

**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)

Joint Administration Requested

**DECLARATION OF SANDRA ABITAN AS CANADIAN COUNSEL TO THE
DEBTORS IN SUPPORT OF MOTION FOR RECOGNITION OF FOREIGN MAIN
PROCEEDING AND REQUEST FOR CERTAIN 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 of 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 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 Debtors.

2. I submit this declaration (“**Declaration**”) in support of the *Motion for Recognition of Foreign Main Proceeding and Request for Certain Related Relief* (the “**Recognition Motion**”)

¹ The Debtors in the chapter 15 proceedings and the last four digits of their federal tax identification numbers are: Xebec Adsorption Inc. (0228), Xebec RNG Holdings Inc. (N/A), Applied Compression Systems Ltd. (N/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: 700-1130 Sherbrooke Street West, Montréal, Québec H3A 2M8.

and the Debtors' voluntary chapter 15 petitions filed in the above-captioned cases (the "**Chapter 15 Petitions**"), each filed contemporaneously herewith. The Recognition Motion seeks entry of an order recognizing the Canadian Proceeding as a "foreign main proceeding" pursuant to chapter 15 of title 11 of the United States Code (the "**Bankruptcy Code**") and certain related relief.

3. In preparing this Declaration, I reviewed the (a) Recognition Motion; (b) the Chapter 15 Petitions; and (c) the relevant provisions of the CCAA as they relate to cross-border insolvencies.

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.

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.

PERSONAL BACKGROUND AND QUALIFICATIONS

6. I earned a civil law degree from the Université de Montréal and was admitted as an attorney in Québec in 1990. I started my practice in the Montréal office of Mendelsohn Rosentzveig Shacter, where I worked as an associate and later as a partner, before joining Osler as a partner in 2002.

7. Osler is one of Canada's preeminent business law firms and is frequently involved in complex multi-jurisdictional insolvency cases, including cross-border plans of arrangement and distressed asset sales. I have more than thirty years of restructuring experience, having

notably represented debtors in several large scale cross-border cases including Homburg Invest, Mega Brands, BCBG MaxAzria, Crabtree & Evelyn and Mexx.

8. I am, together with other partners and associates at my firm, counsel to the Debtors in connection with their 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.

STATEMENTS OF CANADIAN LAW AND PRACTICE

9. The CCAA is a Federal Act that allows financially troubled companies the opportunity to restructure their business and financial affairs. The process typically culminates in a formal "plan of arrangement" ("**Plan of Arrangement**"), although the CCAA may also be relied upon to facilitate a going concern sale or an orderly wind down of a debtor's operations. The CCAA presents an opportunity for companies to avoid bankruptcy liquidation while affording creditors the ability to receive some form of payment for amounts owed to them by the debtor.

10. The CCAA is restricted to larger companies, as a company must owe creditors in excess of CAD\$5 million to qualify to file proceedings under the CCAA, alone or along with filing affiliates. When a CCAA filing takes place with respect to a group of companies, it is common for all of the companies in the corporate group to file within the same proceeding, including any foreign subsidiaries of the group, as may be required.

11. The CCAA process begins in the designated court of the relevant Canadian Province where a debtor's head office, assets or management is located, with a petition by the debtor company for the issuance of an initial order under the CCAA. Pursuant to amendments to the CCAA that recently came into force, the court will issue an initial order giving the company

up to an initial ten days of protection from its creditors to allow for the initiation of a restructuring (similar to the Bankruptcy Code's automatic stay). The court can extend the stay of proceedings upon further application to the court by the company. This extension is typically granted where the company can demonstrate that it is likely that it will file a Plan of Arrangement, or that it is otherwise in key stakeholders' interest, and where an extension of the stay is not prejudicial to the creditors as a whole. There is no time limit on how long the stay can be extended.

12. As is the case in the United States chapter 11 process, the company will usually continue to operate during the CCAA proceedings, although it may also avail itself of restructuring measures (such as the disclaimer of onerous executory contracts) with a view to enhance the prospects of bringing forward a successful Plan of Arrangement or other restructuring transaction.

13. The CCAA proceedings are supervised by a monitor (the "**Monitor**"), an independent licensed insolvency trustee, who is appointed by the Canadian court to monitor the company's ongoing operations and, where applicable, process claims and assist with the filing of and voting in respect of a the Plan of Arrangement. The Monitor acts as the "eyes and ears of the court." His or her duties include monitoring the business, supporting the company's financial planning, reporting to the Canadian court on any major events that might impact the company's viability, assisting the company in the preparation of a Plan of Arrangement or of another restructuring transaction, notifying the creditors of any meetings, and tabulating the votes at the meetings. Where applicable, the Monitor also prepares a report on the Plan of Arrangement that is usually included in the mailing of the Plan of Arrangement.

14. The Plan of Arrangement is one of the possible outcomes of a process under the CCAA. A variety of other outcomes are possible. These include notably a sale of assets or shares, or other restructuring transaction, effected with Court approval but in the absence of a Plan of Arrangement.

15. A Plan of Arrangement is a proposal that is presented by the company to its creditors outlining the terms by which the company intends to settle and release claims owing by the company at the time of the initial filing of the CCAA proceeding and, where applicable, resulting from the disclaimer of agreements in accordance with the CCAA. Such claims will be filed with the Monitor as part of a Court-ordered claims process. It is most common for a Plan of Arrangement to present a compromise to unsecured creditors while the claims of secured creditors are negotiated separately. For the Plan of Arrangement to be binding on each class of creditors, a majority of the voting proven creditors, by number, together with two-thirds of the voting proven creditors, by dollar value, must vote in favor. Court approval is also required, after which the company implements the Plan of Arrangement, upon which the company emerges from the CCAA process, free and clear of all claims that have been released by the Plan of Arrangement.

THE CANADIAN PROCEEDING

16. On September 29, 2022, the Debtors commenced the Canadian Proceeding under the CCAA by filing an Application for the Issuance of a First Day Initial Order, a Deemed Extension of the Stay Period, and a Bidding Procedures Order (the “**Initial Canadian Application**”). A true and correct copy of the Initial Canadian Application is attached to the *Motion for Recognition of Foreign Main Proceeding and Request for Certain Related Relief* filed contemporaneously herewith as **Exhibit C**.

17. On September 29, 2022, the Canadian Court entered an Initial Order pursuant to the CCAA (the “**Initial Order**”), pursuant to which, inter alia, Deloitte Restructuring Inc. (the “**Monitor**”) was appointed to act as monitor of the Debtors and a comprehensive stay of proceedings was ordered to protect the Debtors, their property, and their directors and officers. A true and correct copy of the Initial Order is attached to the *Motion for Recognition of Foreign Main Proceeding and Request for Certain Related Relief* filed contemporaneously herewith as **Exhibit D**.

18. The Initial Order also declared that the center of main interest (COMI) of the Debtors is located in Montreal, Québec, Canada and provides that the Debtors are authorized:

to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement this Order and any subsequent orders of this Court and, without limitation to the foregoing, any orders under Chapter 15 of the U.S. Bankruptcy Code, including an order for recognition of these CCAA proceedings as “Foreign Main Proceedings” in the United States of America pursuant to Chapter 15 of the U.S. Bankruptcy Code, for which Xebec Adsorption Inc., shall be the foreign representative of the Petitioners. All courts and administrative bodies of all such jurisdictions are hereby respectively requested to make such orders and to provide such assistance to the Petitioners and the Monitor as may be deemed necessary or appropriate for that purpose.

Initial Order at ¶ 66.

19. The Initial Order requires the Monitor to “within four (4) business days after the date of this Order (A) post on the Monitor’s website . . . a notice containing the information prescribed under the CCAA, (B) make this Order publicly available in the manner prescribed under the CCAA, (C) send, in the prescribed manner, a notice to all known creditors having a claim against the Petitioners of more than \$1,000, advising them that this Order is publicly available.” Initial Order at ¶ 40(a). The Monitor is also required to “prepare a list showing the names and addresses of such creditors and the estimated amounts of their respective claims, and

make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.” *Id.*

20. The Initial Order further authorizes the Debtors, among other provisions, to “file with [the Canadian] Court and to submit to their creditors one or more Plans in accordance with the CCAA.” Initial Order at ¶ 15.

21. In addition, the Initial Order provides, among other things:

- a stay of proceedings against the Debtors, and their directors and officers, until October 7, 2022 (which stay may be extended);
- that counterparties who have verbal or written agreements with the Debtors must continue providing services to the Debtors and are forbidden from discontinuing those services until allowed by the Canadian Court;
- for the appointment of the Monitor to, among other responsibilities: (a) continue providing notice to creditors; (b) assist the Debtors in dealing with their creditors; (c) review the Debtors’ business and assess opportunities for cost reduction, revenue enhancement, and operating efficiencies; and (d) otherwise assist the Debtors with the restructuring.

Initial Order at ¶¶ 15, 16, 30, and 40.

[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 30, 2022

S. Abitan

Sandra Abitan
Canadian Counsel to the Debtors