

**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 JEAN-FRANÇOIS NADON, CPA, CIRP, LIT, ON BEHALF  
OF DELOITTE RESTRUCTURING INC., IN ITS CAPACITY AS COURT-  
APPOINTED MONITOR IN THE CANADIAN PROCEEDING, 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, Jean-François Nadon, CPA, CIRP, LIT, 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 practicing my profession in the Montréal office’s restructuring services department of Deloitte Restructuring Inc. and am a duly authorized representative of Deloitte Restructuring Inc. (the “**Monitor**”). The Monitor has acted as the monitor of the above-captioned debtors (the “**Debtors**”), in a proceeding (the “**Canadian Proceeding**”) commenced under the Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), and pending before the Superior Court of Québec (Commercial Division) in the District of Montréal (the “**Canadian Court**”). I am authorized to provide this declaration on behalf of the Monitor.

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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.

2. 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>

3. In preparing this Declaration, I reviewed the Motion and other relevant filings in these chapter 15 cases and in the Canadian Proceeding.

4. 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.

### **BACKGROUND**

5. 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.

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

7. The Monitor currently holds the net proceeds (collectively, the “**Net Proceeds**”) from such transactions, excluding certain sums that were paid in accordance with previous orders issued by the Canadian Court.

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

8. Upon the closing of the final Sale Transactions, the Debtors' initial restructuring objectives will have been attained, and the ultimate outcome of the Canadian Proceeding will involve the distribution of the Net Proceeds to creditors as part of one or more plan(s) of arrangement or otherwise.

9. Prior to determining how the Net Proceeds should be distributed, the Monitor must allocate the Net Proceeds among the Debtors' estates on a sale-by-basis.

10. Prior to proposing any plan(s) of arrangement or making distributions, the Monitor must reconcile the Debtors' post-petition intercompany transactions (collectively, the "**Intercompany Transactions**").

11. Prior to selling their assets, from a financial perspective, the Debtors operated *de facto* on a consolidated basis and relied on regular Intercompany Transactions. For example, certain Debtor entities operated as "cost centers" assuming a large portion of corporate expenses, In addition, certain intercompany monetary transfers and inventory sales transactions took place between the Debtors.

12. 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**").

13. 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 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.

14. On June 16, 2023, the Monitor filed that certain *Application of the Monitor for the Approval of a Proposed Allocation Method* (the “**Canadian Application**”) in the Canadian Proceeding. Pursuant to the Canadian Application, the Monitor sought, among other things, approval of the Allocation Method with respect to: (a) the allocation of the Net Proceeds; (b) the adjustments for Intercompany Transactions; and (c) the allocation of the Debtors’ Restructuring Costs, secured debt reimbursements, and DIP financing receipts and payments.

15. On June 29, 2023, after an uncontested hearing to consider the Canadian Application, the Canadian Court issued the Allocation Order, pursuant to which the Canadian Court, among other things, approved the Allocation Method, as set forth in detail in the Allocation Method Report and as summarized below:

- a. Net Proceeds. Net Proceeds from the Sale Transactions will be attributed to the concerned Debtor entity and form the base, or the “top line” of the Allocation Method. In sale transactions involving a single Debtor, the total Net Proceeds from the sale will be allocated to that applicable Debtor. In a sale transaction involving multiple Debtors, the allocation will be based on the purchase price allocation included in the transaction documents.
- b. Intercompany Transactions. The Monitor will account for: (i) monetary transfers made between the Debtors since the Petition Date, (ii) sales and purchases made between the Debtors since the Petition Date, for which no payment was made from the purchaser Debtor to the vendor Debtor, and (iii) the allocation/recharge of corporate overhead and management costs incurred by certain of the Debtors. The net amounts of such Intercompany Transactions (calculated on a per entity basis) will thereafter be subtracted or added from/to the “top line.” In order to properly allocate corporate overhead expenses between the Debtors, the Monitor will allocate to each Debtor that benefitted from the services provided and costs incurred, based on the historical average monthly payroll expenses, sales, and other expenses, as further detailed in the Allocation Method Report.
- c. Restructuring Costs, secured debt reimbursements, and DIP financing receipts and payments. The Monitor will allocate Restructuring Costs, DIP financing receipts and repayments, and secured debt reimbursements between the Debtors,

whether already paid or expected to be paid in connection with the Canadian Proceeding. The Allocation Method consists of a “pro rata result-based approach,” which allocates the amounts between the Debtors based on a *pro rata* of each Debtors’ respective proceeds from the transactions. With respect to the secured debt reimbursements owed to prepetition and DIP lender National Bank of Canada (“NBC”), the allocation will be made only between Debtors in respect of which NBC holds first-ranking security and on a *pro rata* basis using the proceeds from transactions. With respect to the secured debt reimbursements owed to prepetition and DIP lender Export Development Canada (“EDC”), the allocation will be made between those Debtors who are guarantors of the EDC debt and who granted security to EDC, in first or second rank, on a *pro rata* basis using the proceeds from transactions. Any resulting shortfall will be reallocated between the Debtors with sufficient funds available.

**[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/ Jean-François Nadon  
Jean-François Nadon, CPA, CIRP, LIT  
Deloitte Restructuring Inc., in its capacity as  
Monitor in the Canadian Proceeding