

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**SUPERIOR COURT  
(Commercial Division)**

(Sitting as a court designated pursuant to the  
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**DISTRICT OF MONTRÉAL**

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***APPLICATION OF THE MONITOR FOR  
AUTHORIZATION TO MAKE PAYMENTS IN  
CONNECTION WITH THE THIRD DIP  
FACILITY AND THIRD DIP CHARGE,  
SOLEMN DECLARATION, NOTICE OF  
PRESENTATION, LIST OF EXHIBITS,  
EXHIBIT M-1 (Section 11 of the *Companies'*  
*Creditors Arrangement Act*, RSC 1985, c C-  
36)***

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**ORIGINAL**

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**McCarthy Tétrault LLP**

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Our file: 115185-565089