

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

MARGARITA CASTILLO

Applicant

and

XELA ENTERPRISES LTD., TROPIC INTERNATIONAL LIMITED, FRESH
QUEST INC., 696096 ALBERTA LTD., JUAN GUILLERMO GUTIERREZ and
CARMEN S. GUTIERREZ, Executor of the Estate of Juan Arturo Gutierrez

Respondents

BRIEF OF CORRESPONDENCE BETWEEN COUNSEL

March 16, 2022

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181 Bay Street, Suite 1800 Toronto, ON M5J
2T9

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Fax: (416) 865-2851
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Lawyers for the Receiver, KSV Restructuring Inc.

INDEX

Tab	Date	Report
1	March 9, 2022 at 12:15 pm	Email from the Receiver to Cambridge, requesting passwords to the image of Juan Guillermo's devices
2	March 9, 2022 at 12:21 pm	Email from the Receiver to WeirFoulds, requesting a meeting to coordinate production of Juan Guillermo's emails
3	March 9, 2022 at 9:24 pm	Letter from Cambridge to the Receiver (with covering email), requesting a duplicate copy of the image of Juan Guillermo's devices
4	March 9, 2022 at 10:31 pm	Email from WeirFoulds to the Receiver, declining a meeting and refusing immediate production of Juan Guillermo's emails
5	March 11, 2022 at 12:00 pm	Letter from the Receiver to Cambridge and WeirFoulds (with covering email), noting that the Court ordered passwords and emails to be delivered to the Receiver immediately
6	March 11, 2022 at 5:16 pm	Email from WeirFoulds to the Receiver, indicating that ATS will deliver emails to Cambridge rather than the Receiver and declining a meeting
7	March 13, 2022 at 11:48 am	Email from the Receiver to WeirFoulds, reiterating its request for compliance with Court Orders and endorsements
8	March 14, 2022 at 7:54 am	Email from Cambridge to the Receiver, reiterating its request for a duplicate copy of the image of Juan Guillermo's devices
9	March 14, 2022 at 8:59 am	Email from the Receiver to Cambridge, noting that no duplicate copy can be provided without the passwords to the image of Juan Guillermo's devices and that, in any event, Juan Guillermo can complete his review in accordance with the protocol set out in the October 27, 2020 Order
10	March 16, 2022 at 9:39 am	Email from Cambridge to the Receiver, suggesting that Juan Guillermo be permitted to duplicate and then re-lock the image of his devices
11	March 16, 2022 at 9:45 am	Email from the Receiver to Cambridge, suggesting that the protocol in the Court Order is appropriate
12	March 16, 2022 at 1:38 pm	Email from Cambridge to the Receiver, expressing concern about the burden and expense of the protocol on Juan Guillermo

From: [Derek Knoke](#)
To: [Chris Macleod](#); [Joan Kasozi](#); bgreenspan@15bedford.com
Cc: [Monique Jilesen](#); [Bobby Kofman \(bkofman@ksvadvisory.com\)](mailto:bkofman@ksvadvisory.com); [Noah Goldstein \(ngoldstein@ksvadvisory.com\)](mailto:ngoldstein@ksvadvisory.com); [Sarah Millar](#)
Bcc: [KSVAD 52463 Xela Enterprises Ltd Emails](#)
Subject: Passwords [DM-LSDOCS.FID727411]
Date: Wednesday, March 9, 2022 12:15:26 PM
Attachments: [image001.png](#)
Importance: High

Chris,

Further to the March 25, 2021 Order (and the case conference this morning), please provide us today with the passwords necessary to unlock and access the data on the DataShield Fantom Drive.

Derek



[Derek Knoke](#)*

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This e-mail may contain legally privileged or confidential information. This message is intended only for the recipient(s) named in the message. If you are not an intended recipient and this e-mail was received in error, please notify us by reply e-mail and delete the original message immediately. Thank you. Lenczner Slaght LLP.

From: [Derek Knoke](#)
To: [Philip Cho](#); [Michael Ly](#); [Chris Macleod](#); [Joan Kasozi](#); bgreenspan@15bedford.com
Cc: [Monique Jilesen](#); [Bobby Kofman \(bkofman@ksvadvisory.com\)](mailto:bkofman@ksvadvisory.com); [Noah Goldstein \(ngoldstein@ksvadvisory.com\)](mailto:ngoldstein@ksvadvisory.com); [Sarah Millar](#)
Bcc: [KSVAD 52463 Xela Enterprises Ltd Emails](#)
Subject: Emails [DM-LSDOCS.FID727411]
Date: Wednesday, March 9, 2022 12:20:59 PM
Attachments: [image001.png](#)

Philip,

Further to the March 25, 2021 Order (and today's case conference), can we please set up a meeting tomorrow or Friday? We would like to discuss the best way for you to send us an electronic copy of Mr. Gutierrez's emails on ATS' servers as soon as possible.

Derek



Derek Knoke*

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This e-mail may contain legally privileged or confidential information. This message is intended only for the recipient(s) named in the message. If you are not an intended recipient and this e-mail was received in error, please notify us by reply e-mail and delete the original message immediately. Thank you. Lenzner Slaght LLP.

From: [Joan Kasozi](#)
To: [Monique Jilesen](#); [Derek Knoke](#); [Philip Cho](#); [Michael Ly](#)
Cc: [Chris Macleod](#); [Brian Greenspan](#)
Subject: CASTILLO v. XELA ENTERPRISES LTD et al
Date: Wednesday, March 9, 2022 9:24:08 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[\(2022-03-09\) Letter to Receiver re Devices.pdf](#)

EXTERNAL MESSAGE

Good evening Counsel,

Please find attached a letter of today's date from Chris MacLeod.

Best regards,

N. Joan Kasozi

Associate

CAMBRIDGE LLP

333 Adelaide Street West, 4th Floor

Toronto, ON, M5V 1R5

Phone: [\(416\) 477 7007 Ext. 331](tel:(416)4777007)

Direct: [\(416\) 240 1765](tel:(416)2401765)

Email: jkasoz@cambridgellp.com

Website: www.cambridgellp.com



March 9, 2022

Christopher MacLeod,
647.346.6696 (Direct Line)
cmacleod@cambridgellp.com

SENT VIA EMAIL TO: MJILESEN@LITIGATE.COM

Ms. Monique Jilesen

Receiver
Lenczner Slaght Royce Smith Griffin LLP
2600 -130 Adelaide Street West
Toronto, Ontario
M5H 3P5

SENT VIA EMAIL TO: DKNOKE@LITIGATE.COM

Mr. Derek Knoke

Receiver
Lenczner Slaght Royce Smith Griffin LLP
2600 -130 Adelaide Street West
Toronto, Ontario
M5H 3P5

Dear Counsel:

Re: Juan Guillermo Gutierrez et al. ats Margarita Castillo
Court File No.: 279/21
Our File No.: 2003513

Further to the case conference today and Justice McEwen's Endorsement, please provide us with a copy of the image files in the Receiver's control of Mr. Gutierrez' devices so that we can begin our review for privilege with the emails from ATS' server in a coordinated manner.

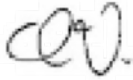
For your convenience, we attach the email correspondence from January 2021 where this request had been made but refused, as you indicated that you could not recall whether this had been requested before.

We look forward to your prompt response.

Yours very truly,

CAMBRIDGE LLP

Per:


A handwritten signature in black ink, appearing to read 'C.M.', is positioned below the 'Per:' label.

CHRISTOPHER MACLEOD

CRM/am

Enclosure: Email exchange between Monique Jilesen and Chris MacLeod dated January 7 and 8, 2022

Email from Chris MacLeod to Monique Jilesen dated January 10, 2021.



From: Monique Jilesen <mjilesen@litigate.com>

Date: Friday, January 8, 2021 at 2:10 PM

To: Chris Macleod <cmacleod@cambridgellp.com>, Derek Knoke <dknoke@litigate.com>

Cc: Joan Kasozi <jkasozi@cambridgellp.com>

Subject: RE: Followup and Affidavit

Chris,

Without prejudice to our position that this is not in compliance with the October 27, 2020 Order, Johan's contact information is: johan.dorado@kroll.com. Please have Dave connect with him directly to arrange for Dave to bring the iPad to Johan for imaging. Johan will determine whether the iPad can be imaged, and he will make best efforts to image it.

In accordance, with the Order Johan will not be providing Dave with a second copy of the devices that were imaged on January 5, 2021. The October 27, 2020 Order provides the protocol for how the images are to be reviewed, and as we have previously discussed and requested we ask for immediate compliance with the Order by providing Duff & Phelps with the password to the DataShield Fantom Drive.as

In any event, we understand that Juan Guillermo has the password to the DataShield Fantom Drive. Would you please confirm that you also have the password (as well as advise us of the names of all individuals who have the password) to the DataShield Fantom Drive?

Perhaps we can have a without prejudice call about this on Monday because, I do in fact have some expertise in this area and in my view, in addition to your proposals not being in accordance with the order, they are not practical. We must get to a practical result (in compliance with the Order).

Looking forward to hearing from you about the imaging of the iPad and a time for a call.

Thanks

Monique

From: Chris Macleod <cmacleod@cambridgellp.com>

Sent: January 7, 2021 10:39 AM

To: Derek Knoke <dknoke@litigate.com>; Monique Jilesen <mjilesen@litigate.com>

Cc: Joan Kasozi <jkasozi@cambridgellp.com>

Subject: Followup and Affidavit

Derek and Monique-

In preparing Juan's affidavit, we note that Juan inadvertently left his broken Ipad at home and thus an attempt to mirror image it has not yet occurred.

This is the one that was seriously damaged and may or may not be able to be copied.

We suggest that our IT Consultant Dave and Johann coordinate to determine if the data can be retrieved from the damaged Ipad and if it can be retrieved that a mirror imaged copy be obtained.

We also will need to have a copy of the current mirror imaged devices so that we are reviewing for privilege from the same images that are secured at D&P.

We suggest Dave and Johann coordinate with each other to do this as soon as possible.

Could you provide Johann's contact details so we can connect the two IT consultants?

Regards,
Chris

--

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.



From: Chris Macleod <cmacleod@cambridgellp.com>

Sent: January 10, 2021 1:49 PM

To: Monique Jilesen <mjilesen@litigate.com>; Derek Knoke <dknoke@litigate.com>

Cc: Joan Kasozi <jkasozi@cambridgellp.com>

Subject: Follow-up

Monique-

Thank you for your message. We will ask Mr. Burton to coordinate with Mr. Dorado to set a date and time for Juan and Dave to return to Duff & Phelps to attempt to image the broken iPad.

We respectfully disagree that the Order of October 27, 2020 requires that the images be uploaded to Relativity in advance of our own review of the data. As we have stated before, the Order does not give any other person access to the data until after we have had our opportunity to review and object to disclosure, and it is our plan to conduct that review prior to upload. It is for that purpose that we are requesting duplicates of the images, so that we can identify objectionable documents using the same hash values contained on the hard drive held by D&P, and we see no legitimate reason to deny our client a copy of his own data. Indeed, refusal to allow us to take copies might interfere with our review process and constitute a basis for an extension of time.

The issue is further complicated by our discovery earlier this week that Duff & Phelps appears to have subcontracted its mandate to Kroll; Joel Bowers and Johan Dorado both use Kroll domain emails, and Mr. Dorado confirmed on Tuesday that he is employed by Kroll. While we continue to assess the issue, we believe it important to point out that Kroll had worked for, and may continue to be working for, the parties in Guatemala (the "Cousins") who are adverse to our client and his family. Among other things, we understand that Kroll conducted investigative surveillance in respect of Mr. Juan Gutierrez and his family, as private investigators for the Cousins, and has given sworn expert testimony on the record for the Cousins, in legal proceedings in the British Virgin Islands. The security concerns raised by our client regarding the copies of his devices and the conflict of interest arising out of the IT consultant retained by the Receiver is what underscores the significant concern on our client's part.

Can you speak to the Receiver and provide us with its position on this apparent conflict and whether it was aware of Kroll's prior mandate? If it was aware, then on what basis did it consider the issue to not constitute a conflict, nor one that should be brought to the parties' attention? If it was not aware, why not?

The Receiver's position on this issue will be helpful for our client to assess the impact of this issue and what, if any, steps it may want to take as a result.

Regards,
Chris

--

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

From: [Philip Cho](#)
To: [Derek Knoke](#); [Michael Ly](#); [Chris Macleod](#); [Joan Kasozi](#); bgreenspan@15bedford.com
Cc: [Monique Jilesen](#); [Bobby Kofman \(bkofman@ksvadvisory.com\)](mailto:bkofman@ksvadvisory.com); [Noah Goldstein \(ngoldstein@ksvadvisory.com\)](mailto:ngoldstein@ksvadvisory.com); [Sarah Millar](#)
Subject: RE: Emails [DM-LSDOCS.FID727411]
Date: Wednesday, March 9, 2022 10:31:28 PM
Attachments: [image001.png](#)

EXTERNAL MESSAGE

Derek, my apologies for the late reply but I have been in back to back meetings and appointments since the end of the case conference. I'm not sure it's necessary or appropriate at this time to have a meeting about delivery of the emails. Given Justice McEwen's comments and endorsement today, ATS should be delivering the emails to Mr. MacLeod and Mr. Greenspan so that they may begin a privilege review of the emails, and probably in coordination with the privilege review of the personal devices as some of the emails will appear in both places. Once Mr. Gutierrez is able to review the emails and the personal device images with his counsel, then I think Mr. MacLeod can update you on timing of productions.

Please confirm that the Receiver does not object to ATS providing the emails to Mr. McLeod and Mr. Greenspan.

Thank you.

PHILIP CHO (he/him/his) | Partner | T. 416-619-6296 | C. 647-638-7828 | pcho@weirfoulds.com

WeirFoulds LLP

From: Derek Knoke <dknoke@litigate.com>
Sent: March 9, 2022 12:21 PM
To: Philip Cho <pcho@weirfoulds.com>; Michael Ly <mly@weirfoulds.com>; Chris Macleod <cmacleod@cambridgellp.com>; Joan Kasozi <jkasozi@cambridgellp.com>; bgreenspan@15bedford.com
Cc: Monique Jilesen <mjilesen@litigate.com>; Bobby Kofman (bkofman@ksvadvisory.com) <bkofman@ksvadvisory.com>; Noah Goldstein (ngoldstein@ksvadvisory.com) <ngoldstein@ksvadvisory.com>; Sarah Millar <smillar@litigate.com>
Subject: Emails [DM-LSDOCS.FID727411]

[External Message]

Philip,

Further to the March 25, 2021 Order (and today's case conference), can we please set up a meeting tomorrow or Friday? We would like to discuss the best way for you to send us an electronic copy of Mr. Gutierrez's emails on ATS' servers as soon as possible.

Derek



Derek Knoke*

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From: [Monique Jilesen](#)
To: [Chris Macleod](#); [Joan Kasozi](#); bhg@15bedford.com; [Philip Cho](#); mly@weirfoulds.com
Cc: [Derek Knoke](#); [Noah Goldstein](#); [Bobby Kofman \(bkofman@ksvadvisory.com\)](mailto:bkofman@ksvadvisory.com)
Subject: Xela [DM-LSDOCS.FID727411]
Date: Friday, March 11, 2022 11:59:37 AM
Attachments: [LTR to Cambridge and WeirFoulds re production compliance - Mar. 10 2022 \(104675360.1\).pdf](#)
[image001.png](#)

Counsel,

Please see attached my letter of today's date. I look forward to hearing from you promptly.

Monique



Monique Jilesen*

pronouns: she/her

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March 11, 2022

Monique Jilesen
Direct line: 416-865-2926
Direct fax: 416-865-2851
Email: mjilesen@litigate.com

VIA EMAIL

Christopher MacLeod and Joan Kasozi
Cambridge LLP
333 Adelaide St. West, Suite 400
Toronto, ON M5V 1R5

Philip Cho and Michael Ly
Weirfoulds LLP
4100 - 66 Wellington St. W.
Toronto ON M5K 1B7

Dear Counsel:

RE: Xela – Production Compliance
Our File No.: 52463
Court File No.: CV-11-9062-00CL

I write in response to the letter from Cambridge LLP dated March 9, 2022 in which Mr. MacLeod requests a copy of the image taken of Juan Guillermo Gutierrez’s devices (the “**JG Images**”).

I also write in response to the email from WeirFoulds LLP dated March 9, 2022 in which Mr. Cho asserts his intention to provide Juan Guillermo’s emails on ATS’ servers to Juan Guillermo rather than the Receiver.

Finally, I write to address the assertion of privilege upon which Mr. MacLeod and Mr. Cho continue to rely to avoid compliance with court orders.

I address each in turn.

The Juan Guillermo Gutierrez Devices

On October 27, 2020, McEwen J. made an order directing Juan Guillermo to allow the Receiver to make a single image of Juan Guillermo’s devices (the “**Oct. 2020 JG Order**”). The JG Images were made on January 5, 2021 but, at Juan Guillermo’s insistence, were password protected.

On March 25, 2021 Justice McEwen held:

[3] Juan Guillermo, contrary to the terms of the above orders, has refused to permit the devices to be imaged, without being uploaded to a password protected drive. He primarily submits that he wishes to review the data, provide the Receiver with a mirror

image, and then advise what he is prepared to produce – subject to claims of privilege and relevancy.

[4] I am not prepared to alter the terms of my previous orders where a protocol has been agreed to by the Receiver and Juan Guillermo.

...

[6] I urge the Receiver and Juan Guillermo to work co-operatively on this issue and to proceed in an economic fashion, but **the terms of the above negotiated, consent orders stand and shall be adhered to. Thus, Juan Guillermo is to provide the password so that Epiq Global (who I agree will succeed Duff & Phelps) can load the data onto the Relativity platform. Thereafter, the protocol concerning Juan Guillermo's objections, can proceed, as per the Order.**

The March 25, 2021 Order provides:

[6] THIS COURT ORDERS that Juan Guillermo Gutierrez shall immediately provide the Receiver and Epiq Global with all encryption codes, keys, passwords or any other such information or knowledge necessary to unlock and access the data on the Juan Guillermo Images, including but not limited to the DataShield Fantom Drive.

It is now over a year since Mr. Gutierrez argued he should get a mirror image of the devices. That argument was rejected by this Court. The Court ordered that Mr. Gutierrez immediately provide the Receiver with the password to the devices.

Mr. Gutierrez has consistently and repeatedly refused to comply with the Court Orders of August 28, 2020, October 27, 2020 and March 25, 2021. Mr. Gutierrez has provided no explanation or excuse for the breach of the Orders.

A privilege protocol is in place with respect to Mr. Gutierrez' devices. Mr. Gutierrez must provide the password and the protocol will be applied.

The ATS Servers

On March 25, 2021, McEwen J. ordered ATS to provide the Receiver with an electronic copy of all emails sent or received by Juan Guillermo at any email address maintained on the ATS servers to the date of the Order, along with any encryption codes, keys, or passwords used to secure the emails.

Mr. Gutierrez sought leave to appeal the March 25, 2021 Order on the basis, among other things, that the Order requires ATS to produce the Mr. Gutierrez' emails. Leave to appeal was dismissed.

Nevertheless ATS has failed to comply with this Order.

On March 9, 2022 Justice McEwen endorsed:

As I advised counsel today I expect all answers, except those arguably sol/clict issues to be provided immediately.

In WeirFould's March 9, 2022 email, Mr. Cho asks the Receiver to confirm that it does "not object to ATS providing the emails to Mr. McLeod [*sic*] and Mr. Greenspan."

The Receiver takes no position on whether ATS chooses to provide Juan Guillermo's emails to Juan Guillermo's counsel. The obligation to produce Juan Guillermo's emails to the Receiver is ATS' obligation and should be complied with. As His Honour stated in his March 9, 2022 endorsement, the "smooth flow of documents" from ATS to the Receiver is to occur immediately.

As indicated in my colleague's email to Mr. Cho on March 9, 2022, we would be pleased to meet with you as soon as possible to discuss how best to arrange for the transfer of documents from ATS to the Receiver immediately. In any event, we look forward to receiving the document production immediately.

Contempt Proceeding

At the March 9, 2022 case conference, Mr. MacLeod again raised the issue of privilege with respect to Juan Guillermo's emails on ATS' servers. He submitted that it was inappropriate for the Receiver and its counsel to review Juan Guillermo's emails on ATS' servers, even on an "eyes only" basis, in light of the pending contempt motion, which is currently scheduled for May 30-31, 2022.

Mr. MacLeod's submission conflates the issues. The contempt motion arises from Juan Guillermo's December 3, 2020 sworn declaration in support of criminal proceedings against the Receiver's representatives in Panama.

The purpose of the review of the JG Images and Juan Guillermo's emails on ATS' servers is to assist the Receiver in its investigation into the Reviewable Transactions—The Receiver does not rely (and does not intend to rely) on any evidence contained on the JG Images or the emails that ATS must produce in support of the May 2022 contempt motion.

We look forward to receiving the password to the devices and the documents.

Yours truly,

A handwritten signature in black ink, appearing to read 'Monique Jilesen', with a long horizontal flourish extending to the right.

Monique Jilesen

MJ/

- c. Brian Greenspan
- Bobby Kofman and Noah Goldstein
- Derek Knoke

From: [Philip Cho](#)
To: [Monique Jilesen](#); [Chris Macleod](#); [Joan Kasozi](#); [bhg@15bedford.com](#); [Michael Ly](#)
Cc: [Derek Knoke](#); [Noah Goldstein](#); [Bobby Kofman \(bkofman@ksvadvisory.com\)](#)
Subject: RE: Xela [DM-LSDOCS.FID727411]
Date: Friday, March 11, 2022 5:16:23 PM
Attachments: [image001.png](#)

EXTERNAL MESSAGE

Monique, as we have advised on a number of occasions, Mr. MacLeod's client has asserted a privilege claim over the emails in ATS' possession. This privilege issue is separate and apart from Xela's claim of privilege which you have referred to.

My understanding from the last case conference is that Justice McEwen expressly acknowledged that none of the orders to date are intended to require any person from producing privileged communications. While there may be a dispute over whether particular productions are privileged or not, those disputes will be dealt with in due course once the privileged documents are identified.

To date, the Receiver has consistently refused to engage in any discussion about a privilege review of the emails in ATS' possession, and no direction was provided to facilitate a privilege review. Instead, the Receiver has simply demanded that all emails be delivered. This position is contrary to the recent endorsement of Justice McEwen and as I advised in my last email, any delivery of emails in ATS' possession will follow a review for privilege by Mr. Gutierrez with his counsel.

As such, we will provide the emails to Mr. MacLeod so that he can arrange to review the emails in tandem with the review of the data on the personal devices to ensure that duplicates are properly catalogued and identified. We believe this is consistent with Justice McEwen's last endorsement. Again, I am not certain as to the utility of a meeting at this time.

PHILIP CHO (he/him/his) | Partner | T. 416-619-6296 | C. 647-638-7828 | pcho@weirfoulds.com

WeirFoulds LLP

From: Monique Jilesen <mjilesen@litigate.com>
Sent: March 11, 2022 12:00 PM
To: [Chris Macleod](mailto:cmacleod@cambridgellp.com) <cmacleod@cambridgellp.com>; [Joan Kasozi](mailto:jkasozi@cambridgellp.com) <jkasozi@cambridgellp.com>; bhg@15bedford.com; [Philip Cho](mailto:pcho@weirfoulds.com) <pcho@weirfoulds.com>; [Michael Ly](mailto:mly@weirfoulds.com) <mly@weirfoulds.com>
Cc: [Derek Knoke](mailto:dknoke@litigate.com) <dknoke@litigate.com>; [Noah Goldstein](mailto:ngoldstein@ksvadvisory.com) <ngoldstein@ksvadvisory.com>; [Bobby Kofman \(bkofman@ksvadvisory.com\)](mailto:bkofman@ksvadvisory.com) <bkofman@ksvadvisory.com>
Subject: Xela [DM-LSDOCS.FID727411]

[External Message]

Counsel,

Please see attached my letter of today's date. I look forward to hearing from you promptly.

Monique



Monique Jilesen*

pronouns: she/her

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M 416-407-5034
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To: [Philip Cho](#); [Chris Macleod](#); [Joan Kasozi](#); bhg@15bedford.com; [Michael Ly](#)
Cc: [Derek Knoke](#); [Noah Goldstein](#); [Bobby Kofman \(bkofman@ksvadvisory.com\)](mailto:bkofman@ksvadvisory.com)
Subject: RE: Xela [DM-LSDOCS.FID727411]
Date: Sunday, March 13, 2022 11:47:55 AM
Attachments: [image001.png](#)

Phillip –

Justice McEwen has directed that documents over which privilege is not claimed get produced in accordance with the Order immediately. The Receiver has made no demand inconsistent with the recent endorsement. Instead, we simply look forward to receiving the documents in accordance with the Order and the endorsement. How ATS goes about ensuring there is a smooth flow of documents to the Receiver is up to ATS. We remain happy to discuss.

Monique

From: Philip Cho <pcho@weirfoulds.com>
Sent: Friday, March 11, 2022 5:16 PM
To: Monique Jilesen <mjilesen@litigate.com>; Chris Macleod <cmacleod@cambridgellp.com>; Joan Kasozi <jkasozi@cambridgellp.com>; bhg@15bedford.com; Michael Ly <mly@weirfoulds.com>
Cc: Derek Knoke <dknoke@litigate.com>; Noah Goldstein <ngoldstein@ksvadvisory.com>; Bobby Kofman (bkofman@ksvadvisory.com) <bkofman@ksvadvisory.com>
Subject: RE: Xela [DM-LSDOCS.FID727411]

EXTERNAL MESSAGE

Monique, as we have advised on a number of occasions, Mr. MacLeod's client has asserted a privilege claim over the emails in ATS' possession. This privilege issue is separate and apart from Xela's claim of privilege which you have referred to.

My understanding from the last case conference is that Justice McEwen expressly acknowledged that none of the orders to date are intended to require any person from producing privileged communications. While there may be a dispute over whether particular productions are privileged or not, those disputes will be dealt with in due course once the privileged documents are identified.

To date, the Receiver has consistently refused to engage in any discussion about a privilege review of the emails in ATS' possession, and no direction was provided to facilitate a privilege review. Instead, the Receiver has simply demanded that all emails be delivered. This position is contrary to the recent endorsement of Justice McEwen and as I advised in my last email, any delivery of emails in ATS' possession will follow a review for privilege by Mr. Gutierrez with his counsel.

As such, we will provide the emails to Mr. MacLeod so that he can arrange to review the emails in tandem with the review of the data on the personal devices to ensure that duplicates are properly catalogued and identified. We believe this is consistent with Justice McEwen's last endorsement. Again, I am not certain as to the utility of a meeting at this time.

PHILIP CHO (he/him/his) | Partner | T. 416-619-6296 | C. 647-638-7828 | pcho@weirfoulds.com

WeirFoulds LLP

From: Monique Jilesen <mjilesen@litigate.com>

Sent: March 11, 2022 12:00 PM

To: Chris Macleod <cmacleod@cambridgellp.com>; Joan Kasozi <jkasozi@cambridgellp.com>; bhg@15bedford.com; Philip Cho <pcho@weirfoulds.com>; Michael Ly <mly@weirfoulds.com>

Cc: Derek Knoke <dknoke@litigate.com>; Noah Goldstein <ngoldstein@ksvadvisory.com>; Bobby Kofman (bkofman@ksvadvisory.com) <bkofman@ksvadvisory.com>

Subject: Xela [DM-LSDOCS.FID727411]

[External Message]

Counsel,

Please see attached my letter of today's date. I look forward to hearing from you promptly.

Monique



Monique Jilesen*

pronouns: she/her

T 416-865-2926

M 416-407-5034

F 416-865-2851

mjilesen@litigate.com

130 Adelaide St W

Suite 2600

Toronto, ON

Canada M5H 3P5

www.litigate.com

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From: [Chris Macleod](#)
To: [Monique Jilesen](#); [Joan Kasozi](#); [bhg@15bedford.com](#); [Philip Cho](#); [mly@weirfoulds.com](#)
Cc: [Derek Knoke](#)
Subject: Xela [DM-LSDOCS.FID727411]
Date: Monday, March 14, 2022 7:54:29 AM
Attachments: [image001.png](#)

EXTERNAL MESSAGE

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Date: Friday, March 11, 2022 at 11:59 AM
To: Chris MacLeod <cmacleod@cambridgellp.com>, Joan Kasozi <jkasozi@cambridgellp.com>, Brian Greenspan <bhg@15bedford.com>, Philip Cho <pcho@weirfoulds.com>, "mly@weirfoulds.com" <mly@weirfoulds.com>
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Cc: [Derek Knoke](#)
Subject: RE: Xela [DM-LSDOCS.FID727411]
Date: Monday, March 14, 2022 8:58:54 AM
Attachments: [image001.png](#)

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Cc: [Derek Knoke](#)
Subject: Re: Xela [DM-LSDOCS.FID727411]
Date: Wednesday, March 16, 2022 9:39:35 AM
Attachments: [image001.png](#)

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Cc: [Derek Knoke](#)
Subject: RE: Xela [DM-LSDOCS.FID727411]
Date: Wednesday, March 16, 2022 9:45:13 AM
Attachments: [image001.png](#)

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Cc: [Derek Knoke](#)
Subject: Xela [DM-LSDOCS.FID727411]
Date: Wednesday, March 16, 2022 1:37:59 PM
Attachments: [image001.png](#)

EXTERNAL MESSAGE

Hi Monique-

There should be no confusion. To be clear, the personal devices contain emails that are duplicated in the data on the ATS servers. We propose to de-duplicate the data so that we don't waste additional time and resources reviewing the same data twice. This requires you to allow us to take a duplicate of the image, which -after all - is Mr. Gutierrez's own data. There is no rational basis to object to our request.

The fact that the Receiver is unwilling to discuss the issue with us is disconcerting. It represents a pattern of conduct by the Receiver that is inconsiderate of Mr. Gutierrez's privacy rights and has the effect of significantly increasing costs. We again ask you to reconsider and assist us to ensure that we minimize the burden and expense of what is already a severely burdensome (not to mention questionable) discovery exercise.

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Please see attached my letter of today's date. I look forward to hearing from you promptly.

Monique



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MARGARITA CASTILLO
Applicant

-and- XELA ENTERPRISE LTD. et al.
Respondents

Court File No. CV-11-9062-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT
TORONTO

**BRIEF OF CORRESPONDENCE BETWEEN
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