

**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.¹

Chapter 15

Case No. 22-10934 (KBO)

Jointly Administered

**DECLARATION OF JULIEN MORISSETTE,
IN SUPPORT OF FOREIGN REPRESENTATIVE’S MOTION
FOR ORDER (I) RECOGNIZING AND ENFORCING CCAA VESTING
ORDER; (II) APPROVING THE SALE OF CERTAIN OF THE DEBTORS’
ASSETS FREE AND CLEAR OF ANY AND ALL LIENS, CLAIMS, AND
ENCUMBRANCES; AND (III) 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

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), 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.

2. I submit this declaration (“**Declaration**”) in support of the *Motion for Order (I) Recognizing and Enforcing the CCAA Vesting Order; (II) Approving the Sale of Certain of the Debtors’ Assets Free and Clear of Liens, Claims, and Encumbrances; and (III) Granting Related Relief* (the “**Sale Motion**”),² which seeks approval of the BioStream Transaction.

3. In preparing this Declaration, I reviewed the (a) Sale Motion; (b) the proposed order with respect to the Sale Motion; (c) the BioStream Vesting Order; (d) the Purchase Agreement, the Binding LOI, and other documents relating to the BioStream Transaction; (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.

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.

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

A. The CCAA Proceeding

6. 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.

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

8. Pursuant to the CCAA Bidding Procedures Order, the Canadian Court, among other things: (a) approved the SISP; and (b) approved the engagement of 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. The sale proceeds received as a result of the sale process enabled the Debtors to repay their debtor-in-possession loans in full. Currently, the Debtors are continuing to wind down their operations, in consultation with the Monitor, and have received Canadian Court approval of a Claims Process.

B. The BioStream Transaction

12. Following the closing of a separate sale transaction with Ivys that did not include assets located in the United States, Ivys expressed an interest in purchasing the Purchased Assets from FormerXBC. The Debtors and the Monitor subsequently engaged in discussion with Ivys regarding such a transaction, which culminated in FormerXBC and Ivys executing the Purchase Agreement, pursuant to which Ivys agreed in principle to purchase the Purchased Assets.

13. On May 19, 2023, the Debtors filed the Canadian Application in the Canadian Proceeding. A copy of the Canadian Application is attached to the Sale Motion as Exhibit C. Pursuant to the Canadian Application, the Debtors sought, among other things, approval of the BioStream Transaction.

14. On May 24, 2023, the Canadian Court entered the BioStream Vesting Order, pursuant to which the Canadian Court, among other things, approved the BioStream Transaction and the execution of the Binding LOI, and authorized the Debtors and Ivys to enter into the Purchase Agreement. A copy of the Purchase Agreement is attached to the Sale Motion as Exhibit A. A copy of the BioStream Vesting Order is attached to the motion as Exhibit D. On May 26,

2023, the Canadian Court entered the Reasons, pursuant to which the Canadian Court explained, among other things, its reasons for issuing the BioStream Vesting Order. A copy of the Reasons is attached to the Sale Motion as Exhibit E.

15. The BioStream Transaction requires entry of the Proposed Order as a condition precedent to closing.

16. During the Canadian Proceeding, the Debtors have complied with all notice and service requirements under the CCAA, including notice of the SISP and the BioStream Transaction. The Debtors have provided notice of the proposed BioStream Transaction to all lienholders, in accordance with the service requirements of the CCAA.

17. Prior to entering into the 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 Ivys' offer. The Debtors and the Financial Advisor were engaged in the SISP for six months, followed by additional sale efforts by the Debtors, and have been unable to attract any higher and better offers for the Purchased Assets, whether through the sale of the Debtors' entire business as a going concern, or through the sale of only FormerXBC's assets.

18. The Debtors have obtained the requisite consent from their prepetition secured lenders to sell the Purchased Assets free and clear of their liens, claims, interests, or encumbrances.

[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: September 8, 2023

/s/ Julien Morissette

Julien Morissette

Canadian Counsel to the Debtors