

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

In re:

FORMERXBC HOLDING USA INC.  
(f/k/a XEBEC HOLDING USA INC.), *et al.*,

Debtor in a foreign proceeding.<sup>1</sup>

Chapter 15

Case No. 22-10934 (KBO)

Jointly Administered

**DECLARATION OF SANDRA ABITAN, AS CANADIAN COUNSEL TO THE DEBTORS, IN SUPPORT OF FOREIGN REPRESENTATIVE’S MOTION FOR ENTRY OF AN ORDER (I) RECOGNIZING AND ENFORCING CCAA ORDER APPROVING ALLOCATION METHOD; AND (II) GRANTING RELATED RELIEF**

I, Sandra Abitan, pursuant to 28 U.S.C. § 1746, hereby declare under penalty of perjury under the laws of the United States, as follows:

1. I am the Managing Partner in the Montréal office of Osler, Hoskin & Harcourt LLP (“**Osler**”). My practice is dedicated to restructuring and insolvency matters. I regularly advise and represent debtors, court-appointed officers, secured lenders, unsecured creditors and distressed asset purchasers, including in proceedings under the Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). I have been retained as Canadian counsel to the above-captioned debtors (the “**Debtors**”), in a proceeding (the “**Canadian Proceeding**”) commenced under the CCAA and pending before the Superior Court of Québec (Commercial

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<sup>1</sup> The Debtors in the chapter 15 proceedings and the last four digits of their federal tax identification numbers are: FormerXBC Inc. (f/k/a Xebec Adsorption Inc.) (0228), 11941666 Canada Inc. (f/k/a Xebec RNG Holdings Inc.) (N/A), Applied Compression Systems Ltd. (N/A), 1224933 Ontario Inc. (f/k/a Compressed Air International Inc.) (N/A), FormerXBC Holding USA Inc. (f/k/a Xebec Holding USA Inc.) (8495), Enerphase Industrial Solutions Inc. (1979), CDA Systems, LLC (6293), FormerXBC Adsorption USA Inc. (f/k/a Xebec Adsorption USA Inc.) (0821), FormerXBC Pennsylvania Company (f/k/a The Titus Company) (9757), FormerXBC NOR Corporation (f/k/a Nortekbelair Corporation) (1897), FormerXBC Flow Services – Wisconsin Inc. (f/k/a XBC Flow Services – Wisconsin Inc.) (7493), California Compression, LLC (4752), and FormerXBC Systems USA, LLC (f/k/a Xebec Systems USA LLC) (4156). The location of the Debtors’ corporate headquarters and the Debtors’ foreign representative is: 730 Industriel Boulevard, Blainville, Quebec, J7C 3V4, Canada.

Division) in the District of Montréal (the “**Canadian Court**”). I am authorized to provide this declaration on behalf of the Foreign Representative and the Debtors.

2. I am, together with other partners and associates at my firm, counsel to the Debtors in connection with the Canadian Proceeding pending before the Canadian Court. Osler is the Debtors’ legal advisor with respect to its current restructuring process. The Debtors have also been advised on matters of United States law by McDonald Hopkins LLC and by Bielli & Klauder, LLC, as Delaware Counsel.

3. I submit this declaration (“**Declaration**”) in support of *Foreign Representative’s Motion for Entry of an Order (I) Recognizing and Enforcing CCAA Order Approving Allocation Method; and (II) Granting Related Relief* [Docket No. \_\_\_] (the “**Motion**”).<sup>2</sup>

4. In preparing this Declaration, I reviewed: (a) the Motion; (b) other relevant filings in these chapter 15 cases and in the Canadian Proceeding; and (c) the relevant provisions of the CCAA as they relate to cross-border insolvencies.

5. All facts set forth in this Declaration are based on: (a) my knowledge; (b) my review of relevant documents; (c) my opinion based upon my experience and knowledge of the Debtors’ operations; or (d) information provided to me by the Debtors or their advisors. If called upon to testify, I could and would testify to the facts set forth herein.

6. This Declaration contains both statements of legal opinion and statements of fact. Where the matters stated in this Declaration are statements of legal opinion, such statements are based upon my experience as a practicing lawyer admitted and licensed to practice in the Province of Québec, Canada.

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<sup>2</sup> All capitalized terms not defined herein shall be given their same meaning as in the Motion.

## BACKGROUND

7. Pursuant to the Initial CCAA Order, the Canadian Court, among other things: (a) entered the Canadian Stay; (b) appointed the Monitor in the Canadian Proceeding; (c) declared that Québec is the “centre of main interest” of the Debtors, and, accordingly, authorized the Debtors to apply to any other court, tribunal, regulatory, administrative, or other body, wherever located, for orders to recognize and assist in carrying out the terms of the Initial CCAA Order and any subsequent orders rendered by the Canadian Court in the context of the Canadian Proceeding, including orders under chapter 15 of the Bankruptcy Code.

8. On May 24, 2023, the Canadian Court entered an order extending the Canadian Stay until September 29, 2023.

9. During these chapter 15 cases, the Debtors have sold substantially all of their assets to non-debtor third party purchasers (the “**Sale Transactions**”).

10. The Sale Transactions include, amongst others: (i) sales of certain of the Debtors’ United States assets previously approved by this Court (*see* Docket Nos. 102, 145-147); (ii) other sales of the Debtors’ assets not located in the United States; (iii) certain other sale transactions that did not require specific Canadian Court authorization, due to the sale proceeds of less than CAD\$750,000.00 per transaction or CAD\$2,500,000.00 in the aggregate; and (iv) two additional sales of Debtor FormerXBC Systems USA, LLC’s assets that the Foreign Representative anticipates closing in the near term.

11. During the pendency of the Canadian Proceeding and these chapter 15 cases, the Foreign Representative (i.e. the parent company FormerXBC Inc.) assumed a vast majority of the Debtors’ restructuring costs, including, among others, professional fee payments, sale advisor fees, KERP payments, and DIP financing interest and fees (collectively, the “**Restructuring Costs**”).

12. Since the commencement of these proceedings, the Debtors, the Monitor, and the secured creditors have recognized and agreed that, due to the required netting of the Debtors' post-petition intercompany transactions and the sharing of the Restructuring Costs, secured debt reimbursements, and DIP financing receipts and payments, an eventual allocation of the proceeds received and of the disbursements made relating to the restructuring proceedings would be required, and this had been contemplated by the orders rendered from time to time as part of the Canadian Proceeding.

13. The Allocation Method and Allocation Method Report are the result of a rigorous analysis and significant efforts deployed by the Monitor, with the assistance of the Debtors' management and accounting teams.

14. Based on my experience, I believe that recognition and enforcement of the Allocation Order will provide stakeholders with a clear understanding of the methodology which will be used by the Monitor to determine the sums that will ultimately be available for distribution by each estate.

15. Upon completion of the claims process approved by the Canadian Court, as recognized and enforced by this Court (*see* Docket No. 166), it is anticipated that one or more plan(s) of arrangement will be filed for entities where Export Development Canada ("**EDC**") does not hold any security. The decision to file a plan(s) of arrangement for entities where EDC does hold security will be made following an evaluation of the claims process, the Allocation Method, and EDC's security.

16. Based on my experience, I believe that recognition and approval of the Allocation Method will allow the Debtors to progress toward one or more plan(s) of arrangement and ultimately distributions to the Debtors' creditors.

17. The CCAA generally requires that each interested party has notice of proceedings and an opportunity to be heard by a neutral court that contends with each party's arguments. The Allocation Order was granted after, and provided for procedures furthering, such compliance.

18. As required by Canadian law, creditors and other parties in interest were given notice of the hearing on the Canadian Application and a full and fair opportunity to be heard and present objections to the other relief granted therein. The Canadian Application was uncontested and, after a hearing, the Canadian Court entered the Allocation Order.

**[Signature Page Follows]**

Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury that, based upon my knowledge, information, and belief as set forth herein, the foregoing is true and correct.

Dated: July 5, 2023

/s/ Sandra Abitan  
Sandra Abitan  
Canadian Counsel to the Debtors