

**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 MOTION FOR
ENTRY OF ORDER (I) RECOGNIZING AND ENFORCING FIFTH AMENDED AND
RESTATED CCAA ORDER; AND (II) AUTHORIZING THIRD DIP FINANCING**

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 of 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), 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), The Titus Company (9757), 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 the *Foreign Representative’s Motion for Entry of Order (I) Recognizing and Enforcing Fifth Amended and Restated CCAA Order; and (II) Authorizing Third DIP Financing* (the “**Third DIP Motion**”), filed concurrently herewith. Capitalized but undefined terms shall have the meanings set forth in the Third DIP Motion.

3. In preparing this Declaration, I reviewed the (a) Third DIP Motion; (b) the Canadian Application; (c) other relevant filings in these chapter 15 cases and in the Canadian Proceeding; and (d) the relevant provisions of the CCAA as they relate to debtor-in-possession financing and cross-border insolvencies or these chapter 15 cases.

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.

6. On September 29, 2022, pursuant to an application made by the Debtors in the Canadian Proceeding, the Canadian Court issued that certain First Day Initial Order (the “**Initial CCAA Order**”). 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 (the “**Canadian Stay**”); (b) appointed Deloitte Restructuring Inc. as monitor (the “**Monitor**”) in the Canadian Proceeding; (c) declared that Québec is the “centre of main interest” of the

Debtors, and (d) 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.

7. Also on September 29, 2022, the Canadian Court entered the Bidding Procedures Order, pursuant to which 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.

8. 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. 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.

9. On October 20, 2022, the Canadian Court issued an Amended and Restated Initial Order, pursuant to which, the Canadian Court, among other things: (a) authorized the Debtors to obtain debtor-in-possession financing in the aggregate amount not to exceed CAD\$3,000,000.00 ("**Original DIP Loan**"); and (b) granted a charge and security jointly to National Bank of Canada and Export Development Canada ("**EDC**"), in the amount of CAD\$3,600,000.00 ("**Original DIP Charge**").

10. On February 13, 2023, the Canadian Court issued a Third Amended and Restated Initial Order, pursuant to which, the Canadian Court, among other things: (a) authorized the

Debtors to obtain debtor-in-possession financing in the aggregate amount not to exceed CAD\$2,500,000.00 (“**Second DIP Loan**”); and (b) granted a charge and security to EDC, in the amount of CAD\$3,000,000.00 (“**Second DIP Charge**”).

11. On March 16, 2023, the Canadian Court issued a Fourth Amended and Restated Initial Order, pursuant to which, the Canadian Court, among other things, extended the Canadian Stay to an including May 5, 2023.

12. On March 16, 2023, the Canadian Court issued an Order Authorizing the Monitor to Pay Certain Amounts Owed to Beneficiaries of CCAA Charges (the “**Monitor Payments Order**”), which, among other things, authorized the Monitor to pay all amounts due and owing under the Original DIP Charge and the Second DIP Charge from the net proceeds of the previously closed sale transactions.

13. On March 22, 2023, the Debtors filed that certain *Application for the Issuance of a Fifth Amended and Restated Initial Order (Interim Financing)* (the “**Canadian Application**”) in the Canadian Proceeding, pursuant to which the Debtors seek, among other things: (a) authority to obtain the Third DIP Loan in the aggregate amount not to exceed CAD\$3,450,000.00, payable in two tranches; and (b) approval of the grant of the Third DIP Charge to the Lender in the maximum amount of CAD\$4,100,000.00, junior only to the Administration Charge and the D&O Charge. A copy of the Canadian Application is attached to the Third DIP Motion as Exhibit B.

14. The Administration Charge was established to provide security for the payment of professional fees and disbursements incurred by the Monitor, the Monitor’s legal counsel, and the Debtors’ legal counsel. The Administration Charge currently equals CAD\$1,500,000.00.

When the Third DIP Loan is fully funded, the Administration Charge will be reduced to CAD\$1,000,000.00.

15. The D&O Charge was established to provide security for the Debtors' obligation to indemnify their directors and officers for certain obligations and liabilities that such directors and officers may incur. The D&O Charge currently equals CAD\$3,700,000.00.

16. On proper notice by the Debtors under the CCAA, the Canadian Court has set a hearing for March 27, 2023, to consider the Canadian Application, including whether to authorize the Debtors to enter into the Third DIP Facility and grant the Third DIP Charge. In accordance with Canadian law and practice, the Debtors filed the Third DIP Loan Term Sheet under seal with the Canadian Court.

17. The Lender has committed to fund the Third DIP Loan in the amount of CAD\$3,450,000.00, payable in two tranches of CAD\$1,500,000.00 and CAD\$1,950,000.00. The Third DIP Loan will be secured by the Third DIP Charge, which will be junior only to the Administration Charge and the D&O Charge (after payment of amounts secured by the Original DIP Charge, the Second DIP Charge, and the Transaction Charge (as defined in the Third Amended and Restated CCAA Order), each payment as authorized by the Monitor Payments Order). The proceeds of the Third DIP Facility will be used to fund the Debtors' restructuring efforts, including to continue the SISP and complete the transactions resulting therefrom. One of the conditions precedent to the Lender's funding of the second tranche of the Third DIP Loan is entry of the Order by this Court.

[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: March 23, 2023

/s/ Julien Morissette

Julien Morissette

Canadian Counsel to the Debtors