

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	
)	Chapter 15
ABENGOA, S.A., <i>et al.</i> , ¹)	
)	Case No. 16-10754 ()
)	
Debtors in a Foreign Proceeding.)	(Joint Administration Requested)
)	

EMERGENCY MOTION FOR PROVISIONAL RELIEF

Christopher Morris, in his capacity as the duly authorized foreign representative (the “**Foreign Representative**”) of foreign debtors, Abengoa, S.A. and its related subsidiaries and affiliates (the “**Foreign Debtors**”) in a foreign proceeding (the “**Spanish Proceeding**”) pending in the Mercantile Court in Seville, Spain (the “**Spanish Court**”), by and through his undersigned counsel, respectfully submits this *Emergency Motion for Provisional Relief* (the “**Emergency Motion**”) and *Memorandum of Law in Support of Emergency Motion for Provision Relief* (the “**Memorandum of Law**”), seeking entry of an order under section 1519 of title 11 of the United States Code (the “**Bankruptcy Code**”) granting the provisional relief requested in this Emergency Motion in aid of the Spanish Proceeding and such other and further relief as the Court finds appropriate under the circumstances. In support of this Emergency Motion, the Foreign Representative respectfully states as follows:

¹ The last four digits of the Employer Identification Number or Spanish Tax Number, as appropriate, for each debtor follow in parentheses: Abengoa, S.A. (7844); Abeinsa Asset Management, S.L. (formerly Abener Inversiones, S.L.) (4597); Abeinsa Inversiones Latam, S.L. (formerly Dimange Inversiones 2009, S.L.) (9680); Abeinsa, Ingeniería Y Construcción Industrial, S.A. (1355); Abencor Suministros S.A. (9461); Negocios Industriales Y Comerciales, S.A. (5977); Abener Energía, S.A. (1759); Abengoa Bioenergía, S.A. (3249); Abeinsa Infraestructuras Medio Ambiente, S.A. (formerly Befesa Agua) (0792); Abengoa Finance, S.A. (0266); Abengoa Concessions, S.L. (8044); Abengoa Solar España, S.A. (formerly Solúcar Energía, S.A.) (5314); Abengoa Solar New Technologies S.A. (formerly Solúcar, Investigación y Desarrollo (Solúcar, R&D), S.A.) (2116); Abentel Telecomunicaciones, S.A. (0178); Asa Desulfuración, S.A. (formerly Befesa Desulfuración, S.A.) (0823); Bioetanol Galicia, S.A. (2146); Ecoagrícola, S.A. (1986); Instalaciones Inabensa, S.A. (2466); Europea de Construcciones Metálicas, S.A. (1303); Siema Technologies, S.L. (formerly Telvent Corporation) (3340); Abengoa Water, S.L. (formerly Befesa Water Projects S.L) (6958); Abengoa Solar S.A. (formerly Solúcar Solar) (9982); Abengoa Greenfield S.A.U. (3677); Abengoa Greenbridge, S.A.U. (8452).

I.
JURISDICTION AND VENUE

1. This Court has jurisdiction over these cases under sections 1334 and 157 of Title 28 of the United States Code and the “Amended Standing Order of Reference” of the United States District Court for the District of Delaware (Sleet, C.J.), dated February 29, 2012.

2. The Foreign Representative has properly commenced these cases under sections 1504 and 1515 of the Bankruptcy Code. This Petition is a core proceeding under section 157(b)(2)(P) of Title 28 of the United States Code.

3. The Foreign Debtors have their principal assets in this district by virtue of Abengoa, S.A.’s direct or indirect ownership in numerous Delaware companies formed as corporations, limited liability companies, and general partnerships. Additionally, the Foreign Debtors have deposited a retainer with DLA Piper LLP (US) in which each has a pro rata ownership interest. These funds are held in a Wells Fargo bank account in the state of Delaware in accordance with Delaware Rule of Professional Responsibility 1.5. (*See* Martin Decl. ¶ 4.) Additionally, certain of the Foreign Debtors are parties to or guarantors of bonds issued under contracts and agreements governed by U.S. law. Abengoa, S.A. is also a party to various pending legal actions in different states around the country.

4. Venue for these cases is proper in this Court under sections 1410(1) and 1410(3) of Title 28 of the United States Code because the principal assets of the Foreign Debtors in the United States are located in this judicial district. Additionally, venue in this district is consistent with the interests of justice and the convenience of the parties, having regard to the relief sought by the Foreign Representative.

5. The statutory predicates for the relief requested in this Emergency Motion are sections 105(a), 306, 362, 1510, 1519, 1521, and 1522 of the Bankruptcy Code and Rule 65 of the Federal Rules of Civil Procedure as required by section 1519(e) of the Bankruptcy Code.

II.
FACTUAL BACKGROUND

6. This Emergency Motion is brought in connection with the *Verified Petition Under Chapter 15 for Order and Final Decree Granting Recognition of Foreign Main Proceedings and Permanent Injunctive and Other Related Relief* (the “**Petition**”) filed today. The Foreign Representative incorporates by reference the Petition, the *Declaration of R. Craig Martin Regarding Determination of Foreign Law* (“**Martin Declaration**”), and the *Declaration of Borja Fernández de Troconiz in Support of Verified Petition Under Chapter 15 for Order and Final Decree Granting Recognition of Foreign Main Proceedings and Permanent Injunctive and Other Related Relief* (the “**Fernández Declaration**”), as if fully set forth herein.

III.
RELIEF REQUESTED

7. The Foreign Debtors have been and remain fully committed to working collaboratively with their creditors to achieve a comprehensive restructuring. In order to further develop, finalize, and implement the proposed global restructuring, the Foreign Debtors seek to implement a temporary moratorium, similar to the one provided in the Spanish Proceeding, against creditor action to provide the stability and breathing room necessary for the Foreign Debtors to negotiate and finalize the restructuring of their debt and preserve operations for the benefit of all stakeholders. Thus, by this Emergency Motion, the Foreign Representative seeks the entry of an order substantially in the form attached hereto as **Exhibit A**, granting provisional relief under section 1519 of the Bankruptcy Code (collectively, the “**Provisional Relief**”):

a. Staying execution against the Foreign Debtors' assets, including, without limitation, staying all persons and entities from: (i) commencing or continuing any legal proceeding (including, without limitation, any judicial, quasi-judicial, administrative or regulatory proceeding, or arbitration) or action against the Foreign Debtors, their assets located in the United States, or the proceeds of those assets; (ii) enforcing any judicial, quasi-judicial, administrative or regulatory judgment, assessment or order or arbitration award against the Foreign Debtors; (iii) commencing or continuing any legal proceeding or action to create, perfect, or enforce any lien, setoff, or other claim against the Foreign Debtors or against any of their assets located in the United States or the proceeds of those assets; and (iv) exercising any control over the Foreign Debtors' assets located in the United States except as authorized by the Foreign Debtor in writing;

b. Entrusting the administration or realization of all or part of the Foreign Debtors' assets located in the United States to the Foreign Debtors in order to protect and preserve the value of such assets;

c. Suspending the right of any person or entity other than the Foreign Debtors to transfer, encumber, or otherwise dispose of any assets of the Foreign Debtors; and

d. Granting the Foreign Representative the rights and protections to which he is entitled under chapter 15 of the Bankruptcy Code, including, but not limited to, the protections limiting the jurisdiction of United States Courts over the Foreign Representative in accordance with Bankruptcy Code §§ 306 and 1510.

8. The Foreign Representative has commenced these chapter 15 cases, seeking aid in respect of the Spanish Proceeding. The Spanish Proceeding stops creditor action in Spain; however, non-Spanish parties could foreseeably take action against any of the Foreign Debtors

(and could continue litigation pending against Abengoa, S.A. in the United States) in such a way that would undermine the Standstill Agreement and the Spanish Proceeding. If that occurred, the Foreign Debtors would suffer irreparable harm. Until the recognition hearing and entry of an order recognizing the Spanish Proceeding as a foreign main proceeding, the requested relief is required to ensure the fair, efficient, and centralized administration of the Foreign Debtors' assets and prevent individual creditors and other persons and entities from depleting or impairing the assets of the Foreign Debtors and thwarting the global restructuring efforts undertaken by numerous parties in interest to the detriment of all the parties in interest. Moreover, the requested provisional relief is necessary to realize the intent and objectives of chapter 15 in these cases.

9. The entry of provisional relief is urgently needed to ensure that non-signatories to the Standstill Agreement do not seek to disrupt the Foreign Debtors' restructuring efforts by commencing litigation and will not cause harm to any of the parties against whom provisional relief is sought because, among other reasons, the principal purpose of the Spanish Proceeding is to impose a temporary moratorium on creditor action. Accordingly, the Foreign Representative believes the relief sought in this Emergency Motion is critical to align these chapter 15 cases with the Spanish Proceeding and avoid a gap in protection arising from the twenty-one-day notice period for the Petition required by the Bankruptcy Rules. Additionally, the provisional relief will enable the Foreign Debtors to protect their assets. Public policy does not prohibit the entry of provisional relief and instead suggests that such provisional relief should be granted. *See, e.g.*, 11 U.S.C. § 1501(a).

10. Based on the foregoing, the Foreign Representative, hereby petitions the Court for entry of an Order Granting Provisional Relief substantially in the form attached as Exhibit A to this Emergency Motion.

IV.
BASIS FOR RELIEF

11. This court is empowered to grant provisional relief to the Foreign Representative under section 1519 of the Bankruptcy Code where, as here, the requested relief is urgently required to protect the assets of the foreign debtors and the interests of their creditors.

12. Section 1519(a)(1) of the Bankruptcy Code authorizes the Court to grant provisional relief staying execution against the Foreign Debtors' assets.

13. Section 1519(a)(2) of the Bankruptcy Code authorizes the Court to entrust to the Foreign Debtors the administration or realization of the Foreign Debtors' assets located in the United States.

14. Section 1519(a)(3) of the Bankruptcy Code permits this Court to grant relief suspending the right of persons or entities other than the Foreign Debtors to transfer, encumber, or otherwise dispose of any assets of the Foreign Debtors through incorporation of section 1521(a)(3) of the Bankruptcy Code. Section 1519(a)(3) of the Bankruptcy Code further authorizes this Court to stay commencement or continuation of actions against the Foreign Debtors and their assets within the territorial jurisdiction of the United States through incorporation of section 1521(a) of the Bankruptcy Code.

15. The Court is further authorized to grant the relief requested by this Emergency Motion by section 105(a) of the Bankruptcy Code, made applicable in Chapter 15 cases by section 103(a) of the Bankruptcy Code, as such relief is both appropriate and necessary to realize the intent and objectives of chapter 15 in these cases. *See* 11 U.S.C § 1501(a). Among other

things, sections 105(a) and 1519(a)(3) of the Bankruptcy Code, through its incorporation of section 1521(a)(7), permit the Court to grant the Foreign Representative any relief available to a trustee in a case pending under the Bankruptcy Code, with limited exceptions not applicable here. Among such appropriate and necessary relief is assurance that the Foreign Representative is subject to the limited jurisdiction protections under sections 306 and 1510 of the Bankruptcy Code.

16. Finally, the Court may grant the Provisional Relief requested because, although not required, the operative facts underpinning the requested relief comport with the standards, procedures, and limitations applicable to an injunction in the Third Circuit, as required by section 1519(e) of the Bankruptcy Code, and evidence that the interests of the creditors and other interested entities, including the Foreign Debtors, are sufficiently protected, as required by section 1522(a) of the Bankruptcy Code. Among other things,

- a. The Foreign Representative has a reasonable likelihood of success on the merits because the Spanish Proceeding is entitled to recognition as a foreign main proceeding.
- b. The Foreign Debtors and their creditors will be irreparably harmed if the Provisional Relief is denied. In contrast, granting the Provisional Relief will not result in harm to nonmoving parties because their remedial action is or will be stayed by the Spanish Court. Accordingly, the balance of hardships decidedly weighs in favor of granting the Provisional Relief.
- c. Granting the Provisional Relief serves the public interest because it furthers the purpose of chapter 15 of the Bankruptcy Code.

V.
NOTICE

17. Notice of this Motion has been provided to the following parties or their counsel: (a) the Office of the United States Trustee, (b) all affiliates of the Foreign Debtors that have bankruptcy proceedings pending in the United States as of the commencement of these chapter 15 cases, (c) all parties to any litigation in which any of the Foreign Debtors is a party and that is pending in the United States as of the commencement of these chapter 15 cases, and (d) all parties against whom provisional relief is sought as set forth in the statements of Foreign Representative required by Federal Rule of Bankruptcy Procedure 1007(a)(4)(B), attached to the official form petitions [D.I.1]. The Foreign Representative respectfully requests that, in light of the nature of the relief requested, no other or further notice of the Emergency Motion need be given.

VI.
CONCLUSION

WHEREFORE, the Foreign Representative respectfully requests that this Court

(1) enter the proposed order attached to this Emergency Motion as Exhibit A, granting the Provisional Relief; and

(2) grant such other and further relief as this Court determines is fair and appropriate under the circumstances.

Dated: Wilmington, Delaware
March 28, 2016

Respectfully submitted,

DLA PIPER LLP (US)

By: /s/ R. Craig Martin
R. Craig Martin, Esq. (Bar No. 5032)
1201 North Market Street, 21st Floor
Wilmington, DE 19801
Telephone: 302.468.5700
Facsimile: 302. 778.7834
e-mail: craig.martin@dlapiper.com

- and -

Richard A. Chesley, Esq.
Oksana Koltko Rosaluk, Esq.
203 North LaSalle Street, Suite 1900
Chicago, IL 60601-1293
Phone: 312.368.4000
Fax: 312.236.7516
e-mail: Richard.Chesley@dlapiper.com
Oksana.KoltkoRosaluk@dlapiper.com

*Attorneys for Foreign Representative of Foreign
Debtors, Abengoa, S.A. and its related subsidiary
petitioners*

EXHIBIT A

Proposed Order Granting Provisional Relief

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	
)	Chapter 15
ABENGOA, S.A., <i>et al.</i> , ¹)	
)	Case No. 16-_____ ()
)	
Debtors in a Foreign Proceeding.)	(Joint Administration Requested)
)	

ORDER GRANTING INTERIM PROVISIONAL RELIEF

Upon consideration of the *Emergency Motion for Provisional Relief* (the “**Emergency Motion**”) filed by Christopher Morris, in his capacity as the duly authorized foreign representative (the “**Foreign Representative**”) of the foreign debtors, Abengoa, S.A. and its related subsidiaries and affiliates (the “**Foreign Debtors**”), in a foreign proceeding (the “**Spanish Proceeding**”) pending in the Commercial Court in Seville, Spain (the “**Spanish Court**”), the *Memorandum of Law in Support of the Emergency Motion for Provisional Relief* (the “**Memorandum of Law**”), *Verified Petition Under Chapter 15 for Order and Final Decree Granting Recognition of Foreign Main Proceedings and Permanent Injunctive and Other Related Relief* (the “**Petition**”) and all documents submitted in support of the Petition (collectively, the “**Provisional Relief Documents**”), the *Declaration of R. Craig Martin Regarding Determination of Foreign Law* (“**Martin Declaration**”), and the *Declaration of*

¹ The last four digits of the Employer Identification Number or Spanish Tax Number, as appropriate, for each debtor follow in parentheses: Abengoa, S.A. (7844); Abeinsa Asset Management, S.L. (formerly Abener Inversiones, S.L.) (4597); Abeinsa Inversiones Latam, S.L. (formerly Dimange Inversiones 2009, S.L.) (9680); Abeinsa, Ingeniería Y Construcción Industrial, S.A. (1355); Abencor Suministros S.A. (9461); Nicsa, Negocios Industriales Y Comerciales, S.A. (5977); Abener Energía, S.A. (1759); Abengoa Bioenergía, S.A. (3249); Abeinsa Infraestructuras Medio Ambiente, S.A. (formerly Befesa Agua) (0792); Abengoa Finance, S.A. (0266); Abengoa Concessions, S.L. (8044); Abengoa Solar España, S.A. (formerly Solúcar Energía, S.A.) (5314); Abengoa Solar New Technologies S.A. (formerly Solúcar, Investigación y Desarrollo (Solúcar, R&D), S.A.) (2116); Abentel Telecomunicaciones, S.A. (0178); Asa Desulfuración, S.A. (formerly Befesa Desulfuración, S.A.) (0823); Bioetanol Galicia, S.A. (2146); Ecoagrícola, S.A. (1986); Instalaciones Inabensa, S.A. (2466); Eucomsa, Europea de Construcciones Metálicas, S.A. (1303); Siema Technologies, S.L. (formerly Telvent Corporation) (3340); Abengoa Water, S.L. (formerly Befesa Water Projects S.L) (6958); Abengoa Solar S.A. (formerly Solúcar Solar) (9982); Abengoa Greenfield S.A.U. (3677); Abengoa Greenbridge, S.A.U. (8452).

Borja Fernández De Troconiz Regarding Spanish Insolvency Law (the “**Fernández Declaration**”), the Court finds and concludes as follows:

a. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated as of February 29, 2012.

b. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P).

c. Venue is proper in this District pursuant to 28 U.S.C. § 1410(1) and (3).

d. These chapter 15 cases have been properly commenced by a duly appointed foreign representative.

e. This Court has the authority to grant the provisional relief requested by the Emergency Motion (the “**Provisional Relief**”) pursuant to 11 U.S.C. §§ 105(a), 306, 362, 1510, 1519, 1521, and 1522.

f. The Provisional Relief is urgently needed to protect the assets of the Foreign Debtors and the interests of their creditors as required by 11 U.S.C. § 1519(a).

g. The interests of the Foreign Debtors’ creditors and other interested entities, including the Foreign Debtors, are sufficiently protected in the Court’s grant of the Provisional Relief, as required by 11 U.S.C. § 1522(a).

h. The Provisional Relief is warranted under 11 U.S.C. § 1519(e).

i. The Foreign Representative has demonstrated a substantial likelihood that the Spanish Proceeding is entitled to recognition as a foreign main proceeding and that the Provisional Relief will be granted on a final basis upon such recognition as a foreign main proceeding;

j. Irreparable harm will result to the Foreign Debtors, their creditors, and their estates if the Provisional Relief is not granted on an expedited basis. Pending the chapter 15 recognition hearing, the Provisional Relief is required to ensure the fair, efficient, and centralized administration of the Foreign Debtors' assets and prevent individual creditors and other persons and entities from depleting or impairing the assets of the Foreign Debtors to the detriment of their creditor body as a whole.

k. Granting the Provisional Relief will preserve the *status quo* and not result in significant harm to nonmoving parties. Any harm that conceivably could result to nonmoving parties by granting the Provisional Relief is less than the irreparable harm that would result to the Foreign Debtors and their creditors if the Provisional Relief is not granted.

l. Granting the Provisional Relief will serve the public interest in that, among other things, the Provisional Relief is necessary to realize the intent and objectives of chapter 15 in this case pursuant to 11 U.S.C. §1501(a).

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The Provisional Relief is GRANTED effective immediately on an interim basis pending final hearing on recognition of the Spanish Proceeding as a foreign main proceeding as set forth below;

2. Pending disposition of the Petition and the request for the recognition of the Spanish Proceeding as a foreign main proceeding, under sections 1519(a)(3) and 1521(a)(7) of the Bankruptcy Code, section 362 of the Bankruptcy Code is applicable to the Foreign Debtors and the property of the Foreign Debtors within the territorial jurisdiction of the United States in these chapter 15 cases. Accordingly, no person or entity may: (a) commence or continue any legal proceeding (including, without limitation, any judicial, quasi-judicial, administrative or

regulatory proceeding, or arbitration) or action against the Foreign Debtors, their assets located in the United States, or the proceeds thereof; (b) enforce any judicial, quasi-judicial, administrative or regulatory judgment, assessment or order, or arbitration award against the Foreign Debtors; (c) commence or continue any legal proceeding or action to create, perfect, or enforce any lien, setoff, or other claim against the Foreign Debtors or against any of their assets located in the United States or the proceeds thereof; or (d) exercise any control over the Foreign Debtors' assets located in the United States except as authorized by the Foreign Debtors in writing;

3. Due to the nature of the relief requested, no security is required under Rule 65(c) of the Federal Rules of Civil Procedure, as made applicable in these chapter 15 cases by Rule 7065 of the Federal Rules of Bankruptcy Procedure, if applicable, or otherwise;

4. The Foreign Debtors are entrusted with the administration and realization of all of the Foreign Debtors' assets located in the United States and is established as the exclusive authority to administer the Foreign Debtors' assets and affairs in the United States;

5. The Foreign Representative is hereby granted on an interim basis, subject to a final hearing, the rights, powers, protections, privileges, and immunities of a trustee in a bankruptcy in the United States during the Provisional Relief period available pursuant to section 1519(a) of the Bankruptcy Code. No action taken during such period by the Foreign Representative, or his agents, representatives, advisors, or counsel, in preparing, disseminating, applying for, implementing or otherwise acting in furtherance of or in connection with the Spanish Proceeding, this Order, these chapter 15 cases, any adversary proceeding, or any further proceeding commenced herewith shall be deemed to constitute a waiver of the immunity afforded such person under sections 306 or 1510 of the Bankruptcy Code;

6. The right and power to transfer, encumber, or otherwise dispose of any assets of the Foreign Debtors is prohibited, except by the Foreign Debtors;

7. Nothing in this Order shall enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding to the extent set forth in sections 362(b) and 1521(d) of the Bankruptcy Code;

8. The Order hereby authorizes the Foreign Debtors to utilize services of Alvarez & Marsal retained by Abengoa, S.A. in connection with the Spanish Proceeding to provide services on behalf of Abengoa, S.A. and its direct and indirect subsidiaries and affiliates within and outside the United States, on an as-needed basis, including in these chapter 15 cases.

9. Copies of the Provisional Relief Documents and this Order shall be served via (a) first class United States mail and via hand delivery if such party or its counsel is located in Wilmington, Delaware or (b) by overnight courier if such party or its counsel is not located in Delaware, and (c) by publication of the Notice in *The Wall Street Journal* (Global Edition) on or before April ____, 2016, upon (i) the Office of the United States Trustee; (ii) all affiliates of the Foreign Debtors that have bankruptcy proceedings pending in the United States as of the commencement of these chapter 15 cases; (iii) all other parties (or their counsel) against whom provisional relief is being sought under section 1519 of the Bankruptcy Code; (iv) all parties to any litigation in which the Foreign Debtors are parties and that is pending in the United States as of the day the Petition was filed; and (v) with respect to any party in interest that later becomes known to the Foreign Representative, within three (3) business days following the time such party is identified by the Foreign Representative. The above-described service of the Provisional Relief Documents and the Order shall constitute due, adequate, and sufficient service and notice, and no other or further service or notice shall be required; and

10. This Court will conduct a hearing on _____, 2016 at _:___ .m. to consider entry of a final order regarding chapter 15 recognition and final relief (the “**Recognition Hearing**”). All objections or other responses to the Emergency Motion must (i) be made in writing, describe the basis therefor, and indicate the nature and extent of the objector’s interests in the Foreign Debtors’ cases; (ii) be filed with the Court and served on counsel for the Foreign Representative, DLA Piper LLP (US), 1201 North Market Street, Wilmington, DE 19801, Attn: R. Craig Martin and 203 N. LaSalle, Suite 1900, Chicago, Illinois 60010, Attn: Richard Chesley, so as to be actually received on or before _____, 2016 at 4:00 pm (EDT).

11. The date and time of the Recognition Hearing may be adjourned or continued to a subsequent date without further notice except for an in-court announcement on the record at the Recognition Hearing or a filing by the Foreign Representative on the docket of the chapter 15 cases of the date and time to which the Recognition Hearing has been adjourned or continued.

12. This Court shall retain jurisdiction with respect to any matters, claims, rights, or disputes arising from or related to the Emergency Motion or the implementation of this Order.

Dated: _____, 2016
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE