

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re:

XEBEC HOLDING USA INC., *et al.*,

Debtors in a foreign proceeding.¹

Chapter 15

Case No. 22- 10934 (KBO)

Jointly Administered

**DECLARATION OF JULIEN MORISSETTE, AS CANADIAN COUNSEL TO
THE DEBTORS, IN SUPPORT OF FOREIGN REPRESENTATIVE’S MOTIONS:
(I) SEEKING RECOGNITION AND ENFORCEMENT OF CCAA VESTING
ORDERS; (II) APPROVING THE SALES OF CERTAIN OF THE DEBTORS’
ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, AND ENCUMBRANCES;
(III) APPROVING THE ASSUMPTION AND ASSIGNMENT OF
CERTAIN CONTRACTS; AND (IV) GRANTING RELATED RELIEF**

I, Julien Morissette, 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 a Partner in the Montréal office of Osler, Hoskin & Harcourt LLP. My practice is dedicated to litigation, 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 Canadian proceedings (the “**Canadian Proceeding**”) commenced under 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 Foreign Representative.

¹ 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), Xebec Holding USA Inc. (8495), Enerphase Industrial Solutions Inc. (1979), CDA Systems, LLC (6293), Xebec Adsorption USA, Inc. (0821), The Titus Company (9757), Nortekbelair Corporation (1897), XBC Flow Services – Wisconsin Inc. (7493), California Compression, LLC (4752), and 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**”)² in support of the following motions filed concurrently herewith:

- (a) *Motion for Order (I) Recognizing and Enforcing the CCAA Vesting Order; (II) Approving the Sale of Certain of the Debtor Xebec Systems USA LLC’s Assets Free and Clear of Liens, Claims, and Encumbrances; (III) Approving the Assumption and Assignment of Certain Contracts; and (IV) Granted Related Relief* (the “**EnergyLink Sale Motion**”), which seeks approval of the sale transaction between Xebec Systems USA LLC and EnergyLink US Inc. (the “**EnergyLink Transaction**”);
- (b) *Motion for Order (I) Recognizing and Enforcing the CCAA Vesting Order; (II) Approving the Sale of Certain of the Debtor The Titus Company’s Assets Free and Clear of Liens, Claims, and Encumbrances; (III) Approving the Assumption and Assignment of Certain Contracts; and (IV) Granted Related Relief* (the “**Fluid-Aire Sale Motion**”), which seeks approval of the sale transaction between The Titus Company and FAD Pennsylvania Inc. (the “**Fluid-Aire Transaction**”); and
- (c) *Motion for Order (I) Recognizing and Enforcing the CCAA Vesting Order; (II) Approving the Sale of Certain of the Debtor XBC Flow Services – Wisconsin Inc.’s Assets Free and Clear of Liens, Claims, and Encumbrances; (III) Approving the Assumption and Assignment of Certain Contracts; and (IV) Granted Related Relief* (the “**Total Energy Sale Motion**” and, collectively with the EnergyLink Sale Motion and the Fluid-Aire Sale Motion, the “**Sale Motions**”), which seeks approval of the sale transaction between XBC Flow Services – Wisconsin Inc. and Total Energy Systems, LLC (the “**Total Energy Transaction**” and, collectively with the EnergyLink Transaction and the Fluid-Aire Transaction, the “**Sale Transactions**”).

3. In preparing this Declaration, I reviewed the (a) Sale Motions; (b) the proposed orders with respect to each of the Sale Motions; (c) the Canadian Application and proposed Vesting Orders (as each term is defined below); (d) the purchase agreements and other documents relating to the Sale Transactions; (e) other relevant filings in these chapter 15 cases and in the Canadian Proceeding; and (f) the relevant provisions of the CCAA as they relate to the sale of assets and cross-border insolvencies or these chapter 15 cases.

² Capitalized but undefined terms herein shall have the meanings set forth in the Sale Motions.

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 Canadian law and 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.

5. This Declaration contains statements of legal opinion or 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.

A. The CCAA Proceeding

6. On September 29, 2022, pursuant to an application made by the Debtors in the Canadian Proceeding, the Canadian Court entered the Initial CCAA Order and the CCAA Bidding Procedures Order.

7. Pursuant to the Initial CCAA Order, the Canadian Court, among other things: (a) ordered a broad stay of proceedings in respect of the Debtors and their directors and officers, which has since been extended until March 17, 2023, subject to further extension (the “**Canadian Stay**”); (b) appointed Deloitte Restructuring Inc. (the “**Monitor**”) as 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. Pursuant to the CCAA Bidding Procedures Order, the Canadian Court, among other things: (a) approved the Debtors' proposed Sale and Investment Solicitation Process (the "SISP"); and (b) approved the engagement of National Bank Financial Inc. (the "**Financial Advisor**") to serve as the Debtors' financial advisor in the context of the sale process.

9. The Debtors, with the assistance of the Monitor and the Financial Advisor, and under the oversight of the Canadian Court, conducted a sale process in accordance with the SISP. The SISP established a clear and open process for the solicitation, receipt, and evaluation of bids on a timeline that provided parties with sufficient time and information to submit competitive bids. In addition to seeking bids to purchase substantially all of the Debtors' assets as a going concern, the SISP also authorized the Debtors to sell certain of their assets as part of separate one-off sale transactions.

10. At the commencement of the sale process, the Financial Advisor distributed teasers to 479 potential targets, including potential investors and strategic acquirers. A confidential virtual data room was made available to potential targets who executed non-disclosure agreements. Initially, 67 parties were deemed "Phase 1" qualified bidders, of which 32 submitted non-binding letters of intent. The Debtors, in consultation with the Monitor and the Financial Advisor, determined that 19 Phase 1 qualified bidders were "Phase 2" qualified bidders, and invited them to participate in Phase 2 of the SISP.

11. On or about January 16, 2023, certain Phase 2 qualified bidders submitted binding offers, which, after further negotiations between the relevant parties, resulted in three transactions, including the sale to Sullair LLC.

12. Subsequently, in an effort to maximize the value of the Debtors' remaining assets and avoid a forced liquidation, the Financial Advisor approached parties that had previously

expressed an interest in the remaining assets and gave them a deadline of February 27, 2023, to submit final offers for the remaining assets. A number of final offers were subsequently received, and the Debtors, the Financial Advisors, and the Monitor, together with their respective advisors, conducted numerous meetings with the potentially interested parties and further negotiated the terms of proposed transactions. These arms'-length negotiations ultimately led to, among other transactions, the Debtors' agreement to enter into the Sale Transactions.

13. On March 14, 2023, the Debtors filed that certain Amended Application for the Issuance of a Fourth Amended and Restated Initial Order, Approval and Vesting Orders, a Wage Earner Protection Program Act Order and Ancillary Relief (the "**Canadian Application**") in the Canadian Proceeding. Pursuant to the Canadian Application, the Debtors seek, among other things: (a) entry of orders approving the respective Sale Transactions (individually, the "**EnergyLink Vesting Order**," the "**Fluid-Aire Vesting Order**," and the "**Total Energy Vesting Order**" and, cumulatively, the "**Vesting Orders**"); and (b) an extension of the Canadian Stay to May 5, 2023. A hearing on the Canadian Application is scheduled for March 16, 2023, at which time the Debtors will request entry of the Vesting Orders.

14. During the Canadian Proceeding, the Debtors have complied with all notice and service requirements under the CCAA, including notice of the SISP, the Canadian Application, and the Sale Transactions.

15. The Debtors have obtained the requisite consent from their prepetition secured lenders and the DIP Lenders to sell the assets pursuant to the Sale Transactions, free and clear of their liens, claims, interests, or encumbrances. If the Canadian Court enters the Vesting Orders, due to the Debtor-sellers' liquidity constraints, the Debtors anticipate closing each of the Sale Transactions prior to a hearing on the Sale Motions. However, as noted below, the parties to the

Sale Transactions heavily negotiated this issue and agreed that the Monitor would maintain the sale proceeds from each Sale Transaction in escrow pending approval of the Sale Motions.

B. The EnergyLink Transaction

16. The EnergyLink Transaction requires entry of the EnergyLink Vesting Order as a condition precedent to closing. Due to Xebec Systems' liquidity constraints, the parties have agreed to close the EnergyLink Transaction on or before March 31, 2023. Notwithstanding that the Debtors anticipate closing the EnergyLink Transaction prior to a hearing on the EnergyLink Sale Motion, after extensive negotiations, the parties have agreed that the Monitor will hold the proceeds from the sale in escrow pending entry of the EnergyLink Sale and Recognition Order. Accordingly, entry of the EnergyLink Sale and Recognition Order is a required post-closing deliverable that will enable the Monitor to release the proceeds from the sale from escrow.

17. Prior to entering into the EnergyLink Purchase Agreement and filing the Canadian Application, the Debtors had exhausted all reasonable options for attracting bids for the assets subject to the sale that are higher and better than EnergyLink's offer. More specifically, the Debtors and the Financial Advisor have been engaged in the SISF for nearly six months and were unable to attract any higher or better offers, whether through the sale of the Debtors' entire business as a going concern, or through the sale of only Xebec Systems' assets. Any additional marketing and sale process is unlikely to result in obtaining higher and better offers and likely would only result in additional expense and further deterioration to the Debtors' business. If the Debtors cannot consummate the EnergyLink Transaction, they will be forced to liquidated Xebec Systems' assets. Therefore, given Xebec Systems' financial circumstances, the proposed private sale is the only viable option.

C. The Fluid-Aire Transaction

18. The Fluid-Aire Transaction requires entry of the Fluid-Aire Vesting Order as a condition precedent to closing. Due to Titus's liquidity constraints, the parties have agreed to close the Fluid-Aire Transaction within five business days of entry of the Fluid-Aire Vesting Order. Notwithstanding that the Debtors anticipate closing the Fluid-Aire Transaction prior to a hearing on the Fluid-Aire Sale Motion, after extensive negotiations, the parties have agreed that the Monitor will hold the proceeds from the sale in escrow pending entry of the Fluid-Aire Sale and Recognition Order. Accordingly, entry of the Fluid-Aire Sale and Recognition Order is a required post-closing deliverable that will enable the Monitor to release the proceeds from the sale from escrow.

19. Prior to entering into the Fluid-Aire Purchase Agreement and filing the Canadian Application, the Debtors have exhausted all reasonable options for attracting bids for the assets subject to the sale that are higher and better than Fluid-Aire's offer. More specifically, the Debtors and the Financial Advisor have been engaged in the SISP for nearly six months and were unable to attract any higher or better offers, whether through the sale of the Debtors' entire business as a going concern, or through the sale of only Titus's assets. Any additional marketing and sale process is unlikely to result in obtaining higher and better offers and likely would only result in additional expense and further deterioration to the Debtors' business. If the Debtors cannot consummate the Fluid-Air Transaction, they will be forced to liquidated Titus's assets. Therefore, given Titus's financial circumstances, the proposed private sale is the only viable option.

D. The Total Energy Transaction

20. The Total Energy Transaction requires entry of the Total Energy Vesting Order as a condition precedent to closing. Due to XBC's liquidity constraints, the parties have agreed to close the Total Energy Transaction within five business days of entry of the Total Energy Vesting Order. Notwithstanding the fact that the Debtors anticipate closing the Total Energy Transaction prior to a hearing on the Total Energy Sale Motion, after extensive negotiations, the parties have agreed that the Monitor will hold the proceeds from the sale in escrow pending entry of the Total Energy Sale and Recognition Order. Accordingly, entry of the Total Energy Sale and Recognition Order is a required post-closing deliverable that will enable the Monitor to release the proceeds from the sale from escrow.

21. Prior to entering into the Total Energy Purchase Agreement and filing the Canadian Application, the Debtors have exhausted all reasonable options for attracting bids for the assets subject to the sale that are higher and better than Total Energy's offer. More specifically, the Debtors and the Financial Advisor have been engaged in the SISP for nearly six months and were unable to attract any higher or better offers, whether through the sale of the Debtors' entire business as a going concern, or through the sale of only XBC's assets. Any additional marketing and sale process is unlikely to result in obtaining higher and better offers and likely would only result in additional expense and further deterioration to the Debtors' business. If the Debtors cannot consummate the Total Energy Transaction, they will be forced to liquidate XBC's assets. Therefore, given XBC's financial circumstances, the proposed private sale is the only viable option.

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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: March 15, 2023

/s/ *Julien Morissette*
Julien Morissette
Canadian Counsel to the Debtors