

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

BETWEEN:

MARGARITA CASTILLO

Applicant

- and -

**XELA ENTERPRISES LTD., TROPIC INTERNATIONAL LIMITED, FRESH QUEST,
INC., 69096 ALBERTA LTD., JUAN GUILLERMO GUTIERREZ and CARMEN S.
GUTIERREZ, as Executor of the Estate of Juan Arturo Gutierrez**

Respondents

**MOTION RECORD
(returnable October 29, 2019)**

Date: October 17, 2019

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Barristers and Solicitors
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Lawyers for the Receiver

TO: ATTACHED SERVICE LIST

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TAB 1

**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., 69096 ALBERTA LTD., JUAN GUILLERMO GUTIERREZ and CARMEN S.
GUTIERREZ, as Executor of the Estate of Juan Arturo Gutierrez**

Respondents

**NOTICE OF MOTION
(returnable October 29, 2019)**

KSV Kofman Inc. (“**KSV**”), in its capacity as the Court-appointed receiver and manager (in such capacity, the “**Receiver**”), without security, of all the assets, undertakings and properties (collectively, the “**Property**”) of Xela Enterprises Ltd. (the “**Debtor**”), will make a motion to Justice McEwen of the Commercial List on October 29, 2019 at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR an Order including, amongst other things:

- (a) approving the first report of the Receiver dated October 17, 2019 (the “**First Report**”) and the activities of the Receiver set out therein;
- (b) approving the fees and disbursements of the Receiver and its legal counsel, Aird & Berlis LLP (“**A&B**”);

- (c) ordering and directing any party with relevant information to produce to the Receiver any and all records in those certain third parties' possession or control in relation to, and evidencing:
- (i) the sale, assignment or transfer of the shares of each BDT Investments Inc. ("**BDT**"), Corporacion Arven, Limited ("**Arven**") and a subsidiary of Arven, Preparados Alimenticios Internacionales, CA to Juan Arturo Gutierrez ("**Juan Arturo**"), as purchaser or assignee, and Empresas Arturo International ("**EAI**"), as vendor or assignor, in and around early 2016, which were ultimately assigned or transferred to The ARTCARM Trust (the "**Trust**") (the "**EAI Transaction**"); and
 - (ii) the assignment by Lisa S.A. ("**Lisa**") of the proceeds from the Avicola litigation to BDT in January 2018 (the "**Assignment Transaction**");
- (d) requiring each of Lisa, BDT, the Trust and its trustee, Alexandria Trust Corporation ("**ATC**"), and any other person with information concerning the Assignment Transaction to deliver such information to the Receiver, including any and all documentation related to the Assignment Transaction;
- (e) sealing Confidential Appendices 1 and 2 of the First Report (together, the "**Confidential Appendices**") until further Order of this Court; and
- (f) such further and other relief as counsel may advise and this Court may permit.

THE GROUNDS FOR THE MOTION ARE:

- (a) pursuant to an Order of the Honourable Justice McEwen of this Court dated July 5, 2019 (the "**Appointment Order**"), KSV was appointed as the Receiver, without security, of all of the assets, undertakings and properties of the Debtor;
- (b) The Debtor is the parent company of more than two dozen subsidiaries, located predominantly in Central America, that carry or carried on business in the food

and agricultural sectors. Presently, the Debtor's most significant asset is its indirect one-third interest in a group of family-owned Guatemalan-based poultry companies that are collectively referred to as the "**Avicola Group**";

- (c) the Applicant, Margarita Castillo ("**Margarita**"), commenced an application against the respondents on January 18, 2011, seeking, *inter alia*, relief from oppression against her father, Arturo, and brother, Juan Guillermo Gutierrez ("**Juan Guillermo**") with respect to her status as a director and minority shareholder of Tropic International Limited, a family company majority owned by the Debtor. Prior to these receivership proceedings, Xela was managed primarily by Juan Guillermo;
- (d) pursuant to a judgment issued October 28, 2015, and a series of cost orders issued December 21, 2015, December 30, 2016, and March 27, 2017, the Debtor, Juan Guillermo and Juan Arturo became jointly obligated to pay Margarita \$5,083,866.04 (plus accrued interest and reimbursable enforcement expenses, the "**Judgment Debt**");
- (e) the outstanding balance of the Judgment Debt is approximately \$4.1 million. Margarita, through an Alberta holding company, also owns preference shares in the face amount of approximately \$14 million.
- (f) the Debtor's indirect equity interest in the Avicola Group is currently the subject of litigation in the jurisdictions of Canada, the State of Florida, the Republic of Panama, the Republic of Guatemala, Barbados, Bermuda, and the Bolivarian Republic of Venezuela. The litigation has been ongoing for over twenty years;
- (g) the Debtor sold, assigned or transferred the shares of each Arven and BDT to Juan Arturo, who ultimately assigned them to the Trust, and the Receiver is concerned that EAI may have received inadequate consideration when it sold, conveyed or transferred the shares of BDT and Arven to Juan Arturo;

- (h) the Receiver is concerned that prior to the Appointment Order, the Debtor caused or allowed its wholly-owned subsidiary to assign all or a considerable portion of Lisa's interest in the Avicola Litigation to BDT pursuant to terms of the Assignment Transaction for inadequate consideration;
- (i) each of EAI, Arven and BDT are entities governed by the laws of Barbados;
- (j) Arven and BDT were former direct or indirect subsidiaries of the Debtor prior to the EAI Transaction;
- (k) the Receiver understands that the Trust is also governed by the laws of Barbados;
- (l) the EAI Transaction appears to involve entities all governed by the laws of Barbados;
- (m) pursuant to the Appointment Order, the Receiver is entitled to access any and all information relating to the business or affairs of the Debtor in the possession or control of (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of the Appointment Order;
- (n) to date, the Debtor and its legal counsel have not provided satisfactory responses to the enquiries of the Receiver relating to the business of EAI, BDT, Arven and the Trust;
- (o) the Receiver has been advised that ATC has refused to provide any information to the Receiver regarding the EAI Transaction;
- (p) the Receiver now seeks an order compelling each of BDT, Arven and ATC to cooperate and turn over any and all documents relating to the EAI Transaction in

order to assist the Receiver in completing its review and assessment of the EAI Transaction

- (q) in addition, the Receiver is also seeking an order compelling each of Lisa, BDT, and ATC, and any other person with information concerning the Assignment Transaction, to deliver such information to the Receiver in order for the Receiver to complete its assessment of the Assignment Transaction;
- (r) the Receiver has filed with the Court the First Report outlining, *inter alia*, the actions of the Receiver since the commencement of these proceedings, including its discussions with the Applicant and management of the Debtor;
- (s) a sealing order is required because the Confidential Appendices contains certain sensitive information, the public release of which is prohibited by Paragraph 4 of the Appointment Order;
- (t) the Appointment Order authorizes the Receiver to pass its accounts from time to time, and to include any necessary solicitor fees and disbursements in the passing of the accounts;
- (u) the Receiver and its legal counsel, A&B, have accrued fees and expenses in their capacity as Receiver and counsel thereto, respectively, which fees and expenses require the approval of this Court pursuant to the Appointment Order;
- (v) the other grounds set out in the First Report;
- (w) section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (x) rules 1.04, 2.01, 2.03, 3.02, 16, 17, 30, 37 and 41.05 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
- (y) such further and other grounds as counsel may advise and this Court may permit.

2. **THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

- (a) the First Report and its appendices;
- (b) the Appointment Order; and
- (c) such further and other material as counsel may submit and this Court may permit.

Date: October 17, 2019

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Lawyers for the Receiver

TO: ATTACHED SERVICE LIST

MARGARITA CASTILLO

- and -

XELA ENTERPRISES LTD., TROPIC INTERNATIONAL LIMITED, FRESH QUEST, INC., 69096 ALBERTA LTD., JUAN GUILLERMO GUTIERREZ and CARMEN S. GUTIERREZ, as Executor of the Estate of Juan Arturo Gutierrez
Respondents

Applicant

CV-11-9062-00CL

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

Proceedings commenced at Toronto

**NOTICE OF MOTION
(returnable October 29, 2019)**

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Lawyers for the Court-appointed Receiver

TAB 2

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR) TUESDAY, THE 29th
)
JUSTICE MCEWEN) DAY OF OCTOBER, 2019

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, as Executor of the Estate of Juan Arturo Gutierrez**

Respondents

ORDER

THIS MOTION, made by KSV Kofman Inc. (“**KSV**”), in its capacity as the Court-appointed receiver (in such capacity, the “**Receiver**”), without security, of the assets, undertakings and property (collectively, the “**Property**”) of Xela Enterprises Ltd. (the “**Debtor**”), for an Order, *inter alia*, (i) approving the first report of the Receiver dated October 17, 2019 (the “**First Report**”) and the activities of the Receiver set out therein; (ii) approving the fees and disbursements of the Receiver and its legal counsel; (iii) ordering and directing that any party with information and/or documentation in its possession or control in relation to, and evidencing, the sale, conveyance or transfer of the shares and/or assets of each Corporacion Arven, Limited (“**Arven**”) and BTD Investments Inc. (“**BDT**”) to Juan Arturo Gutierrez (“**Juan Arturo**”), as purchaser or transferee, and Empresas Arturo International (“**EAI**”), as vendor or transferor, which were ultimately sold,

conveyed or transferred by Juan Arturo to The ARTCARM Trust, in and around early 2016 (the “**EAI Transaction**”) deliver all such information and/or documentation to the Receiver; (iv) ordering and directing that any party with information and/or documentation in its possession or control in relation to, and evidencing, the assignment by Lisa S.A. (“**Lisa**”) of the proceeds from the Avicola Litigation to BDT in January 2018 (the “**Assignment Transaction**”) deliver all such information and/or documentation to the Receiver; and (v) sealing the Confidential Appendices 1 and 2 of the First Report, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record of the Receiver, including the First Report and the appendices thereto, the fee affidavit of Steven Graff sworn October 10, 2019 and the fee affidavit of Noah Goldstein sworn October 17, 2019, and on hearing the submissions of counsel for the Receiver and such other counsel as were present and listed on the Counsel Slip, no one else appearing for any other party named on the service list, although served as evidenced by the affidavit of Gaurav Gopinath sworn October 17, 2019, filed.

SERVICE

1. **THIS COURT ORDERS AND DECLARES** that the time for service of this Motion and the Motion Record herein are properly returnable today and hereby dispenses with further service thereof.

APPROVAL OF THE FIRST REPORT

2. **THIS COURT ORDERS** that First Report and the conduct and activities of the Receiver described therein be and are hereby approved; provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

APPROVAL OF FEES AND DISBURSEMENTS

3. **THIS COURT ORDERS** that the fees and disbursements of the Receiver, being fees and disbursements totalling \$36,763.75 (excluding HST) as set out in Appendix “F” to the First Report, are hereby approved.

4. **THIS COURT ORDERS** that the fees and disbursements of the Receiver's legal counsel, Aird & Berlis LLP, being fees and disbursements totalling \$43,520.07 plus HST of \$6,393.10, totalling \$49,177.68 as set out in Appendix "G" to the First Report, are hereby approved.

PRODUCTION OF RECORDS RE EAI TRANSACTION AND ASSIGNMENT TRANSACTION

5. **THIS COURT ORDERS** that (i) EAI and (ii) all of its current and former directors and officers, employees, agents, accountants and all other persons acting on their instructions or behalf, be and are hereby directed to produce forthwith to the Receiver any and all information and records, including its minute books and any board resolutions, in their possession or control of in relation to the EAI Transaction.

6. **THIS COURT ORDERS** that (i) The ARTCARM Trust and (ii) all of its current and former trustees, including Alexandria Trust Corporation, and employees, agents, accountants and beneficiaries, and all other persons acting on their instructions or behalf, be and is hereby directed to produce forthwith to the Receiver any and all information to their knowledge and any documentation and records in their possession or control in relation to the EAI Transaction and the Assignment Transaction.

7. **THIS COURT ORDERS** that (i) Arven and (ii) all of its current and former directors, officers, employees, agents, accountants and shareholders, and all other persons acting on their instructions or behalf, be and is hereby directed to produce forthwith to the Receiver any and all information to their knowledge and any documentation and records in their possession or control in relation to the EAI Transaction.

8. **THIS COURT ORDERS** that (i) BDT and (ii) all of its current and former directors, officers, employees, agents, accountants and shareholders, and all other persons acting on their instructions or behalf, be and is hereby directed to produce forthwith to the Receiver any and all information to their knowledge and any documentation and records in their possession or control in relation to the EAI Transaction and the Assignment Transaction.

9. **THIS COURT ORDERS** that (i) Lisa and (ii) all of its current and former directors, officers, employees, agents, accountants and shareholders, and all other persons acting on their

instructions or behalf, be and is hereby directed to produce forthwith to the Receiver any and all information to their knowledge and any documentation and records in their possession or control in relation to the Assignment Transaction.

10. **THIS COURT ORDERS** that any party having notice of this Order be and is hereby directed to produce forthwith to the Receiver any and all information and records in their possession or control of in relation to the EAI Transaction and the Assignment Transaction.

SEALING OF CONFIDENTIAL INFORMATION

11. **THIS COURT ORDERS** that the Confidential Appendices 1 and 2 of the First Report be and are hereby sealed until further Order of this Court.

RECOGNITION BY FOREIGN JURISDICTIONS

12. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States of America, Republic of Panama, Republic of Guatemala, Barbados or Bolivarian Republic of Venezuela to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

MARGARITA CASTILLO

-and-

XELA ENTERPRISES LTD. *Et al.*

Applicant

Respondents

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceedings commenced at Toronto**

ORDER

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*Lawyers for KSV Kofman Inc., in its capacity as the court-appointed
Receiver of Xela Enterprises Ltd.*

TAB 3



**First Report of
KSV Kofman Inc.
as Receiver and Manager of Xela Enterprises Ltd.**

October 17, 2019

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COURT FILE NO.: CV-11-9062-00CL

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

MARGARITA CASTILLO

Applicant

- And -

XELA ENTERPRISES LTD., TROPIC INTERNATIONAL LIMITED, FRESH QUEST, INC., 696096 ALBERTA LTD., JUAN GUILLERMO GUTIERREZ AND CARMEN S. GUTIERREZ, AS EXECUTOR OF THE ESTATE OF JUAN ARTURO GUTIERREZ

Respondents

**AND IN THE MATTER OF THE RECEIVERSHIP OF XELA ENTERPRISES LTD.
FIRST REPORT OF KSV KOFMAN INC.**

OCTOBER 17, 2019

1.0 Introduction

1. On January 18, 2011, Margarita Castillo (“Margarita”) commenced an application in the Ontario Superior Court of Justice (the “Court”) seeking, among other things, relief against her now-deceased father, Juan Arturo Gutierrez (“Juan Arturo”), and her brother, Juan Guillermo Gutierrez (“Juan Guillermo”), in her capacity as a director of Tropic International Limited (“Tropic”), a wholly-owned subsidiary of Xela Enterprises Ltd. (the “Company”).
2. Pursuant to a judgement issued by the Court on October 28, 2015, the Company, Juan Guillermo and Juan Arturo, became jointly obligated to pay Margarita approximately \$5 million, plus interest and costs (the “Judgment Debt”).
3. Margarita, through an Alberta company, also owns preference shares in the Company with a face amount of approximately \$14 million. The Alberta company continues to own these shares.
4. On January 15, 2019, Margarita made an application to the Court for, among other things, the appointment of KSV Kofman Inc. (“KSV”) as receiver and manager of the Company (the “Receiver”) pursuant to Section 101 of the *Court of Justices Act* (Ontario). The Receiver understands that the present balance owing under the Judgment Debt is approximately \$4.1 million, plus interest and costs which continue to accrue.

5. In response to Margarita's application, the Company filed an application for protection under the *Companies' Creditors Arrangement Act* ("CCAA") on June 17, 2019.
6. On July 5, 2019, the Court dismissed the CCAA application and appointed KSV as Receiver. A copy of the receivership order is attached as Appendix "A" (the "Receivership Order").
7. The Company is the parent company of more than two dozen subsidiaries, located predominantly in Central America, that carry or carried on business in the food and agricultural sectors. Most of these businesses have been discontinued, are no longer operating or, as discussed in this report ("Report"), were conveyed to the ARTCARM Trust (the "Trust"), a Barbados domiciled trust, the beneficiaries of which are Juan Guillermo's children. The Trustee of the Trust is Alexandria Trust Corporation ("ATC").
8. Presently, the Company's most significant asset is its indirect one-third interest in a group of successful family-owned vertically integrated poultry businesses operating in Central America referred to as the "Avicola Group". The Company's interest in the Avicola Group is held as follows:
 - a) 25% through its wholly owned indirect subsidiary, Lisa, S.A. ("Lisa"), a Panamanian holding company; and
 - b) 8.3% through Villamorey S.A. ("Villamorey"), a Panamanian holding company¹.

Attached as Appendix "B" is the Company's present corporate organizational chart.²

9. Dionisio Gutierrez Sr., Isabel Gutierrez de Bosch and their children (collectively, the "Cousins") are believed to own the remaining two-thirds of the Avicola Group through entities they own, including the remaining two-thirds of Villamorey.
10. Margarita, Juan Guillermo and the Cousins have been litigating for decades, primarily related to shareholder disputes involving the Avicola Group (the "Avicola Litigation").
11. As of mid-2018, the Company and Lisa had received approximately \$43 million and US\$57 million, respectively, from BDT, Arven and a subsidiary of Arven, Preparados Alimenticios Internacionales, CA ("PAICA"), to assist them to fund the Avicola Litigation.
12. The Receiver understands that prior to April 2016, Empress Arturo International ("EAI"), a Barbados company and a wholly owned subsidiary of the Company, directly and indirectly owned and operated the "Arturos" restaurant business in Venezuela through BDT and Arven. The Receiver has been advised by Juan Guillermo that the Arturos restaurant chain is still operating and that BDT and Arven are now owned by the Trust.

¹ Villamorey owns 25% of the Avicola Group, of which the Company has an indirect one-third ownership interest.

² The Company's corporate organizational chart does not show the Villamorey interest in the Avicola Group; however, the Receiver understands based on court pleadings and its conversations with Juan Guillermo that Villamorey owns a 25% interest in the Avicola Group.

13. The effect of the transactions discussed in this Report (the transactions are defined below as the EAI Transaction and the Assignment Transaction) was to transfer from the Company to the Trust all or the majority of the potential value of the Avicola Litigation and the Arturo business (owned by BDT and Arven) to Juan Guillermo's children as beneficiaries of the Trust.

1.1 Purposes of this Report

1. The purposes of the Report are to:
 - a) provide background information concerning the Company;
 - b) discuss the Receiver's concerns regarding:
 - i. the sale, conveyance or transfer in early 2016 by EAI of the shares of BDT and Arven to Juan Arturo, and then from Juan Arturo to the Trust (the "EAI Transaction"); and
 - ii. the assignment in January 2018 by Lisa of the proceeds from the Avicola Litigation to BDT (the "Assignment Transaction");
 - c) recommend that the Court issue an order:
 - i. requiring each of BDT, Arven, the Trust and ATC, the directors of EAI and any other person with information concerning the EAI Transaction, to deliver such information to the Receiver, including any and all documentation related to the EAI Transaction;
 - ii. requiring each of Lisa, BDT, the Trust and ATC and any other person with information concerning the Assignment Transaction to deliver such information to the Receiver, including any and all documentation related to the Assignment Transaction;
 - iii. sealing Confidential Appendices "1" and "2" pending the issuance of a further order of the Court unsealing the Confidential Appendices;
 - iv. approving the fees and disbursements of the Receiver and its legal counsel, Aird & Berlis LLP ("A&B"), arising for the periods referenced in the attached fee affidavits; and
 - v. approving this Report and the Receiver's activities, as described herein.

1.2 Currency

1. All references to currency in this Report are in Canadian dollars unless otherwise stated.

1.3 Restrictions

1. In preparing this Report, the Receiver has relied upon unaudited financial information of the Company, the books and records of the Company, materials filed in the Avicola Litigation, discussions with representatives of the Company and discussions with Margarita. The Receiver has also relied upon answers to questions it submitted to Juan Guillermo and on the information provided by Juan Guillermo during meetings between him and the Receiver and their respective legal counsel.
2. The Receiver has also relied upon the Examination of Juan Guillermo held on June 26, 2019 (the "Examination") and the related Answers to Undertakings, Advisements and Refusals from the Examination (the "Examination Undertakings"). Copies of the Examination and Examination Undertakings are attached hereto as Appendices "C" and "D", respectively.
3. The Receiver has not audited, or otherwise attempted to verify the accuracy or completeness of the financial information relied on to prepare this Report in a manner that complies with Canadian Auditing Standards ("CAS") pursuant to the *Chartered Professional Accountants of Canada Handbook* and, accordingly, the Receiver expresses no opinion or other form of assurance contemplated under the CAS in respect of such information.
4. This Report provides an update relating to these receivership proceedings and support for the relief to be sought by the Receiver at its motion returnable October 29, 2019. This Report should not be relied upon for any other purpose. The Receiver expresses no opinion or other form of assurance with respect to the financial and other information presented in this Report or relied upon by the Receiver in preparing this Report. Any party wishing to place reliance on the financial information should perform its own diligence.

1.4 Receivership Materials

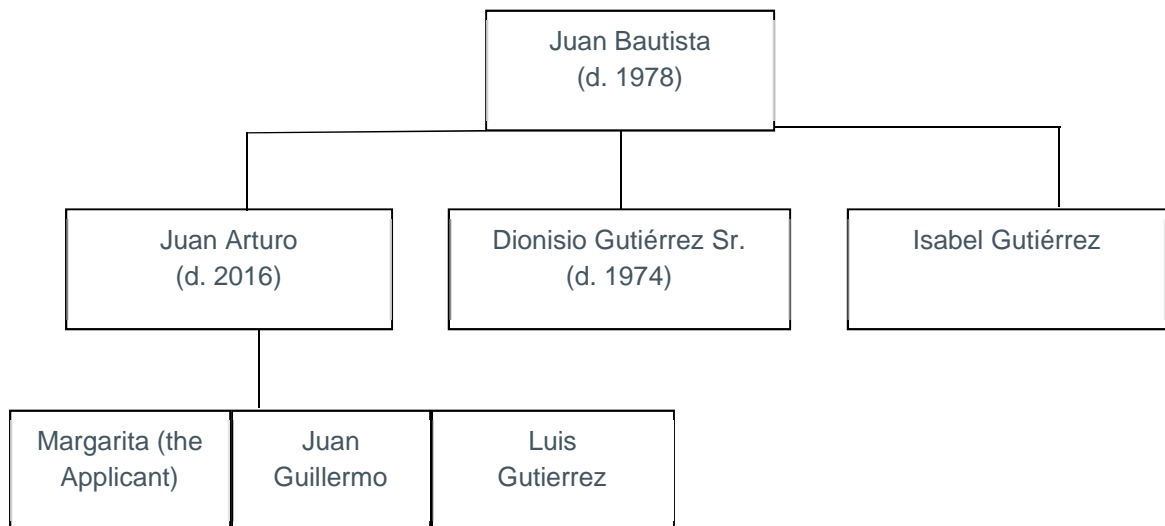
1. All materials filed in the receivership proceedings are available on the Receiver's website at: <https://www.ksvadvisory.com/insolvency-cases/case/xela-enterprises-ltd>.

2.0 Executive Summary

1. As a result of the EAI Transaction (i.e. the sale, transfer or conveyance of the shares of each of BDT and Arven to the Trust) and the Assignment Transaction, the majority of the economic interest in the Company has been transferred from the Company to the Trust, the beneficiaries of which are Juan Guillermo's children. The EAI Transaction and the Assignment Transaction were completed at a time when Juan Guillermo was litigating with Margarita. While the Receiver has not completed its review of the EAI Transaction and the Assignment Transaction because several information requests made of Juan Guillermo and others remain outstanding, it is apparent that Juan Guillermo had (and has) several conflicts of interest related to these transactions, including that his children will benefit from them if there is a recovery by Lisa on the Avicola Litigation. Juan Guillermo appears to be leading the Avicola Litigation on behalf of Lisa, notwithstanding he is not an officer or director of that company.
2. As the Receiver is continuing to review the EAI Transaction, the Assignment Transaction and other matters related to these proceedings, the Receiver is of the view that any settlement of the Avicola Litigation and/or the sale of the Company's interests in Avicola Group should require consultation with the Receiver and approval of the Court.

3.0 Background

1. Juan Bautista Gutierrez ("Juan Bautista") was the patriarch of the Gutierrez family and the founder of the Avicola Group. A condensed family tree is provided below:



2. The Avicola Group is based in Guatemala. The Avicola Group carries on a large and successful poultry business in Central America.
3. The Receiver understands that in 1978, Juan Bautista conveyed his interest in the Avicola Group equally to his three children, Juan Arturo, Dionisio Gutierrez Sr. and Isabel Gutierrez. Juan Arturo's interest in the Avicola Group was indirectly held by the Company through Lisa.
4. A dispute arose in 1998 as to whether the Cousins were concealing the Avicola Group's financial results from Lisa. The Avicola Group has not paid dividends to Lisa since that time. The Receiver understands that Lisa is presently involved in over 100 lawsuits with the Cousins in multiple jurisdictions, including Canada, the State of Florida, Panama and Guatemala with respect to, among other things, dividends totalling approximately US\$360 million³ owing to Lisa and Villamorey from the Avicola Group.

3.1 The Company

1. The Company is a holding company incorporated in Canada. The Company's major shareholders include members of Juan Arturo's family.⁴ Juan Guillermo is a director and the President of the Company.
2. The Company has six wholly owned subsidiaries, as detailed below.

Subsidiary	Jurisdiction	Status
Gabinvest, S.A.	Panama	Owns Lisa, which holds the Avicola Group Interest
Xela International Inc.	Canada	Inactive
Tropic International Ltd.	Canada	Inactive
Empress Arturo International	Barbados	See Section 4
Xela Global Resources	Canada	Inactive
Boucheron Universal Corp.	Panama	Inactive

³ Paragraph 121 of the Examination.

⁴ As reflected in the Affidavit of Juan Guillermo sworn June 17, 2019 in support of the CCAA application (the "Guillermo Affidavit").

3. The Company's most recent financial statements were prepared as of May 31, 2018. A summary of the Company's unaudited and unconsolidated⁵ balance sheet as of that date is provided below⁶:

(unaudited; \$000s)	
Assets	
Investments	270
Advances to related parties	22,485
Total assets	<u>22,755</u>
Liabilities	
Accounts payable and other current liabilities	9,459
Due to shareholders	671
Due to related parties	72,944
Total liabilities	83,075
Equity	<u>(60,319)</u>
Total liabilities and equity	<u>22,755</u>

4. As reflected above, as at May 31, 2018, the Company had significant liabilities owing to related parties. A summary of these balances as at May 31, 2018 is provided below:

(unaudited; \$000s)	Amount	Status
BDT	24,194	See Section 4 below
Badatop Holdings Inc.	21,884	Inactive
PAICA	11,835	See Section 4 below
Arven	6,508	See Section 4 below
Other	8,523	Inactive
Total due	<u>72,944</u>	

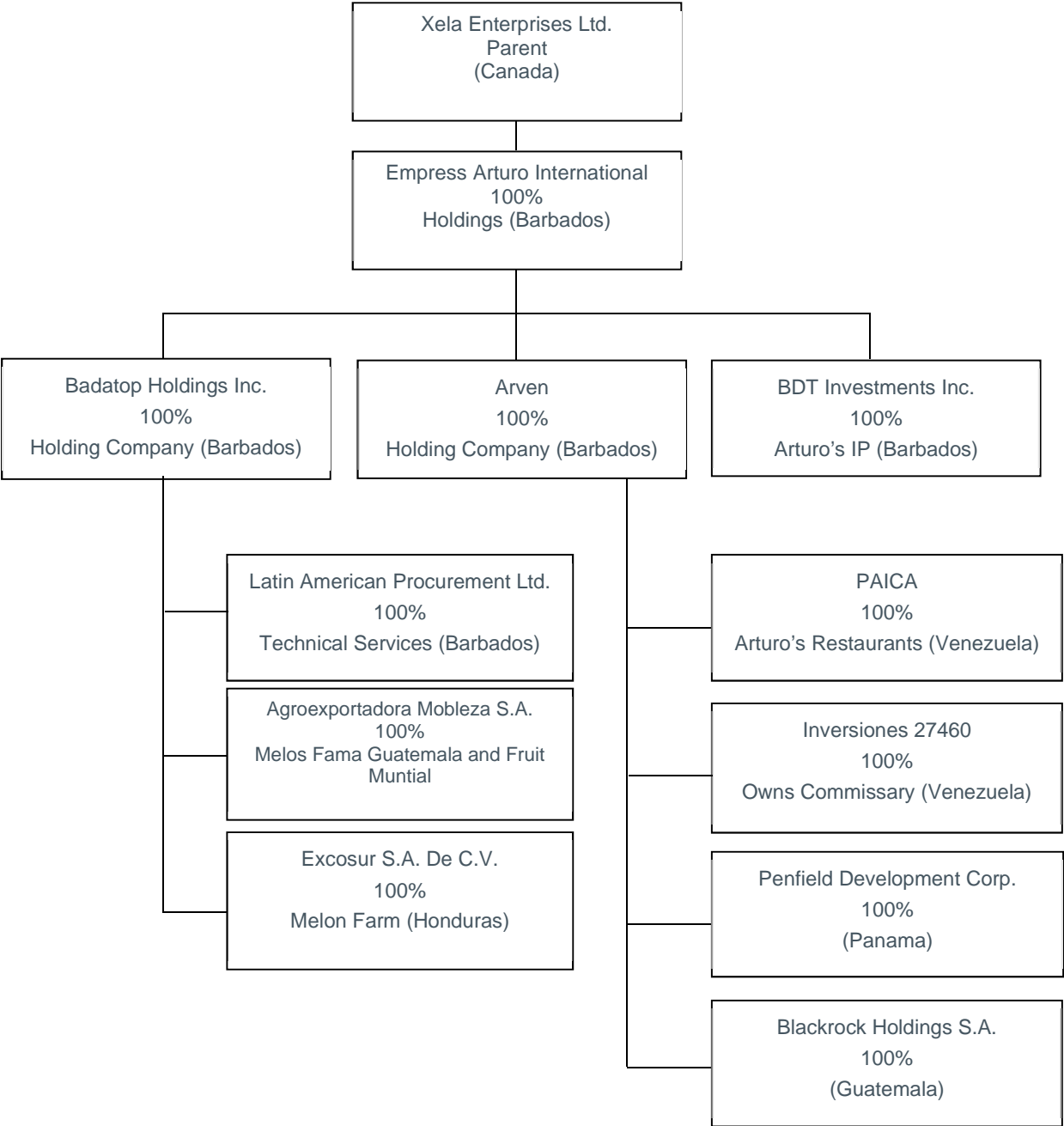
⁵ The Company has not provided consolidated financial statements.

⁶ The Company's financial statements exclude the debt owing to Margarita.

4.0 EAI Transaction and Assignment Transaction

4.1 EAI Transaction

1. The Company is the sole shareholder of EAI. At the time of the EAI Transaction, Juan Guillermo was a Director of EAI and its President.
2. BDT and Arven were subsidiaries of EAI prior to April 2016. The corporate chart for EAI prior to the EAI Transaction is reflected below.



3. The Receiver understands that BDT owns the intellectual property used by “Arturos”, a chain of 90 fast food chicken restaurants operating in Venezuela. The Arturos restaurants are owned by PAICA, a Venezuelan entity which is wholly owned by Arven. PAICA pays royalties and service fees to BDT.
4. The Receiver understands that BDT, Arven and PAICA have a history of profitability. Juan Guillermo has advised that the Arturos business has suffered in recent years due to the political and economic situation in Venezuela. The Receiver understands that BDT, Arven and PAICA have collectively advanced a total of approximately USD\$57 million to Lisa and \$43 million to the Company to fund the Avicola Litigation as of the dates reflected in the table below.

(unaudited; \$000s)	Company (CAD) (as at May 31, 2018)	Lisa (USD) (as at June 30, 2018)	Total
BDT	24,194	47,076	71,270
Arven	6,508	12,727	19,235
PAICA	11,835	(2,913)	8,922
	42,537	56,890	99,427

5. According to information provided to the Receiver by Juan Guillermo, at the time of the EAI transaction (around April 2016), EAI owed Juan Arturo approximately US\$9 million on account of loans purportedly advanced by Juan Arturo to EAI. To date, the Receiver has not been provided with any evidence of advances by Juan Arturo to EAI despite the Receiver’s requests for this evidence.
6. The Receiver has been advised by Juan Guillermo that EAI was unable to repay the amounts owing to Juan Arturo and, as a result, EAI conveyed the shares of BDT and Arven to Juan Arturo for US\$6.5 million⁷ in partial satisfaction of EAI’s obligation to him. The Receiver understands from Juan Guillermo that the balance of the debt remains outstanding.
7. The Receiver has been further advised by Juan Guillermo that Juan Arturo subsequently transferred the BDT and Arven shares he acquired from EAI to the Trust. The effect of the EAI Transaction was to remove the shares of BDT and Arven from the Company’s organization and to transfer them to the Trust. The Receiver is concerned that the consideration paid by Arturo for the shares of BDT and Arven may not have reflected the value of the Arturos’ business, nor that sufficient value was attributed to the receivables owing by Lisa and the Company to BDT, Arven and PAICA.
8. Juan Arturo died in June 2016. Juan Guillermo advises that: (a) he only learned of the sale, transfer or conveyance of the shares in BDT and Arven to the Trust from his father just prior to father’s death; (b) he has no information concerning the Trust or the details of the EAI Transaction; and (c) he is not presently involved in the business and operations of either of BDT and/or Arven.

⁷ Comprised of US\$3.75 million for the shares of BDT and US\$2.75 million for the shares of Arven.

9. Juan Guillermo provided the Receiver with valuations of BDT and PAICA⁸ (the “Valuations”) in the context of the EAI Transaction. Copies of the Valuations are attached hereto as Confidential Appendix “1”. The Receiver’s concerns with the Valuations are provided in Confidential Appendix “2”.
10. The Receiver has the following additional concerns with respect to the EAI Transaction:
 - a) BDT, Arven and PAICA have advanced tens of millions of dollars to Lisa to fund its costs (and the Receiver understands that they continue to fund, or are prepared to continue to fund, Lisa’s litigation); however, it is unclear to the Receiver why EAI decided not to use the cash flow generated by these entities to repay the amounts EAI owed to Juan Arturo. This could have been done through payment of a dividend from some or all EAI’s subsidiaries to EAI; and
 - b) it is unclear how the Boards of Directors of each of the Company and EAI satisfied themselves as to the value of BDT and Arven, including the receivables owing from Lisa. It is also unclear whether the Boards of the Company and EAI had separate legal counsel when completing the EAI Transaction, and the extent of Juan Guillermo’s participation in the EAI Transaction.
11. Based on the foregoing, the Receiver requires additional information from each of BDT, Arven, and ATC to further investigate the EAI Transaction⁹. The Receiver recommends that the Court issue an order requiring these and any other party with information concerning the EAI Transaction to provide all such information to the Receiver forthwith, so that the Receiver can complete its review of the transaction.
12. In the interim, as EAI is incorporated in Barbados, the Receiver has engaged local counsel in Barbados.

4.2 Assignment Transaction

1. In January 2018, BDT sought additional consideration from Lisa for amounts advanced, or to be advanced, by BDT to Lisa to fund the Avicola Litigation. Pursuant to the Assignment Agreement, BDT agreed to fund Lisa’s costs in the Avicola Litigation, provided Lisa assign its interest in the Avicola Litigation to BDT. BDT agreed to pay Lisa 30% of the net litigation proceeds, after deducting costs and the repayment by Lisa of any amounts owing to BDT. A copy of the Assignment Agreement is attached as Appendix “E”.

⁸ The BDT valuation was prepared by Deloitte LLP. The PAICA valuation was prepared by Lara Marambio & Asociados, which is a subsidiary of or related to Deloitte LLP.

⁹ The Receiver has requested details regarding the Trust, including a copy of the Trust Agreement and the names of the law firms that represent the Trust. Juan Guillermo has advised the Receiver that ATC will not provide any information concerning the Trust.

2. The effect of the Assignment Transaction is to transfer further recoveries from the Avicola Litigation to BDT. At the time of the Assignment Transaction, Lisa owed BDT approximately \$47 million. The Receiver understands that the amounts advanced from BDT to Lisa since the date of the Assignment Agreement are insignificant¹⁰. Accordingly, it is unclear whether Lisa received any consideration for entering into the Assignment Agreement. If the litigation is settled in the near term, BDT will receive a windfall despite making no material additional advances to Lisa to fund the Avicola Litigation since the date of the Assignment Agreement.
3. The Receiver is concerned, again, that Juan Guillermo is conflicted as President of the Company, a director of the Company and the father of the beneficiaries of the Trust (who stand to benefit from the Assignment Transaction).

4.3 Confidential Appendices

1. Torys LLP (“Torys”), which is acting as counsel to the Company (but not to the Receiver) required that the Receiver sign a Non-Disclosure Agreement in order to be provided with a copy of the Valuations. Accordingly, the Receiver respectfully requests that the Valuations be filed with the Court on a confidential basis and be sealed as the documents contain confidential information and are currently subject to confidentiality restrictions as ordered by the Court under the Receivership Order. In the circumstances, the Receiver is of the view its concerns with the Valuations should also be subject to the confidentiality provisions as they reference the Valuations. The Receiver is not aware of any party that will be prejudiced if the information in the Confidential Appendices is sealed. Accordingly, the Receiver believes the proposed Sealing Order is appropriate in the circumstances.

5.0 Receivership Order – Clarification re Paragraph 4

1. Pursuant to paragraph 4 of the Receivership Order, the Receiver is not permitted to, among other things, take steps to commence, direct, interfere with, settle, interrupt or terminate any litigation between the Company and its subsidiaries and/or affiliates and any third party until December 31, 2019 or such other date as the Court may order.
2. The Avicola Group presently represents substantially all the Company’s value and currently is the only potential source of recoveries for the Company’s stakeholders. In the circumstances, the Receiver is of the view that it should be consulted with respect to any settlement or transaction negotiated by Juan Guillermo, and that any such settlement or transaction must be approved by the Court given Juan Guillermo’s conflicts of interest. The Receiver also believes that Court approval of any settlement or transaction involving the Avicola Group is required until the Receiver can fully investigate the transactions discussed in this Report. The Receiver is of the view that this requirement is not inconsistent with paragraph 4 of the Receivership Order.

¹⁰ According to answer 15 to the undertakings at the Examination, the debt owing by Lisa to BDT is less than \$50 million. An exact amount was not provided in the answers.

3. The Receiver has been advised by Juan Guillermo that he disagrees with the Receiver's position that Court approval is required of any settlement. Despite efforts to bridge the gap between the parties, and to avoid involving the Court, the parties were required to attend before Justice McEwen to request advice and direction in this regard. The Court requested that the Receiver, Margarita and Juan Guillermo provide written submissions by no later than October 25, 2019 outlining their respective interpretations of paragraph 4 of the Receivership Order. This matter is to be determined by the Court at a case conference on October 29, 2019, following the Receiver's motion.

6.0 Professional Fees

1. The fees of the Receiver and A&B are summarized in the table below:

(\$)					
Firm	Period	Fees	Disbursements	Total	Average Hourly Rate
KSV	Jan 7/19 – Aug 31/19	36,763.75	65.92	36,829.67	620.49
A&B	Jan 10/19 – Sept 11/19	42,636.50	852.15	43,488.65	549.44
Total		79,400.25	918.07	80,318.32	

2. Detailed invoices for the Receiver and A&B can be found in the affidavits sworn by their representatives in Appendices "F" and "G", respectively.
3. The Receiver is of the view that the hourly rates charged by A&B are consistent with the rates charged by law firms practicing in the area of insolvency and restructuring in the Toronto market, and that the fees charged are reasonable in the circumstances.
4. Funding for these proceedings has been provided by Margarita pursuant to Receiver Certificates. There is presently no source of liquidity in the Company to fund the costs of these proceedings.

7.0 Overview of Receiver's Activities

1. The Receiver's activities in respect of these proceedings include the following:
 - a) familiarizing itself with the status and history of the litigation involving the Company;
 - b) corresponding with A&B concerning all matters in connection with the receivership proceedings;
 - c) preparing the Notice and Statement of the Receiver pursuant to subsections 245(1) and 246(1) of the *Bankruptcy and Insolvency Act*;
 - d) attending two meetings with Margarita and Bennett Jones;
 - e) attending two meetings with Torys and Juan Guillermo;
 - f) preparing questions for Juan Guillermo, reviewing his responses and sending follow-up questions;

- g) reviewing financial information concerning the Company;
- h) reviewing the EAI Transaction and the Assignment Transaction;
- i) dealing with Torys regarding various matters in these proceedings, including several information requests and the dispute as to whether Court approval is required of any settlement of the Avicola Litigation;
- j) engaging with Barbados and Panamanian counsel to assist the Receiver with a review of the subsidiaries, the Avicola Litigation and the EAI Transaction;
- k) reviewing, commenting and executing a confidentiality agreement between the Receiver and Juan Guillermo; and
- l) corresponding with Stikeman Elliot LLP, Canadian counsel to the Cousins.

8.0 Conclusion and Recommendation

1. As a result of the transactions discussed in this Report, the Receiver is concerned that EAI may have received inadequate consideration when it sold, conveyed or transferred the shares of BDT and Arven to Juan Arturo. In addition to further investigating the EAI Transaction and the Assignment Transaction, further investigation is required into the Valuations of BDT, Arven and PAICA to assess the reasonableness of the consideration paid by Juan Arturo to EAI for the shares of BDT and Arven.
2. Based on the foregoing, the Receiver respectfully recommends that this Court make an Order granting the relief detailed in Section 1.1(1)(c) of this Report.

* * *

All of which is respectfully submitted,



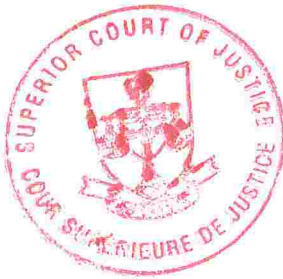
**KSV KOFMAN INC.,
SOLELY IN ITS CAPACITY AS RECEIVER AND MANAGER OF
XELA ENTERPRISES LTD. AND
NOT IN ITS PERSONAL OR CORPORATE CAPACITY**

Appendix “A”

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE)
JUSTICE MCEWEN)

FRIDAY , THE 5th
DAY OF July , 2019



MARGARITA CASTILLO

Applicant

- and -

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

Respondents

ORDER
(appointing Receiver)

THIS MOTION made by the Applicant for an Order pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing KSV Kofman Inc. as receiver and manager (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of Xela Enterprises Ltd. (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Margarita Castillo sworn January 14, 2019 and the Exhibits thereto and on hearing the submissions of counsel for Margarita Castillo and Xela Enterprises Ltd., and on reading the consent of KSV Kofman Inc. to act as the Receiver,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 101 of the CJA, KSV Kofman Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "Property").

RECEIVER'S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$250,000, provided that the aggregate consideration for all such transactions does not exceed \$1,000,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required;
- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and

on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;

- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

4. THIS COURT ORDERS that, notwithstanding any other provision in this Order, the Receiver shall not take any steps to commence, direct, interfere with, settle, interrupt or terminate any litigation between the Debtor and its subsidiaries and/or affiliates and any third party, including the litigation involving or related to the Avicola companies (as defined and further set out in the affidavit of Juan Guillermo Gutierrez (“Juan”), sworn June 17, 2019). Such steps shall include but not be limited to:

- a) selling or publicly marketing the shares of Lisa S.A., Gabinvest S.A., or any shares owned by these entities;
- b) publicly disclosing any information about the above-mentioned litigation and/or the Receiver’s conclusions or intentions, provided that the Receiver may disclose such information to Juan and Margarita Castillo (“Margarita”) and their counsel upon Juan and Margarita each executing a non-disclosure agreement in a form reasonably acceptable to the Receiver, and if the Receiver does disclose such information, conclusions or intentions, the Receiver shall disclose equally to Juan and Margarita;

- c) replacing counsel in the above mentioned litigations; and
- d) engaging in settlement negotiations or contacting opposing parties in the above-mentioned litigation.

This paragraph applies only until December 31, 2019 or such other date as this Court may order.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

5. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request. The Receiver shall treat as confidential all information received relating to litigation involving or related to the Avicola companies.

6. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

7. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service

provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

8. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

9. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

10. THIS COURT ORDERS that all rights and remedies against the Receiver are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as

amended (the "BIA"), and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

11. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

12. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

13. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be

opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

14. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

15. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

16. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or

collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

17. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

18. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory

or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

20. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

21. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The amount of such borrowing shall not, subject to further order of this Court, exceed \$500,000 before December 31, 2019. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

24. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

TERMINATION OF RECEIVERSHIP

25. THIS COURT ORDERS that the Debtor may make a motion to this Court for the termination of the receivership upon receipt by Margarita of the judgment debt owing to her by the Debtor, plus receivership fees and expenses, and that upon such motion the burden shall be on Margarita to justify that it remains just and equitable to continue the receivership.

SERVICE AND NOTICE

26. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL 'http://www.ksvadvisory.com/insolvency-cases/case/xela-enterprises'.

27. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as

last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

28. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

29. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

30. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, Panama Guatemala, Barbados, Bermuda, Venezuela or Honduras to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

31. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

32. THIS COURT ORDERS that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, in the amount of \$40,000, all inclusive, to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

33. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



A handwritten signature in black ink, appearing to be 'M. J. T.', written above a horizontal line.

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

JUL 05 2019

PER / PAR:



A handwritten signature in blue ink, appearing to be 'A', written next to the text 'PER / PAR:'.

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that KSV Kofman Inc., the receiver (the "Receiver") of the assets, undertakings and properties Xela Enterprises Ltd. acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the ___ day of _____, 20__ (the "Order") made in an action having Court file number CV-11-9062-00CL, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

KSV Kofman Inc., solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____

Name:

Title:

MARGARITA CASTILLO
Moving Party

-and-

XELA ENTERPRISES LTD. et al.
Respondents
Superior Court File No.: CV-11-9062-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding commenced at Toronto

ORDER

BENNETT JONES LLP
3400 One First Canadian Place
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Toronto, ON M5X 1A4

Jeffrey S. Leon (#18855L)
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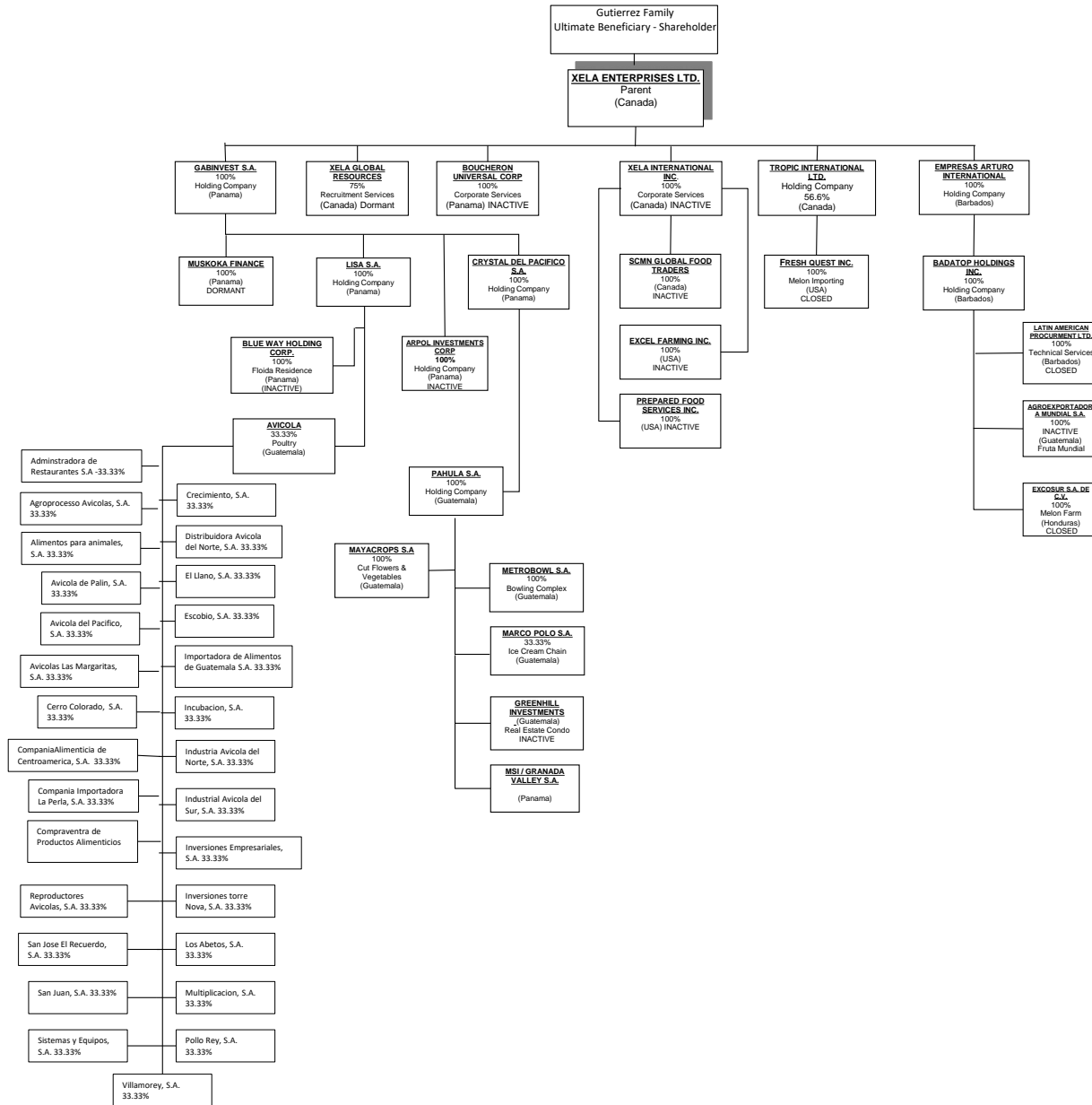
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Lawyers for the moving party, Margarita Castillo

Appendix “B”



Appendix “C”

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT
ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF XELA ENTERPRISES LTD.

Applicant

This is the Cross-Examination of JUAN
GUTIERREZ on an Affidavit sworn June 17, 2019, taken at
the offices of Network Reporting & Mediation, 100 King
Street West, Suite 3600, Toronto, Ontario, on the 26th
day of June, 2019.

A P P E A R A N C E S:

JASON WOYCHESHYN) Solicitors for Margarita Castillo
WILLIAM BORTOLIN)

JEREMY OPOLSKY) Solicitors for Xela Enterprises Ltd
STEFAN CASE)

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1 --- UPON COMMENCING AT 12:35 P.M.
2 JUAN GUTIERREZ, Sworn
3 EXAMINATION BY MR. WOYCHESHYN:
4 1. Q. You are Juan Guillermo Gutierrez?
5 A. Yes.
6 2. Q. You acknowledge you're under oath?
7 A. Sorry?
8 3. Q. You acknowledge you're under oath, sir?
9 A. Yes, I know.
10 4. Q. You swore an affidavit in this
11 proceeding on June 17th, 2019. Do you have a copy of
12 that affidavit?
13 A. Yes.
14 5. Q. I understand, sir, you swore the
15 affidavit in support of Xela's application made under
16 the Companies' Creditors Arrangement Act?
17 A. Correct.
18 6. Q. For the purposes of the examination,
19 I'll refer to that act as the CCAA; and when I do
20 that, you'll understand what I'm referring to?
21 A. Yes.
22 7. Q. You also swore your affidavit, sir, in
23 opposition to Margarita Castillo's motion to have a
24 receiver appointed over Xela?
25 MR. OPOLSKY: He did not. He swore in

Page 6

1 support of this affidavit and the CCAA application.
 2 BY MR. WOYCHESHYN:
 3 8. Q. All right. Sir, just so I'm clear,
 4 your affidavit is not in opposition to Margarita's
 5 motion for a receiver?
 6 MR. OPOLSKY: The affidavit is sworn in
 7 support of the CCAA proceedings.
 8 MR. WOYCHESHYN: Will it be relied on in
 9 submissions in opposition to Margarita's motion for a
 10 receivership?
 11 MR. OPOLSKY: We understand that those
 12 motions are being heard together --
 13 MR. WOYCHESHYN: Yes.
 14 MR. OPOLSKY: -- and that they are
 15 alternatives to each other. But nonetheless, this
 16 affidavit was sworn in support of the CCAA
 17 application.
 18 BY MR. WOYCHESHYN:
 19 9. Q. I take it, sir, that does Xela does
 20 Margarita Castillo's motion to have a receiver
 21 appointed?
 22 A. Xela, or Xela, what it's supporting is
 23 going to a CCAA as the best alternative to protect the
 24 rights of all creditors and stockholders.
 25 10. Q. And the CCAA proceeding being planned

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1 to be in preference to the appointment of a receiver?
 2 A. It is because -- it is our preference
 3 in the sense that it's the most fair and appropriate
 4 way to be finding a solution that is equitable and
 5 reasonable for all creditors without exception,
 6 including Margarita Castillo, and also to protect the
 7 rights of stockholders.
 8 11. Q. I didn't ask you why you prefer one
 9 method over the other, I just asked whether you prefer
 10 a CCAA over the receiver. I take your answer as being
 11 yes. Do I have that right?
 12 A. Yes, it is.
 13 12. Q. Do you prefer Xela or Xela?
 14 A. Either way. It's no preference.
 15 13. Q. You have a copy of your affidavit in
 16 front of you, sir?
 17 A. Yes, I do.
 18 14. Q. I take it before you swore your
 19 affidavit you reviewed it carefully?
 20 A. Yes.
 21 15. Q. You wanted to make sure it was accurate
 22 --
 23 A. Yes.
 24 16. Q. -- and truthful?
 25 A. Yes.

Page 8

1 17. Q. In preparing for today's cross-
 2 examination, you reviewed your affidavit again?
 3 A. Yes.
 4 18. Q. Did you identify any errors during that
 5 review?
 6 MR. OPOLSKY: We have one numerical
 7 correction and perhaps I will speak to that because
 8 that would facilitate it.
 9 MR. WOYCHESHYN: Sure.
 10 MR. OPOLSKY: I don't believe that it's
 11 material. But for completeness, at Paragraph 66 of
 12 the affidavit, the paragraph refers to amounts owing
 13 from Xela subsidiaries both in 2018 and in 2014.
 14 Those totals appear in the financial statements but
 15 are a misreading of the total amount. If I can direct
 16 your attention to Page 126 of the record, which is at
 17 Tab E.
 18 MR. WOYCHESHYN: These are the notes to the
 19 non-consolidated financial statements for Xela
 20 Enterprises Ltd for the period ending May 31st, 2015?
 21 MR. OPOLSKY: That's correct. You'll see
 22 that on this page it references the approximately
 23 \$25,000,000.00 figure halfway down the page.
 24 MR. WOYCHESHYN: Yes.
 25 MR. OPOLSKY: That figure is not the full

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1 total, which should be at the bottom of the page,
 2 which is 38.8 million.
 3 MR. WOYCHESHYN: Right.
 4 MR. OPOLSKY: Similarly, in 2018, if I can
 5 direct you to Page 142 of the record.
 6 MR. WOYCHESHYN: These are the notes to the
 7 non-consolidated statements of operations for Xela
 8 Enterprises for the period ending May 31st, 2018?
 9 MR. OPOLSKY: That's correct. You'll see on
 10 Page 142 of the record the figure of approximately
 11 \$8,000,000.00 near the end of the page?
 12 MR. WOYCHESHYN: Yes.
 13 MR. OPOLSKY: Again, that figure omitted
 14 some of the other line items and should be, if you
 15 flip over the page to Page 143, approximately
 16 \$22,000,000.00. I don't believe that this materially
 17 changes the content of the affidavit. But if you
 18 would like a revised affidavit, we'd be happy to
 19 provide it.
 20 BY MR. WOYCHESHYN:
 21 19. Q. No, that's fine. You adopt those
 22 corrections that your counsel just stated on the
 23 record, Mr. Gutierrez?
 24 A. Yes.
 25 20. Q. Other than those changes, no other

Page 10

1 changes to your affidavit, sir?
 2 A. Not that I'm aware of.
 3 21. Q. So as far as you're aware, your
 4 affidavit remains accurate and truthful?
 5 A. Yes.
 6 22. Q. Your affidavit starts by listing your
 7 name and says that you live in the city of Toronto.
 8 Is that correct, sir?
 9 A. That's correct.
 10 23. Q. What's your address?
 11 A. It's 47 York Mills Road, Unit 212,
 12 Toronto.
 13 24. Q. I'm showing you, sir, a letter and a
 14 notice of examination from my office to one of your
 15 counsel at Torys LLP. The letter is dated June 25,
 16 2009 and attaches a notice of examination for today's
 17 date. Do you see that?
 18 A. Yes.
 19 25. Q. Have you seen this document before?
 20 A. This page, yes.
 21 MR. WOYCHESHYN: If we can mark that as the
 22 first exhibit.
 23 --- EXHIBIT NO. A: Letter to Torys LLP and Notice of
 24 Examination
 25 BY MR. WOYCHESHYN:

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1 26. Q. I take it you have not brought any
 2 documents with you today, sir?
 3 MR. OPOLSKY: Counsel, the request -- Mr.
 4 Gutierrez has not brought any documents with him.
 5 MR. WOYCHESHYN: I take it in support of the
 6 application that Xela is making, the evidence will be
 7 the affidavit of Mr. Gutierrez, the attachments
 8 thereto and the transcript from this cross-
 9 examination?
 10 MR. OPOLSKY: That's our understanding,
 11 subject to, of course, any report that the proposed
 12 monitor puts in.
 13 MR. WOYCHESHYN: Do you anticipate such a
 14 report coming up pre the hearing?
 15 MR. OPOLSKY: That's our understanding, but
 16 we don't control the monitor and that will be up to
 17 the monitor.
 18 MR. WOYCHESHYN: Well, the report won't come
 19 pre filing the application, right?
 20 MR. OPOLSKY: The application has been
 21 filed, but there will be a -- I anticipate that there
 22 will be a report of the proposed monitor in support of
 23 the CCAA filing, which is custom. However, I'm not
 24 the monitor nor am I counsel to the monitor, so your
 25 questions are best posed to those parties.

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1 BY MR. WOYCHESHYN:
 2 27. Q. Thank you. Mr. Gutierrez, just to
 3 clear up some nomenclature for today's examination.
 4 We already talked about Xela. And when I'm referring
 5 to Xela, I'm referring to Xela Enterprises Ltd, and
 6 you're comfortable with that?
 7 A. Sorry?
 8 28. Q. When I refer to Xela Enterprises Ltd
 9 today, I'm going to call it Xela.
 10 A. Yes. That's okay.
 11 29. Q. You're comfortable with that?
 12 A. Yes.
 13 30. Q. When I refer to Lisa -- L-I-S-A,
 14 capital S period, capital A period -- I'll just refer
 15 to it as Lisa, and you're comfortable with that?
 16 A. Yes.
 17 31. Q. If you could turn, please, sir, to
 18 exhibit ---
 19 MR. OPOLSKY: Before we do that, can we go
 20 off the record to discuss keeping track of the
 21 exhibits?
 22 MR. WOYCHESHYN: Sure.
 23 --- OFF THE RECORD (12:45 P.M.) ---
 24 --- UPON RESUMING (12:45 P.M.) ---
 25 BY MR. WOYCHESHYN:

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1 32. Q. If you could turn to Exhibit M as in
 2 Mary of your affidavit, sir. This is, as I understand
 3 it, the current organizational chart of Xela, is that
 4 right?
 5 A. It is right.
 6 33. Q. So if we look on the left-hand side of
 7 Exhibit M, this is Page 231 of the application record,
 8 we see at the very top the Gutierrez family ultimate
 9 beneficiary dash shareholders of Xela and then towards
 10 the left, one of the subsidiaries of Xela is a company
 11 called Gabinvest S.A., G-A-B-I-N-V-E-S-T?
 12 A. That's correct.
 13 34. Q. Xela owns 100 percent of Gabinvest?
 14 A. That's correct.
 15 35. Q. And one of, if we follow the lines, one
 16 of the subsidiaries of Gabinvest is Lisa, the company
 17 we just mentioned before, right?
 18 A. That's correct.
 19 36. Q. Gabinvest owns 100 percent of Lisa's
 20 shares?
 21 A. Correct.
 22 37. Q. Then Lisa in turn holds a 33.33 percent
 23 interest in Avicola?
 24 A. Yes. It's a group of companies.
 25 38. Q. Right. So for today's examination,

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1 when I refer to Avicola, I will be referring to each
2 of those group of companies. Is that acceptable to
3 you?
4 A. To each of them or to all of them?
5 39. Q. Collectively. Collectively to all of
6 them.
7 A. Okay.
8 40. Q. Is that fair?
9 A. That's correct. That's a group.
10 41. Q. Your affidavit makes references in a
11 number of instances to the Cousins -- capital C
12 Cousins, spelled like the family. I just want to be
13 sure that I know which individuals you're referring
14 to. So I take it that when you say Cousins in your
15 affidavit, you're referring to four individuals: Juan
16 Luis Bosch Gutierrez, Felipe Antonio Bosch Gutierrez,
17 Dionisio Gutierrez Mayorga and Juan Jose Gutierrez
18 Mayorga?
19 A. Mainly them, yes.
20 42. Q. Who else is included in the Cousins
21 when you use it?
22 A. Well, they all have siblings and there
23 is also an aunt and they all form the same group. So
24 but the four you mentioned are the controlling parties
25 of this issue.

Page 15

1 43. Q. The aunt that you mentioned in your
2 last response, sir, that's Isabelle Gutierrez De
3 Bosch?
4 A. Correct.
5 44. Q. When you use the word Cousins, it's
6 those five individuals plus their sibling relatives?
7 A. Correct.
8 45. Q. Let's talk, sir, about your role with
9 Xela. You're the president of Xela?
10 A. That's correct.
11 46. Q. You've had that role since 2000?
12 A. Correct.
13 47. Q. You've been a director of Xela
14 throughout that period as well?
15 A. Yes.
16 48. Q. As president of Xela I take it you
17 understand you have various duties that you owe to the
18 company?
19 A. Yes, I do.
20 49. Q. You have a duty to act honestly?
21 A. Pardon?
22 50. Q. You have a duty to act honestly?
23 A. Of course.
24 51. Q. In good faith?
25 A. Yes.

Page 16

1 52. Q. And in best interest of Xela?
2 A. Correct.
3 53. Q. I take it at all times you did your
4 best and do your best, sir, to meet those duties?
5 A. That's correct.
6 54. Q. Xela has two directors right now, is
7 that right?
8 A. That's correct.
9 55. Q. You're one director?
10 A. Yes.
11 56. Q. Calvin Shields is the other director?
12 A. Correct.
13 57. Q. Mr. Shields is about 88 years old?
14 A. I don't know his exact age, but it's
15 probably around there.
16 58. Q. You know him to be in his eighties for
17 sure?
18 A. Absolutely. Yeah.
19 59. Q. He lives in Florida?
20 A. Correct.
21 60. Q. Does Xela hold any board meetings?
22 A. We haven't had one for a while.
23 Recently had one.
24 61. Q. I understood that prior to the last six
25 months, Xela's last board meeting was in 2016. Does

Page 17

1 that sound right?
2 A. I don't recall exactly when that may
3 have been.
4 62. Q. When was the most recent board meeting
5 of Xela?
6 A. I don't remember the exact date, but it
7 was a week or two weeks ago.
8 63. Q. Was that a face to face meeting with
9 you and Mr. Shields?
10 A. It was done over the telephone
11 conference.
12 64. Q. Are there any minutes from that
13 meeting?
14 A. There is one, yes.
15 MR. WOYCHESHYN: Subject to any claims for
16 privilege, which I'm sure you'll let me know, Counsel,
17 can we get a copy of the minutes?
18 MR. OPOLSKY: Yes.
19 --- UNDERTAKING NO. 1
20 BY MR. WOYCHESHYN:
21 65. Q. Leaving aside the two directors, I take
22 it your evidence, sir, is you're the only officer of
23 Xela?
24 A. Correct.
25 66. Q. If you could turn up Paragraph 42 of

Page 18

1 your affidavit, sir? This is Page 11 of your
 2 affidavit, Page 20 of the application record.
 3 A. Page 20?
 4 67. Q. Yes. Paragraph 42.
 5 A. Forty-two.
 6 68. Q. You state, "In my role as president, I
 7 am the only current member of Xela's executive
 8 management team." I just want to make sure that we're
 9 using similar language. When you say you're the only
 10 current member of Xela's executive management team,
 11 are you saying that you're Xela's only officer?
 12 A. I'm the only officer, the only
 13 executive, the only employee. There's nobody else
 14 working at Xela.
 15 69. Q. Are you an employee of Xela?
 16 A. I don't know if technically yes because
 17 I haven't been paid in years, but I am representing
 18 Xela. I'm the only one there.
 19 70. Q. You say that's been for years?
 20 A. Correct.
 21 71. Q. You know who Juan Jose Rodriguez is?
 22 A. Yes, I do.
 23 72. Q. He is a U.S. attorney with the law firm
 24 Carey Rodriguez?
 25 A. Correct.

Page 19

1 73. Q. That's based in Miami?
 2 A. Correct.
 3 74. Q. I understand that he has been
 4 representing Xela's interest in the Avicola litigation
 5 in the U.S., is that right?
 6 A. Xela hasn't been involved in the
 7 Avicola litigation directly. It's always been Lisa
 8 who is the one that holds those shares.
 9 75. Q. But with respect to Lisa, Juan
 10 Rodriguez is the advisor to Lisa in the U.S.?
 11 MR. OPOLSKY: You can answer whether he's on
 12 the record, but I would counsel you to not discuss
 13 anything that relates to advice he's given you or any
 14 communications you've had with him.
 15 THE DEPONENT: Yeah. He has been in the
 16 record.
 17 BY MR. WOYCHESHYN:
 18 76. Q. I'm showing you a corporate profile
 19 search for Xela today, pulled today. Sorry. You see
 20 at the top right-hand corner it says June 26, 2019?
 21 A. Yes.
 22 77. Q. Then the registered office is 2225
 23 Sheppard Avenue East. We can agree that that's the
 24 old address of Xela?
 25 A. That's correct.

Page 20

1 78. Q. Then if we go to Page 3 of this
 2 document, we see your name as a director and officer
 3 since 19 -- as a director since 1998 and an officer
 4 since 2000 and then on Page 4 it lists Juan Jose
 5 Rodriguez as an officer. Do you see that?
 6 A. Yes.
 7 79. Q. According to this, it says he was an
 8 officer starting in April 2012. I take it your
 9 evidence, sir, is he is no longer an officer?
 10 A. He's no longer.
 11 80. Q. When did that cease to be the case?
 12 A. I don't recall. I don't. It's a long
 13 time ago.
 14 81. Q. Can I get an undertaking for the date
 15 of his resignation or removal as an officer, please?
 16 MR. OPOLSKY: I'll take that under
 17 advisement.
 18 --- UNDER ADVISEMENT NO. 1
 19 BY MR. WOYCHESHYN:
 20 82. Q. So your evidence, sir, is this
 21 corporate profile report just hasn't been updated?
 22 A. Obviously not because he's not a
 23 director anymore.
 24 83. Q. Sorry, just to be clear, it doesn't
 25 list him as a director. It lists him as an officer.

Page 21

1 A. Or an officer. Sorry, I meant an
 2 officer. He's never been a director.
 3 MR. WOYCHESHYN: We'll mark that as the next
 4 exhibit, please.
 5 --- EXHIBIT NO. B: Corporate profile search for Xela
 6 dated June 26, 2019
 7 BY MR. WOYCHESHYN:
 8 84. Q. Back to Exhibit M as in Mary, sir, of
 9 your affidavit, Page 231 on the application record. I
 10 know we talked about Gabinvest and Lisa on the left-
 11 hand side of the diagram, but if we turn to the right-
 12 hand side, we also see that there's a subsidiary
 13 called -- and pardon my Spanish -- but Empresas Arturo
 14 International?
 15 A. That's correct.
 16 85. Q. That's a hundred percent -- Xela owns
 17 100 percent of Empresas Arturo International?
 18 A. That's correct.
 19 86. Q. That's a Barbadian company?
 20 A. Yes.
 21 87. Q. I take it it has held that interest in
 22 Empresas Arturo International for a number of years?
 23 A. Yes.
 24 88. Q. I take it that the Arturo name comes
 25 from your father?

Page 22

1 A. That's correct.
 2 89. Q. Then moving to the left on Page 231,
 3 Exhibit M of your affidavit, it lists Tropic
 4 International Ltd that Xela holds a 56.6 percent
 5 interest in that company. Do you see that?
 6 A. Yes.
 7 90. Q. You acknowledge, sir, that Margarita
 8 Castillo owns the other 44.4 percent?
 9 A. Yes, that's correct.
 10 91. Q. Then underneath Tropic is Fresh Quest
 11 Inc. and, according to this, it says it's closed. Did
 12 I see that right?
 13 A. That's correct.
 14 92. Q. And do I have it right that as of in
 15 late 2015 is when all the assets of Fresh Quest were
 16 sold?
 17 A. Fresh Quest, yes, it closed then.
 18 Fresh Question didn't have any assets, just an office.
 19 93. Q. Let me rephrase. The only asset that
 20 Tropic had was its interest in Fresh Quest, right?
 21 A. That's correct.
 22 94. Q. So with the closing of Fresh Quest,
 23 Tropic has no assets, right?
 24 A. That's correct.
 25 95. Q. Back to the left-hand side of the

Page 23

1 diagram and talking about Lisa's interest in Avicola.
 2 We went through the sequence, but we can agree that
 3 Lisa is the indirectly wholly owned subsidiary of
 4 Xela?
 5 A. Correct.
 6 96. Q. When I use the phrase Avicola shares,
 7 can we agree that what I'm referring to is Lisa's
 8 interest in the Avicola group?
 9 A. Can you repeat the question?
 10 97. Q. Sure. When I use the phrase the
 11 Avicola or the Avicola shares, what I'm referring to
 12 is Lisa's one-third interest in the Avicola group. Is
 13 that acceptable to you?
 14 A. Yes.
 15 98. Q. We can agree, sir, that the Avicola
 16 shares are by far the most valuable asset of any asset
 17 that is owned by Xela or any of its subsidiaries?
 18 A. Yes.
 19 99. Q. I take it we can agree that other than
 20 the Avicola shares, there is no realizable value in
 21 any of Xela's direct or indirect subsidiaries?
 22 A. That's correct.
 23 100. Q. And the value of the Avicola shares is
 24 potentially hundreds of millions of dollars?
 25 A. Correct.

Page 24

1 101. Q. I take it that no independent valuation
 2 has been conducted by a business valuer of the Avicola
 3 shares?
 4 A. There's been several valuations done,
 5 but they have been all done by people related to us.
 6 Yes.
 7 102. Q. So no independent valuer has valued the
 8 Avicola shares?
 9 A. Independ -- in the past it was. Not
 10 recently.
 11 103. Q. When you say ---
 12 A. But it was -- it was done twice in the
 13 past.
 14 104. Q. In the past five years has a valuation
 15 been done?
 16 A. No. It's farther than that.
 17 105. Q. At Exhibit B to your affidavit, B as in
 18 Bob, you include a slide deck from Eduardo San Juan.
 19 A. Yes.
 20 106. Q. Mr. San Juan, he is an employee of one
 21 of Xela's subsidiaries?
 22 A. It was.
 23 107. Q. He was?
 24 A. It was. Yeah. He's not currently
 25 working for Xela or its direct subsidiaries.

Page 25

1 108. Q. Okay. But he had ---
 2 MR. OPOLSKY: I'm sorry, Counsel. Was your
 3 question at the time that he did this valuation or is
 4 your question did he ever work for Xela?
 5 BY MR. WOYCHESHYN:
 6 109. Q. The question is he is an employee of a
 7 Xela subsidiary and the answer was he's no longer an
 8 employee --
 9 A. Correct.
 10 110. Q. -- of Xela or any of its subsidiaries.
 11 When did he stop being an employee?
 12 A. I don't -- I don't know for exact date.
 13 I would have to check, but I don't know.
 14 111. Q. Can you advise me of that, please?
 15 MR. OPOLSKY: I will take it under
 16 advisement.
 17 --- UNDER ADVISEMENT NO. 2
 18 BY MR. WOYCHESHYN:
 19 112. Q. The slide deck that you provided is in
 20 Spanish, and Footnote 1 of your affidavit says that a
 21 translation is underway and will be provided in a
 22 supplementary affidavit. We don't have a
 23 supplementary affidavit. Do you have a translation of
 24 this slide deck, sir?
 25 MR. OPOLSKY: We're in the process of

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1 getting that to you. We have a version of the
 2 translation. We need to put it in a sworn affidavit
 3 and we will get it to you.
 4 --- UNDERTAKING NO. 2
 5 BY MR. WOYCHESHYN:
 6 113. Q. Thank you. We can agree, though, that
 7 to your knowledge, Mr. Gutierrez, that Eduardo San
 8 Juan is not a chartered business valuer?
 9 A. I don't know for sure if he has a
 10 chartered or not. But he's an expert finance guy and
 11 he's done many valuations.
 12 114. Q. Do you still have communications with
 13 him?
 14 A. Yes. I can communicate with him.
 15 115. Q. Can you ask him whether he is a
 16 chartered or certified business valuer?
 17 MR. OPOLSKY: We'll take that under
 18 advisement.
 19 --- UNDER ADVISEMENT NO. 3
 20 BY MR. WOYCHESHYN:
 21 116. Q. In your affidavit, sir, you mention
 22 that practically the only buyer of the Avicola shares
 23 is the Cousins, do I have that right?
 24 A. That's correct.
 25 117. Q. Has Xela ever tried to market the

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1 Avicola shares to someone outside the family?
 2 A. We have attempted to find potential
 3 buyers unsuccessfully.
 4 118. Q. When is the last time you tried that?
 5 A. I don't recall. But it's -- I don't
 6 remember. I can't tell you a date because I don't
 7 remember the date.
 8 119. Q. Fair enough that it's been over five
 9 years?
 10 A. Yes.
 11 120. Q. I take it that your evidence and
 12 certainly your belief is that the value of the Avicola
 13 shares would certainly be greater than Xela's
 14 liabilities?
 15 A. Absolutely.
 16 121. Q. I think based on your affidavit you say
 17 that the -- you believe the unpaid dividends owing to
 18 Lisa to be approximately 360,000,000 U.S.?
 19 A. Yes.
 20 122. Q. And that's just for the unpaid
 21 dividends? That's not the share value?
 22 A. That amount is on paid dividends plus
 23 interests.
 24 123. Q. Then if we look at Paragraph 13 of your
 25 affidavit, you refer to the slide deck, which I

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1 understand we're getting a translated copy. But Mr.
 2 San Juan's evidence, according to you, in the slide
 3 deck, is that the share value of the Avicola shares is
 4 approximately U.S. 550,000,000, I have that right?
 5 A. Yes. That's correct.
 6 124. Q. I take it you adopt that as, from your
 7 perspective, a fair amount in terms of the amount that
 8 they're worth?
 9 A. It's an amount sustained by the
 10 valuation and the information available for doing it.
 11 125. Q. Right. But what I'm curious is, do you
 12 support that evidence or do you say that the value is
 13 actually lower than 550,000,000?
 14 A. I think the value is likely to be
 15 higher than that.
 16 126. Q. So at a minimum it's 550,000,000 U.S.?
 17 A. Correct.
 18 127. Q. We can agree that Xela is not an
 19 operating business?
 20 A. That's correct.
 21 128. Q. We can agree that Xela is in liquidity
 22 crisis?
 23 A. Yes.
 24 129. Q. Xela is insolvent?
 25 A. I think so.

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1 130. Q. Well, let's look at Paragraph 38 of
 2 your affidavit.
 3 A. Sorry, what paragraph?
 4 131. Q. Thirty-eight, pardon me.
 5 A. Thirty-eight.
 6 132. Q. You say in your second sentence, "As
 7 described below, Xela has no active operations and is
 8 insolvent." You see that?
 9 A. Yes.
 10 133. Q. Then turn over to Paragraph 47 of your
 11 affidavit. Page 21 of the record you start Paragraph
 12 47 with, "Xela is insolvent," right?
 13 A. Yes.
 14 134. Q. So we can agree that Xela is insolvent?
 15 A. Yes, I did. I did already agree.
 16 135. Q. Just so we're using that term in the
 17 same fashion, sir, when you use the word insolvent, is
 18 it fair to say that what you mean by that is Xela is
 19 unable to pay its liabilities as they become due?
 20 MR. OPOLSKY: I think that's a legal
 21 question and he's referring to ---
 22 MR. WOYCHESHYN: No, it's not. He used the
 23 word. I'm trying to understand what he means by it.
 24 MR. OPOLSKY: Well, nonetheless, it's a
 25 defined term under the CCAA and there are several

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1 criteria under it and it is ---
 2 MR. WOYCHESHYN: Counsel, I don't need to
 3 know what the legal definition is. I don't need to
 4 know what the CCAA says. Your client used the word
 5 twice in his affidavit and I'm entitled to understand
 6 what he meant by that. So I'm putting to him a
 7 proposition that's a definition and if he accepts it,
 8 fine; if he doesn't and has a different definition,
 9 that's fine.
 10 MR. OPOLSKY: Nonetheless, it is a legal
 11 term and he's invoking the legal term with respect to
 12 the CCAA and it is ---
 13 MR. WOYCHESHYN: Sorry, let him answer that.
 14 I don't need you to answer that. It's his affidavit,
 15 his words. I'm cross-examining him.
 16 MR. OPOLSKY: I understand that. But you're
 17 cross-examining him on ---
 18 MR. WOYCHESHYN: On the word that he used.
 19 MR. OPOLSKY: Nonetheless, you're cross-
 20 examining him on ---
 21 MR. WOYCHESHYN: To ask him the definition
 22 of the word that he used, his understanding of the
 23 word. There is nothing improper about the question.
 24 MR. OPOLSKY: You're doing it in reference
 25 to the legal standard.

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1 MR. WOYCHESHYN: And if he has a different
 2 understanding, he can tell me. All I want to know is
 3 what he understood when he used that word.
 4 MR. OPOLSKY: Well, then you -- then ask
 5 him. But instead of you putting to him a defined term
 6 in the CCAA ---
 7 MR. WOYCHESHYN: No. So what's your
 8 objection?
 9 MR. OPOLSKY: My objection is that's a legal
 10 question. The answer is -- Xela's legal position is
 11 that all the criteria of the CCAA are...
 12 MR. WOYCHESHYN: Your objection is that my
 13 question about what I purport that he meant when he
 14 used a word is a legal question?
 15 MR. OPOLSKY: My objection is that he's not
 16 a lawyer.
 17 MR. WOYCHESHYN: I know he's not a lawyer
 18 and that's why I'm asking him what he meant by the
 19 word.
 20 MR. OPOLSKY: Well, you're putting to him a
 21 legal standard for the CCAA without identifying it as
 22 such.
 23 MR. WOYCHESHYN: He can agree with it or he
 24 can disagree with it. It's not a legal question.
 25 MR. OPOLSKY: Okay. Well then can you re-

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1 ask the question and he will answer.
 2 BY MR. WOYCHESHYN:
 3 136. Q. Yes. When you used the word insolvent,
 4 sir, what you mean is Xela is unable to pay its
 5 liabilities as they become due, right?
 6 A. What I mean is that at the current
 7 state Xela is not in a position to do so, but it will
 8 ---
 9 137. Q. To pay its liabilities as they become
 10 due, right?
 11 A. At this current moment and the current
 12 state, but that -- that can be changed any moment.
 13 138. Q. Understood. But in that current state,
 14 we can agree that Xela has been insolvent since 2015?
 15 A. I don't know if exactly that date
 16 applies.
 17 139. Q. So let's look. Stay with Paragraph 48
 18 of your affidavit. The last sentence: "Since 2015
 19 Xela has maintained a deficit of liabilities in excess
 20 of assets totalling more than \$50,000,000.00." Do you
 21 see that?
 22 A. Yes.
 23 140. Q. So can we agree that Xela has been
 24 insolvent since 2015?
 25 A. Xela has been having difficulties

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1 paying bills for a while. It's in a more difficult
 2 situation today than it was before.
 3 141. Q. Okay. So you used the word insolvent,
 4 sir, and you said we agreed that Xela is currently
 5 insolvent. On your evidence, when did Xela become
 6 insolvent?
 7 MR. OPOLSKY: Hold on. Again, my objection
 8 is --
 9 MR. WOYCHESHYN: On his --
 10 MR. OPOLSKY: -- that you're ask ---
 11 MR. WOYCHESHYN: -- understanding of the
 12 term.
 13 MR. OPOLSKY: But you're using a legally
 14 defined term and asking him for a legal conclusion.
 15 MR. WOYCHESHYN: No, I'm not. I'm using the
 16 definition that he adopted and I'm asking him when
 17 Xela became insolvent. There is absolutely nothing
 18 improper with that question.
 19 MR. OPOLSKY: Well, you're again -- the word
 20 insolvent --
 21 MR. WOYCHESHYN: You can object.
 22 MR. OPOLSKY: -- is ---
 23 MR. WOYCHESHYN: If you have an objection,
 24 state it. But we're not going to go through this all
 25 day. So if you're not letting him answer the

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1 question, refuse it and I'll move on.
 2 MR. OPOLSKY: I'm objecting to your use of
 3 the word insolvent. Please ask your question in a
 4 different way and he can answer the question.
 5 BY MR. WOYCHESHYN:
 6 142. Q. Okay. At Paragraph 47 of your
 7 affidavit, sir, Xela is insolvent. You see that?
 8 A. Yes.
 9 143. Q. That is the current state of affairs,
 10 right?
 11 A. Correct.
 12 144. Q. When did Xela become insolvent --
 13 MR. OPOLSKY: Sorry. That's ---
 14 BY MR. WOYCHESHYN:
 15 145. Q. -- based on your use of that word?
 16 A. It's not -- it's not an exact date. I
 17 cannot tell you an exact date because there's not an
 18 exact date. It is insolvent as we're speaking, as
 19 this document was drafted.
 20 146. Q. So you're the president and director of
 21 Xela and you have no idea when Xela became insolvent?
 22 Is that your evidence?
 23 MR. OPOLSKY: I'm going to object to that
 24 question again. Don't answer that question.
 25 MR. WOYCHESHYN: On what grounds?

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1 MR. OPOLSKY: On the grounds that you're
 2 asking him for a legal conclusion. The word insolvent
 3 is defined with three criteria in the CCAA. You're
 4 asking him for a legal conclusion.
 5 MR. WOYCHESHYN: Counsel, you're interfering
 6 with the cross. I'm asking him repeatedly for his
 7 understanding of the word insolvent; he has given that
 8 to me. Now I'm trying to understand when Xela
 9 insolvent based on how he understands that term.
 10 There is nothing legal about that at all.
 11 MR. OPOLSKY: Is your question -- so I
 12 understand it -- based on solely that definition that
 13 he gave you?
 14 MR. WOYCHESHYN: Yes. When it became
 15 insolvent.
 16 MR. OPOLSKY: Which is that they couldn't
 17 meet their ongoing liabilities when they become
 18 insolvent?
 19 MR. WOYCHESHYN: Correct.
 20 MR. OPOLSKY: Can you answer that question?
 21 THE DEPONENT: Yeah. There's not -- not a
 22 very specific date. It's been a gradual process
 23 caused by multiple situations, including the fact that
 24 all Xela's bank accounts were frozen.
 25 BY MR. WOYCHESHYN:

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1 147. Q. Are you able to answer that by way of
 2 undertaking?
 3 MR. OPOLSKY: We will take it under
 4 advisement.
 5 --- UNDER ADVISEMENT NO. 4
 6 BY MR. WOYCHESHYN:
 7 148. Q. Can we agree that how you use the term
 8 insolvent in Paragraph 47 of your affidavit that Xela
 9 has been insolvent within that meaning since at least
 10 January of 2017?
 11 A. Since January 2017?
 12 149. Q. Correct.
 13 A. I don't recall the exact dates when --
 14 when the bank accounts were seized, or frozen -- I
 15 don't know the term -- but that would be the moment
 16 when -- when that would be.
 17 150. Q. Sometime in 2017?
 18 A. I think that's correct.
 19 151. Q. If you have a different recollection,
 20 you'll let me know by way of undertaking?
 21 A. I'm not certain about the year.
 22 MR. OPOLSKY: He asked for an undertaking.
 23 We'll take that -- just to clarify, your request is if
 24 Mr. Gutierrez has a different understanding of when
 25 those events came to pass that he would let you know?

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1 MR. WOYCHESHYN: Yes. If it's a year other
 2 than 2017.
 3 MR. OPOLSKY: We will give you that
 4 undertaking.
 5 --- UNDERTAKING NO. 3
 6 BY MR. WOYCHESHYN:
 7 152. Q. Back to your Affidavit, sir. Paragraph
 8 7. The last sentence at Paragraph 7, which is Page 12
 9 of the record, "Under the supervision of this court
 10 and the monitor, Xela will use the stability provided
 11 by the CCAA to continue its involvement in ongoing
 12 litigation with a view toward proposing a CCAA plan to
 13 its creditors that is consistent with the terms of the
 14 restructuring support agreement." You see that, sir?
 15 A. Yes.
 16 153. Q. I read that correctly?
 17 A. Yes.
 18 154. Q. I'm correct that no CCAA plan has yet
 19 been proposed?
 20 A. That's correct.
 21 155. Q. I'm correct that the -- it's
 22 anticipated that no CCAA plan will be proposed until
 23 monies are recovered in the Lisa versus BDT lawsuit
 24 currently underway in Florida?
 25 MR. OPOLSKY: You can answer the question.

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1 THE DEPONENT: Can you ask the question
 2 again?
 3 BY MR. WOYCHESHYN:
 4 156. Q. Yes. Based on the current state of
 5 affairs, it's anticipated that no CCAA plan will be
 6 proposed until monies are recovered in the Lisa and
 7 BDT lawsuit currently underway in Florida?
 8 A. That's partially correct. Because that
 9 would be the case if -- but there is a possibility in
 10 some of the other actions that it could materialize
 11 sooner.
 12 157. Q. Just so we're clear, when we refer to
 13 the Lisa and BDT lawsuit that's currently underway in
 14 Florida, you refer to that in your affidavit as the
 15 Florida litigation?
 16 A. Correct.
 17 158. Q. There is no other Florida litigation,
 18 right?
 19 A. No.
 20 159. Q. You agree with me?
 21 A. Yes.
 22 160. Q. Let's just look at Paragraph 8 of your
 23 affidavit, sir. You say, "The CCAA plan contemplates
 24 two things: first BDT, one of Xela's creditors and a
 25 company involved in the ongoing litigation, will

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1 contribute \$6.3 million from proceeds received as a
 2 result of the litigation, which will be used to fund
 3 distributions to Xela's other creditors, including Ms.
 4 Castillo." The litigation you are referring to in
 5 that sentence, sir, is the Florida litigation, right?
 6 A. We're still in Paragraph 8?
 7 161. Q. Correct.
 8 A. Yes.
 9 162. Q. As I understand it, in the Florida
 10 litigation there is approximately \$13,000,000.00 U.S.
 11 garnished in a bank account, do I have that right?
 12 A. That's correct.
 13 163. Q. And the Florida litigation is to see
 14 how much of that \$13,000,000.00 BDT can recover, is
 15 that ---
 16 MR. OPOLSKY: Fourteen million.
 17 BY MR. WOYCHESHYN:
 18 164. Q. Fourteen million dollars.
 19 A. BDT -- BDT has a right to recover the
 20 full amount.
 21 165. Q. Okay. But that is what the litigation
 22 is about, right?
 23 A. There's a judgement for that already.
 24 166. Q. I know.
 25 A. The only litigation is to determine if

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1 the specific funds are the ones in question.
 2 167. Q. I see.
 3 A. It's not if there isn't money that it
 4 owed. It's just that if the specific funds are the
 5 ones that corresponding and they will.
 6 168. Q. Okay. As you understand it, if BDT
 7 wins the Florida litigation then it will receive the
 8 \$14,000,000.00?
 9 A. That's correct.
 10 169. Q. And as you understand it, if it loses
 11 the Florida litigation, it will not receive the
 12 \$14,000,000.00?
 13 A. That is a possibility, but highly
 14 unlikely because of the evidence material proves the
 15 ownership of the money.
 16 MR. OPOLSKY: Can we clarify for the record
 17 that when we refer to \$14,000,000.00, we're speaking
 18 in U.S. currency?
 19 BY MR. WOYCHESHYN:
 20 170. Q. Correct. Yes. Thank you. That
 21 Florida litigation is scheduled for a trial I
 22 understand in November of 2019?
 23 A. November of this year. Yes.
 24 171. Q. Just so I'm clear then, based on what
 25 you last said, Paragraph 8 of your affidavit when you

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1 say that BDT will contribute \$6.3 million from
 2 proceeds received as a result of litigation, the
 3 sequence of events is that BDT first needs to recover
 4 at least that amount in the Florida litigation, right?
 5 A. Yes.
 6 172. Q. And only then will it contribute those
 7 proceeds to allow Xela to make distributions to the
 8 creditors, do I have that right?
 9 A. Yes. Even though there are other cases
 10 that are being litigated that could come on soon.
 11 173. Q. I'm only asking about the Florida
 12 litigation, sir, right now. So I'm clear, the 6.3
 13 million, I take it, referenced in Paragraph 8 of your
 14 affidavit, is in Canadian currency?
 15 A. Yes. Canadian currency. The 6.3.
 16 174. Q. Can we agree that if BDT loses the
 17 Florida litigation that there will be no distributions
 18 to the creditors under the current contemplated CCAA
 19 plan?
 20 A. I cannot say that because, as I said
 21 before, there are other -- other actions being
 22 litigated, there's other resolutions that are in --
 23 already in the favour of Lisa that would end up in
 24 BDT. So we cannot say that it will be the only way.
 25 It's other options.

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1 175. Q. We just confirmed a moment ago that the
 2 6.3 million from BDT, that only relates to the Florida
 3 litigation, right?
 4 A. Whatever BDT collects on the dividends.
 5 176. Q. Correct. In the --
 6 A. Not necessarily ---
 7 177. Q. -- Florida -- in the Florida
 8 litigation?
 9 A. In the Florida litigation. But if
 10 something else comes sooner, it would apply the same.
 11 178. Q. Is there a trial date set in any of the
 12 other litigation matters?
 13 A. There's another litigation that's just
 14 pending on an appeal resolution.
 15 179. Q. Where is that?
 16 A. In Panama.
 17 180. Q. What's the judgement?
 18 A. That the court ordered that the
 19 dividends withheld by Villamorey, which is the
 20 Panamanian company that's part of the Avicola group,
 21 that the dividends that Villamorey has been holding of
 22 Lisa be paid immediately after netting an amount owed
 23 by Lisa. That amount would be, according to the court
 24 order, paid to the disposition of the different court,
 25 which is the 12th District Court, or 12th Circuit --

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1 I'm not sure how it's called -- which is the one that
 2 ruled in favour of BDT. So the funds will go to BDT
 3 instead of Lisa.
 4 181. Q. How much are the dividends under that
 5 Panamanian judgement?
 6 A. Don't know the -- don't remember the
 7 exact number, but if my memory doesn't fail me, it's
 8 around \$18,000,000.00 U.S.
 9 182. Q. Perhaps I'm confused, sir, but I
 10 thought that what happened in Florida was an
 11 enforcement of that Panamanian decision and that the
 12 Panamanian court found roughly \$19,000,000.00 in
 13 dividends owing and that what is happening in Florida
 14 is a recognition of that Panamanian decision.
 15 A. It's part of it, yeah.
 16 183. Q. You're saying it's part of it. Is it
 17 part of it or is it?
 18 A. Well, if the Panamanian ruling is paid,
 19 the Florida would be redundant, obviously. They're
 20 both related.
 21 184. Q. Thank you. Other than the Panamanian
 22 proceeding that you just referred to which is tied to
 23 the Florida litigation, any other judgements in -
 24 judgements or trials pending?
 25 A. There are several ones in Guatemala,

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1 but I can't speak about them because I don't know full
 2 knowledge.
 3 185. Q. Do you know whether there is a trial
 4 date currently scheduled in any of the Guatemala
 5 proceedings?
 6 A. I cannot answer that question with
 7 certainty.
 8 186. Q. Can you answer by way of undertaking?
 9 MR. OPOLSKY: We will take that under
 10 advisement.
 11 --- UNDER ADVISEMENT NO. 5
 12 BY MR. WOYCHESHYN:
 13 187. Q. Does Xela or any of its subsidiaries,
 14 including Lisa, currently have any judgements in any
 15 of the litigation relating to the Avicola shares?
 16 A. I cannot answer that question with
 17 certainty because I don't know the details.
 18 188. Q. If you can answer it by way of
 19 undertaking whether Xela or any of its subsidiaries
 20 currently has any outstanding judgement anywhere in
 21 the world in relation to the Avicola litigation?
 22 MR. OPOLSKY: Can you agree, Counsel, that
 23 that -- that this undertaking you're requesting
 24 subsumes the previous one or are they two separate
 25 requests?

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1 MR. WOYCHESHYN: They are two separate
 2 requests.
 3 MR. OPOLSKY: Can you clarify to me what
 4 you're asking?
 5 MR. WOYCHESHYN: Because one is a trial
 6 date. One is a trial date, to see whether there's
 7 trial dates; and this is to actually see if there's
 8 any outstanding judgements.
 9 MR. OPOLSKY: Thank you. I'll take both --
 10 the same answer for both.
 11 MR. WOYCHESHYN: So that's under advisement
 12 for both, right?
 13 MR. OPOLSKY: Yes.
 14 --- UNDER ADVISEMENT NO. 6
 15 BY MR. WOYCHESHYN:
 16 189. Q. When I refer to the Avicola litigation,
 17 sir, what -- just so we're clear, what I'm referring
 18 to is what you describe in Paragraph 7 of your
 19 affidavit at Page 11, where you refer to Xela pursuing
 20 the restoration of Lisa's shareholder rights and
 21 payment of dividends.
 22 MR. OPOLSKY: I'm sorry, you're referring to
 23 --
 24 MR. WOYCHESHYN: Paragraph 7.
 25 MR. OPOLSKY: -- Page 2 of his affidavit or

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1 Page ---
 2 BY MR. WOYCHESHYN:
 3 190. Q. Yes. Page 2 of his affidavit. Pardon
 4 me. You understand what I mean by Avicola
 5 litigation, sir?
 6 A. Yes, I do.
 7 191. Q. The Avicola litigation has been ongoing
 8 since 1998, do I have that right?
 9 A. 1999.
 10 192. Q. 1999. As you say in your affidavit --
 11 I'm happy to take you to it -- but it's over 100
 12 lawsuits, right?
 13 A. Yes.
 14 193. Q. In multiple jurisdictions?
 15 A. Correct.
 16 194. Q. Panama, you mentioned, right?
 17 A. Correct.
 18 195. Q. And Guatemala?
 19 A. Correct.
 20 196. Q. Canada?
 21 A. Correct.
 22 197. Q. And in Florida?
 23 A. Correct.
 24 198. Q. So we can agree that the Avicola
 25 litigation is now 20 years old?

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1 A. Correct.
 2 199. Q. I know this may be corrected by way of
 3 undertaking, but my last question with respect to
 4 judgement was any outstanding judgements that were
 5 owed to Xela or any of its subsidiaries related to the
 6 Avicola litigation. This question is a bit different.
 7 Other than the Bermuda's judgement which was in Xela's
 8 favour, have there been any other judgements that have
 9 been paid in Xela or any of its subsidiaries' favour
 10 in relation to the Avicola litigation?
 11 A. No other judgement -- no other final
 12 judgement has been issued other than the one we just
 13 spoke in Panama, which is under appeal.
 14 200. Q. The Bermuda judgement that we just
 15 referenced, we can agree that that was roughly
 16 \$3,000,000.00 U.S.?
 17 A. I don't recall the exact number. My
 18 memory tells me more like four.
 19 201. Q. I don't mean to be unfair, it's not a
 20 memory test. One second. Actually, why don't we do
 21 it this way: if your recollection is that the recovery
 22 on the Bermuda judgement is something greater than
 23 U.S. \$3,000,000.00 or was greater than U.S.
 24 \$3,000,000.00, you'll let me know?
 25 A. I'm not sure if I can tell you the

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1 exact number.
 2 MR. OPOLSKY: Counsel, does whether it's
 3 three or four million, does it really matter?
 4 MR. WOYCHESHYN: Well, he's not even
 5 committing to that it's in the ballpark.
 6 THE DEPONENT: It's in the ballpark.
 7 BY MR. WOYCHESHYN:
 8 202. Q. Okay. We can agree?
 9 A. Between three and four. Somewhere
 10 around there. I don't know the exact number. You
 11 asked me for exact number.
 12 MR. OPOLSKY: Are we satisfied?
 13 BY MR. WOYCHESHYN:
 14 203. Q. We're satisfied. That's in U.S. funds,
 15 right?
 16 A. Correct.
 17 204. Q. So no more than 4,000,000 U.S.?
 18 A. Not substantially more than four. It
 19 could be four and period, you know? I don't know the
 20 exact number.
 21 205. Q. In the past five years -- actually,
 22 just let me take a step back. That judgement from the
 23 Bermuda judgement was from 2008, does that sound
 24 right?
 25 A. That's correct.

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1 206. Q. Other than the Panama judgement that
 2 you referenced earlier, there's no other judgements
 3 that you can recall at this time?
 4 A. No final judgements.
 5 207. Q. In the past five years, has Xela
 6 received a monetary -- and when I Xela, I mean Xela
 7 and any of its subsidiaries -- received a monetary
 8 settlement offer to resolve all the Avicola
 9 litigation?
 10 MR. OPOLSKY: Hold on one second. I think
 11 that would be subject to settlement privilege.
 12 MR. WOYCHESHYN: No. If it has received an
 13 offer it wouldn't be privileged.
 14 MR. OPOLSKY: I think whether it has
 15 received or given an offer would be both be
 16 privileged.
 17 MR. WOYCHESHYN: Disagree.
 18 MR. OPOLSKY: Well, I'm going to instruct
 19 you not to answer the question.
 20 --- REFUSAL NO. 1
 21 BY MR. WOYCHESHYN:
 22 208. Q. In the past five years has Xela or any
 23 of its subsidiaries received an offer -- not telling
 24 me what the offer is, but have they received an offer
 25 to pay out any dividends owing to Lisa?

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1 MR. OPOLSKY: Sorry, just so I don't repeat
 2 my earlier objection, are you asking whether someone
 3 has come along and said, 'Here, have some money' and
 4 they've said no, or are you asking whether someone has
 5 come along and said, 'Here, have some money as long as
 6 you give up your other rights'? Because one is an
 7 offer of money and the second is a settlement offer.
 8 BY MR. WOYCHESHYN:
 9 209. Q. Either or. Has there been any offer,
 10 any monetary offer -- not telling me the amount --
 11 made to Xela with respect to either the Avicola
 12 litigation or the unpaid dividends?
 13 MR. OPOLSKY: I'll instruct you that if
 14 someone has offered Xela or any of its subsidiaries
 15 money without conditions or a settlement you can
 16 answer the question, but not to answer any questions
 17 about settlement offers that you've received.
 18 THE DEPONENT: Nobody has offered money
 19 without the condition.
 20 BY MR. WOYCHESHYN:
 21 210. Q. The offer with condition that you just
 22 referred to, again, I don't want to know any details
 23 about it, but has that been made in the past five
 24 years?
 25 MR. OPOLSKY: Hold on. It's the same thing.

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1 I'm instructing him not to answer, which is he will
 2 not answer. Settlement privileged is a two-sided
 3 privilege. It is not his to waive alone. He will not
 4 answer any questions about settlement proposals that
 5 Xela or its subsidiaries has received.
 6 --- REFUSAL NO. 2
 7 BY MR. WOYCHESHYN:
 8 211. Q. Just so we're clear, I don't accept
 9 that. But I will move on. Your evidence, sir, is
 10 that Xela stands to obtain the benefit of judgements,
 11 settlements and payments of future dividends in the
 12 Avicola litigation, do I have that right?
 13 A. Through ---
 14 MR. OPOLSKY: Can you repeat that question?
 15 BY MR. WOYCHESHYN:
 16 212. Q. Yes. Xela stands to obtain the benefit
 17 of judgements, settlements and payments of future
 18 dividends in the Avicola litigation?
 19 A. Through its subsidiary Lisa.
 20 213. Q. So you agree with me?
 21 A. Yeah. Lisa gets the results.
 22 214. Q. Breaking that down, other than the
 23 Bermuda and Panama judgement, there's no other
 24 judgements that you know about?
 25 A. No final judgements that I'm aware of.

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1 215. Q. Your evidence is that you -- or you're
 2 instructed not to answer any questions regarding
 3 whether any settlement offers have been made in the
 4 Avicola litigation?
 5 MR. OPOLSKY: That's correct.
 6 MR. WOYCHESHYN: And whether there's been
 7 any offers or payments of future dividends?
 8 MR. OPOLSKY: If the offer is part of a
 9 settlement offer, my instructions are not to answer
 10 questions about the settlement offers received or
 11 settlement negotiations or any settlement process
 12 whatsoever.
 13 MR. WOYCHESHYN: Just for the record, given
 14 that your client has put those matters in issue in
 15 Paragraphs 7 and 86 of his affidavit, my position at
 16 the hearing before Justice McEwen will be that to the
 17 extent that there is any settlement privilege, that
 18 settlement privilege was waived when he put forward
 19 that evidence.
 20 MR. OPOLSKY: Let's pause for a moment while
 21 I look at the affidavit to see what you're referring
 22 to. That's fine, Counsel. We disagree and we'll
 23 disagree on the record saying that he'll receive the
 24 benefit of settlements does not waive his privilege
 25 over the substance or the essence of settlement

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1 discussion through our office. I understand your
 2 position and I hope you understand mine.
 3 BY MR. WOYCHESHYN:
 4 216. Q. I do. Feel free, Mr. Gutierrez, to
 5 look at the wording that we just looked at. So at
 6 Paragraph 7 of your affidavit, top of Page 3 when you
 7 say, "Xela stands to obtain the benefit of judgements,
 8 settlements and the payment of future dividends that
 9 are capable of offering substantial recoveries to all
 10 of its creditors." Do you see that?
 11 A. Yes.
 12 217. Q. Would you agree with me, sir, that
 13 since the Avicola litigation started in 1999, Xela
 14 always stood to obtain the benefit of judgements,
 15 settlements and payment of future dividends?
 16 A. I don't understand what you mean with
 17 your question.
 18 218. Q. Well, your evidence, sir, is that
 19 sitting here today Xela stands to obtain the benefit
 20 of judgements, settlements and payment of future
 21 dividends and that would allow for recovery to the
 22 creditors. My proposition to you is that ever since
 23 Xela started the Avicola litigation in 1999 it was in
 24 that position.
 25 A. The litigation started in '99 precisely

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1 to recover those dividends that were withheld from
2 Lisa and from Xela.

3 219. Q. Right. So you can agree with me that
4 in 1999 Xela stood to benefit from the judgement,
5 settlements and payment of future dividends?
6 A. I don't understand what you mean with
7 the -- with your wording. But Xela started the
8 litigation then looking to obtain that. There's a
9 different situation then than now.

10 220. Q. Right. But the hope, I take it, when
11 Xela started the litigation in 1999 was to obtain
12 either a judgement, a settlement or the payment of
13 future dividends, right?
14 A. It was to obtain and recover its rights
15 as a shareholder and the dividends. That is correct.

16 221. Q. That's always been what it's been
17 seeking in the last 20 years of litigation, right?
18 A. That has been what's been pursued with
19 the litigation.

20 222. Q. For 20 years?
21 A. You're making it sound confusing for me
22 because, yeah, it has been 20 years of litigation
23 because the jurisdictions where this litigation is
24 being held are very slow, it's a lot of procedural
25 issues, a lot of recourses that are filed in all

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1 directions that delay things. So being in litigation
2 for 20 years wasn't our plan, but this is very normal,
3 or very normal in that jurisdiction.

4 223. Q. I don't mean to confuse you and
5 certainly no one intends to be in litigation for 20
6 years. But let me put it another way. The Avicola
7 litigation, since its inception, has always been
8 focused on Lisa enforcing its shareholder rights and
9 trying to recover unpaid dividends at its core?
10 A. That was the reason why the lawsuits
11 were filed in the first place.

12 224. Q. That's always been the focus of the
13 litigation?
14 A. That is the reason of litigation.

15 225. Q. Staying with Paragraph 7. So you say
16 Xela stands to obtain the benefit of judgement,
17 settlements and payment of future dividends, and then
18 you continue the next sentence: "That is why CCAA
19 protection is necessary." Do you see that?
20 A. What is exactly -- that's not exact
21 wording? Oh, yes.

22 226. Q. You see that?
23 A. Yes.

24 227. Q. But we just talked about that the
25 Avicola litigation has always been about enforcing

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1 Lisa's shareholder rights. Can we agree that the CCAA
2 protection is only in response to Margarita's motion
3 for a receiver?
4 A. A CCAA -- CCAA is required and is the
5 best option in order to be able to procure the best
6 resolution for all creditors, including Margarita.
7 Actually, in my text it says especially Ms. Castillo.
8 So that the CCAA is required for improving the
9 possibilities for everybody who is involved in this to
10 be paid off.

11 228. Q. Other than Ms. Castillo's motion to
12 have a receiver appointed, what else has changed that
13 necessitates, in your evidence, sir, the need for CCAA
14 protection?
15 A. The financial situation requires --
16 requires the restructuring and the assistance of the
17 protection of the CCAA in order to be able to protect
18 the rights of all the creditors.

19 229. Q. We can agree, sir, that there's no
20 restructuring until there's recovery in the Florida
21 litigation?
22 A. That is probably the case, but that's
23 why the monitor will be assisting in developing the
24 proper plan.

25 230. Q. Well, we spoke earlier that the plan

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1 won't even come out until there will be recovery in
2 the Florida litigation, right?
3 A. That's a possibility, but not the only
4 option.

5 231. Q. I'm going to put it to you, sir, that
6 the only thing that has changed that necessitate, on
7 your evidence, the need for CCAA protection is the
8 commencement of my client's motion to have a receiver
9 appointed. Do you agree or disagree with that?
10 A. Can you repeat the question?
11 MR. WOYCHESHYN: Madam Reporter, did you get
12 it?
13 THE REPORTER: Sorry. Can we go off for a
14 second?
15 --- OFF THE RECORD (1:38 P.M.) ---
16 --- UPON RESUMING (1:38 P.M.) ---
17 BY MR. WOYCHESHYN:

18 232. Q. I put it to you, sir, that the only
19 basis why Xela is seeking CCAA protection now is
20 because of the commencement of Margarita Castillo's
21 motion to have a receiver appointed.
22 A. My position is that the CCAA is the
23 best alternative to protect the rights of Margarita's
24 interests as well as the other creditors and as well
25 as the stockholders.

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1 233. Q. Xela could've brought a CCAA
 2 application a year ago, right?
 3 A. I guess it would be possible, but at
 4 that point there wasn't -- it wasn't in our -- our
 5 possibility at that moment.
 6 234. Q. Right. My proposition to you, sir, is
 7 it was done in response to Margarita Castillo's motion
 8 for a receiver.
 9 A. It's one of the reasons. But the main
 10 reason is because Xela needs to get the creditor
 11 protection to protect the rights off all share -- all
 12 the -- all of the creditors, including her, especially
 13 her, and that's been established already in the
 14 affidavit more than once.
 15 235. Q. One of your motivations in seeking CCAA
 16 protection is protecting Margarita as a creditor?
 17 A. Yes.
 18 236. Q. Can we agree that with respect to the
 19 Avicola litigation that there is no predictable
 20 deadline by which there will be a settlement?
 21 A. I don't think there is a predictable
 22 date for anything in litigation.
 23 237. Q. So you agree with me?
 24 A. Well, I think it's no -- there's
 25 nothing in life that is certain for sure in the

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1 future. So there is some high probabilities, but
 2 certainty is never for anything.
 3 238. Q. Other than the pending Florida
 4 litigation and Panama litigation, can we agree that
 5 there's no predictable deadline by which Xela stands
 6 to benefit from a judgement in the Avicola litigation?
 7 A. You said Panama and Florida?
 8 239. Q. Yes.
 9 A. There is also possibilities in
 10 Guatemala. So it's not only in those two cases.
 11 240. Q. Right. But is there anything on the
 12 horizon, that is within the next 12 months, 16 months,
 13 18 months, 24 months?
 14 A. There is very good possibilities, yes.
 15 241. Q. Tell me about those.
 16 A. I cannot. I can't tell certain things
 17 because first I'm not 100 percent aware of, I'm not
 18 the lawyer, I'm not the expert in the matter. And
 19 other is because there is litigation in Central
 20 America that it's at the stage where things are not
 21 public yet. It's a different system than here, so we
 22 have to respect the rules.
 23 242. Q. Nothing else you can tell me about
 24 that?
 25 A. All I can tell you is there is -- there

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1 is several actions that are advancing that are
 2 recovering the rights of Xela or Lisa -- actually Lisa
 3 directly, Xela indirectly -- on those shares and
 4 dividends.
 5 243. Q. But no monetary judgements other than
 6 the ones we've talked about in Panama?
 7 A. No. There is possibilities to get
 8 monetary recoveries in Guatemala in the near future.
 9 244. Q. Right. But no judgement right now,
 10 that's my point.
 11 MR. OPOLSKY: Are you asking whether a
 12 judgement exists right now?
 13 BY MR. WOYCHESHYN:
 14 245. Q. Correct.
 15 A. I think I already said clearly that
 16 there is no final judgements. It's a lot of actions.
 17 And as I explained to you, the litigation system, the
 18 system in Latin America is different than here,
 19 particularly in Guatemala there's a lot of recourses.
 20 So there's a lot of resolutions that get all kinds of
 21 different recourses that delays the outcome. That's
 22 why it's been 20 years. But after 20 years we're
 23 getting to the end of it. There is very few recourses
 24 left.
 25 246. Q. How many outstanding pieces of

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1 litigation are there right now?
 2 A. I don't know the exact number, but
 3 there's over a 100.
 4 247. Q. Right now there's over 100 outstanding
 5 pieces of litigation?
 6 A. There's 28 companies. That's why each
 7 case, multiply it by 28.
 8 248. Q. So over 100 pieces of litigation, sir,
 9 and your evidence, just so I understand what you just
 10 told me, is that you're getting close to the end?
 11 A. In some instances, yes.
 12 249. Q. What do you mean by in some instances?
 13 A. I cannot -- I don't know all the
 14 details, I cannot answer for all in general. But I
 15 can tell you there is several -- several actions that
 16 are very close to get to the end.
 17 250. Q. Okay. Well, you need to tell me which
 18 ones.
 19 A. I will need to go through a list of
 20 them and I don't have. But I can tell you that some
 21 of the Avicola companies have recognized in court that
 22 they owe dividends. But that's all I can tell you.
 23 There's a lot -- as I said before, a lot of those
 24 things I'm not privy of because they are handled by
 25 lawyers.

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1 251. Q. Sitting here today there's nothing more
 2 you can tell me about that?
 3 A. On legal issues I am not that expert.
 4 252. Q. Let's talk about BDT. That's capital
 5 B, capital D, capital T. You referred to them at Page
 6 5 of your affidavit, Paragraph -- starting at
 7 Paragraph 16.
 8 A. Yes.
 9 253. Q. You say that there that BDT has agreed
 10 to act as a plan sponsor in the present CCAA
 11 application and then you say, "I understand that BDT
 12 is a Barbados company that owns the intellectual
 13 property of a chain of Venezuelan chicken
 14 restaurants." You see that?
 15 A. Yes.
 16 254. Q. When you say you understand that that's
 17 what BDT is, what's that understanding based on?
 18 A. Well, that's what I know.
 19 255. Q. But how do you know that?
 20 A. I know it from the past.
 21 256. Q. Why do you know that from the past?
 22 A. I'm not part of BDT anymore.
 23 257. Q. I know. That's not my question.
 24 A. I cannot tell you what is it now
 25 because I'm not part of it anymore.

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1 258. Q. Okay. But there was a time when you
 2 were, right?
 3 A. When I was -- when I was related to it
 4 indirectly, yes, that was the case.
 5 259. Q. Well, it's not just indirectly, sir.
 6 You were a former director of BDT?
 7 A. Yeah. Well, at that time, yes, it was.
 8 260. Q. We can agree that you were a director
 9 of BDT between 2004 and 2009?
 10 A. 2004 and 2009?
 11 261. Q. Yes.
 12 A. Yes.
 13 262. Q. Then in your question there when you
 14 say a chain of Venezuelan chicken restaurants, what
 15 you're referring to there is Arturo's, right?
 16 A. Correct.
 17 263. Q. That's the chain of chicken restaurants
 18 named after your father?
 19 A. Correct.
 20 264. Q. Then you say in Paragraph 17, "Neither
 21 BDT or PAICA -- is that pronounced correct? PAICA?
 22 A. Correct.
 23 265. Q. So all capitals, P-A-I-C-A. You say,
 24 "Neither BDT nor PAICA are Xela subsidiaries." That
 25 wasn't always the case, was it, sir?

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1 A. No.
 2 266. Q. You agree with me?
 3 A. Yeah, it was not the case in the past.
 4 267. Q. As recently as July 2017 BDT was a
 5 wholly owned subsidiary of Empresas Arturo
 6 International, right?
 7 MR. OPOLSKY: What date?
 8 THE DEPONENT: What was the date again?
 9 BY MR. WOYCHESHYN:
 10 268. Q. July 2017.
 11 A. I don't believe so. I don't think so.
 12 MR. OPOLSKY: Sorry, that's confusing. Are
 13 you agreeing with him or are you disagreeing with him?
 14 MR. WOYCHESHYN: On what?
 15 MR. OPOLSKY: You asked the question in a
 16 negative and he answered in a negative and I'm trying
 17 to clarify.
 18 MR. WOYCHESHYN: I said as recently as July
 19 2017 BDT was a wholly owned subsidiary of Empresas
 20 Arturo International and he said, no, I don't think
 21 that's right.
 22 MR. OPOLSKY: Okay. Thank you.
 23 BY MR. WOYCHESHYN:
 24 269. Q. I'm showing you Exhibit 11 from the
 25 examination. It's the original Exhibit 11 from an

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1 examination of you in July of 2017. Have a look at
 2 it. It's a corporate diagram. And on the right-hand
 3 side, you'll see that, according to that diagram, BDT
 4 was a wholly owned subsidiary of Empresas Arturo
 5 International. You see that?
 6 A. Correct.
 7 270. Q. Do you remember me examining you back
 8 in 2017, sir?
 9 A. Yes.
 10 271. Q. Does that help your recollection as to
 11 whether at that time BDT was a wholly owned
 12 subsidiary?
 13 A. At that time I was -- I thought so.
 14 But you asked me that on a personal basis. I wasn't
 15 representing Xela. On that time I was on a leave of
 16 absence for -- since 2014 to 2017.
 17 272. Q. Sorry, I missed the last part. So what
 18 did you say the last --
 19 A. So at --
 20 273. Q. -- part? 24?
 21 A. -- the time I wasn't aware. When this
 22 happened, I wasn't aware of some changes that had
 23 happened in the company while I was away.
 24 MR. OPOLSKY: Sorry, you've put to him an
 25 exhibit from cross-examination in July 2017?

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1 MR. WOYCHESHYN: Correct.

2 MR. OPOLSKY: Other than being an exhibit on

3 that cross-examination, did this exhibit come from an

4 affidavit?

5 BY MR. WOYCHESHYN:

6 274. Q. No. You know who Mark Korol is, sir?

7 A. Yes, I do.

8 275. Q. He was the chief financial officer of

9 Xela?

10 A. He was, yes.

11 276. Q. I'm showing you and your counsel

12 undertakings from Mr. Korol in the proceeding that my

13 client commenced against Xela and yourself. And if

14 you look at undertaking 6, it asks Mr. Korol to

15 produce an updated organization chart. The answer is

16 see Tab 6. And then that was answered on December 7,

17 2012. And then there's a chart that follows behind.

18 And, again, in Mr. Korol's response as chief financial

19 officer it shows that at least as of December 2012

20 that BDT was a wholly owned subsidiary of Empresas

21 Arturo International. Do you see that?

22 A. Yes, as of 2012 that's correct.

23 277. Q. You have no reason to doubt that as of

24 December 2012, BDT was a wholly owned subsidiary of

25 Xela? Or pardon me, of Empresas Arturo International?

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1 A. As of December 2012, this is correct.

2 MR. WOYCHESHYN: Thank you. Can we mark

3 that as an exhibit, please?

4 MR. OPOLSKY: What exhibit are we on?

5 MR. BORTOLIN: C.

6 --- EXHIBIT NO. C: Undertakings from Mr. Korol

7 BY MR. WOYCHESHYN:

8 278. Q. What's not shown on here, sir, is the

9 jurisdiction that ---

10 MR. OPOLSKY: Sorry, are you still on

11 Exhibit C?

12 BY MR. WOYCHESHYN:

13 279. Q. Yes, sorry. Empresas Arturo

14 International ---

15 MR. OPOLSKY: Can you wait?

16 BY MR. WOYCHESHYN:

17 280. Q. Yes. For each of the companies on the

18 diagram, and I think it's the same for exhibit -- ah,

19 no. Let me rephrase. Just to be clear, Empresas

20 Arturo International is a Barbados company?

21 A. That's correct.

22 281. Q. Do you know the date when BDT stopped

23 being a wholly owned subsidiary of Empresas Arturo

24 International?

25 A. I do not know the exact date.

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1 282. Q. Are you on the board of Empresas Arturo

2 International?

3 A. I was in the past.

4 283. Q. Do you know when you ceased to be on

5 the board?

6 A. I'm not sure. I will -- I have to

7 check. I don't know. I don't recall.

8 284. Q. Can you check your records and let me

9 know by way of undertaking?

10 MR. OPOLSKY: Yes.

11 --- UNDERTAKING NO. 4

12 BY MR. WOYCHESHYN:

13 285. Q. Do you recall even at a high level what

14 the nature of the transaction was that caused BDT to

15 no longer be a wholly owned subsidiary of Empresas

16 Arturo International?

17 A. No, I don't know the details.

18 286. Q. Then staying with the chart that we're

19 looking at, which is Exhibit C, under another

20 subsidiary of Empresas Arturo International is a

21 company called Arven, A-R-V-E-N, which is a holding

22 company in Barbados, and one of the wholly owned

23 subsidiaries of that is PAICA. Do I have that

24 correct?

25 A. That's correct.

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1 287. Q. So we can agree that as of December

2 2012 PAICA was also an indirectly wholly owned

3 subsidiary of Xela?

4 A. As of December 2012, yes.

5 288. Q. Do you know when PAICA stopped being a

6 wholly owned indirect subsidiary of Xela?

7 A. I don't know the exact date, but my

8 understanding is that was at the same time as BDT.

9 289. Q. What's that understanding based on?

10 A. On information my father gave me a few

11 days before he passed away.

12 290. Q. He passed away in June 2016?

13 A. Correct.

14 291. Q. We're done with Exhibit C, sir. Back

15 to your affidavit, Paragraph 17.

16 MR. OPOLSKY: Seventeen.

17 THE DEPONENT: Sorry.

18 BY MR. WOYCHESHYN:

19 292. Q. We're on Page 14 of the record.

20 MR. OPOLSKY: Counsel, we've been at this

21 for about an hour and a half. In the next ten minutes

22 or so I'd like to take a break.

23 MR. WOYCHESHYN: I think we can take it now,

24 if that's fine with you?

25 MR. OPOLSKY: That's works for me.

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1 --- OFF THE RECORD (1:54 P.M.) ---
 2 --- UPON RESUMING (2:06 P.M.) ---
 3 BY MR. WOYCHESHYN:
 4 293. Q. Mr. Gutierrez, you acknowledge you're
 5 still under oath?
 6 A. Yes.
 7 294. Q. Paragraph 17 of your affidavit's where
 8 you say you were advised by Patrick Doig, president of
 9 BDT, that both companies are owned by a trust of which
 10 members of my family are beneficiaries. The both
 11 companies you're referring to there are BDT and PAICA,
 12 right?
 13 A. BDT and Arven.
 14 295. Q. Arven. So BDT and Arven are owned by a
 15 trust. So Arven, A-R-V-E-N, is also no longer a
 16 subsidiary indirect of Xela, correct?
 17 A. Correct.
 18 296. Q. It ceased to be an indirect subsidiary
 19 around the same time that BDT and PAICA ceased to be,
 20 right?
 21 A. Yes.
 22 297. Q. They're all part of the same
 23 transaction?
 24 A. Yes.
 25 298. Q. So BDT and Arven are owned by a trust.

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1 Is the name of the trust Alexandria trust?
 2 A. I don't know the name of the trust.
 3 Alexandria is the trustee.
 4 299. Q. Can you ask Mr. Doig what the name of
 5 the trust is?
 6 MR. OPOLSKY: We will take that under
 7 advisement.
 8 --- UNDER ADVISEMENT NO. 7
 9 BY MR. WOYCHESHYN:
 10 300. Q. You say that members of your family are
 11 beneficiaries of the trust. Which members of your
 12 family, sir?
 13 A. I don't know.
 14 301. Q. Are you a beneficiary of the trust?
 15 A. I don't -- I am not.
 16 302. Q. So if you could ask Mr. Doig who the
 17 beneficiaries of the trust are?
 18 MR. OPOLSKY: I'll take that under
 19 advisement.
 20 MR. WOYCHESHYN: If there's any refusal on
 21 that, as an alternative I'd like to know which family
 22 members are beneficiaries of the trust. Same under
 23 advisement?
 24 MR. OPOLSKY: Yes. I assume that was one
 25 question. But yes, I understand the alternative

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1 question.
 2 --- UNDER ADVISEMENT NO. 8
 3 BY MR. WOYCHESHYN:
 4 303. Q. Okay. The trustee is Alexandria Trust
 5 Corporation? I have that right?
 6 A. That's my understanding from what Mr.
 7 Doig told me.
 8 304. Q. You have no direct involvement with
 9 Alexandria Trust Corporation?
 10 A. None.
 11 305. Q. Turning over in your affidavit to Page
 12 6 of your affidavit, Page 15 of the record, Paragraph
 13 19 of your affidavit, you say BDT has already loaned
 14 substantial amounts to Lisa on a secured basis to fund
 15 the litigation surrounding Xela's indirect interest in
 16 Avicola. That's to fund the Avicola litigation,
 17 right? We're talking about the same thing?
 18 A. Avicola litigation, correct.
 19 306. Q. Then in Paragraph 21 you say, "In
 20 January 2018 BDT sought further security for the
 21 amounts that had continued to advance, which had
 22 increased to approximately U.S. \$46.8 million." Did I
 23 read that correctly?
 24 A. Where is that?
 25 307. Q. Paragraph 21.

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1 A. Twenty-one. Yes.
 2 308. Q. Do I have it right that as of January
 3 2018 that BDT had loaned \$46.8 million U.S. to Lisa
 4 with respect to the Avicola litigation?
 5 A. Yes.
 6 309. Q. Those funds were used to pursue the
 7 Avicola litigation?
 8 A. That's correct.
 9 310. Q. I take it that that amount, given that
 10 we're in June of 2019, has increased?
 11 A. Ask me again the question. Sorry.
 12 311. Q. Since January 2018, BDT has loaned
 13 additional funds beyond the 46.8 million U.S. for the
 14 Avicola litigation, right?
 15 A. That is my understanding.
 16 312. Q. Can you confirm either sitting here
 17 right now or by way of undertaking that the amount
 18 advanced by BDT in support of the Avicola litigation
 19 is now over U.S. \$50,000,000.00?
 20 A. Fifty?
 21 313. Q. Fifty. Five-zero.
 22 A. I don't have knowledge. But I would
 23 assume so.
 24 314. Q. If it's less than 50 if you could let
 25 me know by undertaking?

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1 MR. OPOLSKY: We will undertake if he
 2 becomes aware that it's less than \$50,000,000.00.
 3 --- UNDERTAKING NO. 5
 4 BY MR. WOYCHESHYN:
 5 315. Q. Mr. Doig has told you, sir, that the
 6 monthly litigation spent is between \$80,000.00 and
 7 \$100,000.00?
 8 A. That's what he told me, yes.
 9 316. Q. That's in U.S. funds?
 10 A. Correct.
 11 317. Q. I take it you believe that to be true?
 12 A. Sorry?
 13 318. Q. You believe that to be true?
 14 A. That's what he told me. I don't know.
 15 I cannot judge his truthfulness, but he told me that.
 16 I asked the ---
 17 319. Q. You have no reason -- sorry. You have
 18 no reason to doubt what he told you?
 19 A. I don't have a reason to doubt him.
 20 320. Q. Do you know how BDT is funding that
 21 litigation?
 22 A. I don't know directly because I'm not
 23 part of BDT anymore.
 24 321. Q. Could you ask Mr. Doig?
 25 MR. OPOLSKY: I'll take it under advisement.

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1 --- UNDER ADVISEMENT NO. 9
 2 MR. WOYCHESHYN: I would like to know from
 3 Mr. Doig how BDT is financing the eighty to one
 4 hundred thousand dollars U.S. per month in litigation
 5 expenditures, where that money is coming from. Under
 6 advisement?
 7 MR. OPOLSKY: Isn't that the same question?
 8 MR. WOYCHESHYN: Yes. I was clarifying.
 9 MR. OPOLSKY: I understand.
 10 BY MR. WOYCHESHYN:
 11 322. Q. I take it that we can agree that the
 12 BDT, PAICA, Arven transaction which caused those
 13 entities to no longer be indirectly wholly owned
 14 subsidiaries of Xela, that happened sometime between
 15 December 2012 and June 2016?
 16 A. Yes, in that range.
 17 323. Q. In Paragraph 20 you refer to security
 18 that BDT had previously for its loan to Lisa and that
 19 was the pledge of shares in Villamorey?
 20 A. That's correct.
 21 324. Q. V-I-L-L-M-O-R-E-Y. Are those shares
 22 still pledged as collateral in support of BDT's loan?
 23 A. That is my understanding.
 24 325. Q. So BDT has that as security plus it has
 25 the interest that it received under the assignment

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1 agreement that you attach as Exhibit G to your
 2 affidavit, do I have that right?
 3 A. What is that agreement?
 4 326. Q. Sure.
 5 MR. OPOLSKY: Exhibit G?
 6 BY MR. WOYCHESHYN:
 7 327. Q. Yes, Exhibit G. It's Page 150 of the
 8 record. The document is entitled ---
 9 A. Yes. That's my understanding.
 10 328. Q. Okay. So other than the pledge of the
 11 Villamorey shares as collateral and the security
 12 provided under Exhibit G, I take it, sir, you're not
 13 aware of any other security that BDT has on its loans
 14 that it's advanced to Lisa?
 15 A. I don't -- I have no information about
 16 it, so I don't know.
 17 329. Q. In Paragraph 21 of your affidavit you
 18 describe at the core what the assignment agreement is.
 19 I just want to be clear that I understand it and
 20 correct me if you have a different understanding, sir.
 21 But the way I understand it is that to the extent that
 22 Lisa recovers funds in the Avicola litigation, those
 23 funds will first be used to repay the loan that BDT
 24 has given to Lisa, right?
 25 MR. OPOLSKY: Counsel, you're asking about

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1 Paragraph 21, which refers to Exhibit G?
 2 MR. WOYCHESHYN: Yes.
 3 MR. OPOLSKY: He should have the opportunity
 4 to refer to either of those.
 5 MR. WOYCHESHYN: Of course.
 6 MR. OPOLSKY: Sir, you can refer to Exhibit
 7 G, which is the assignment, or Paragraph 21 in your
 8 affidavit because I believe Counsel's question relates
 9 to both.
 10 MR. WOYCHESHYN: It does.
 11 MR. OPOLSKY: If you need a moment, I'm sure
 12 Counsel will permit that.
 13 THE DEPONENT: So what is the question?
 14 BY MR. WOYCHESHYN:
 15 330. Q. That to the extent that Lisa recovers
 16 any funds in the Avicola litigation that it first must
 17 repay the amounts loaned by BDT to Lisa?
 18 A. That is my understanding.
 19 331. Q. And then any recovery above that will
 20 be split on a 70/30 percent basis with 70 percent to
 21 BDT, 30 percent to Lisa? I have that right?
 22 A. That's what I understand from reading
 23 this document, which I was not part of when it was
 24 done. So I don't know the -- what the parties meant.
 25 But that's how I read it.

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1 332. Q. Can you ask Mr. Doig whether BDT has
 2 any additional security on its loans advanced to Lisa
 3 other than the security described at Paragraphs 20 and
 4 21 of your affidavit?
 5 MR. OPOLSKY: Hold on. Sorry, your question
 6 is to -- your request is to ask Mr. Doig whether BDT
 7 has any security over Lisa's assets other than
 8 described at Paragraphs 20 and 21?
 9 MR. WOYCHESHYN: Any security in support of
 10 its loans to Lisa other than the security described in
 11 Paragraph 20 and 21.
 12 MR. OPOLSKY: Any security in support. I'll
 13 take that under advisement.
 14 --- UNDER ADVISEMENT NO. 10
 15 BY MR. WOYCHESHYN:
 16 333. Q. I take it, sir, that the BDT loan is
 17 interest free?
 18 A. The loan from -- that Lisa owes?
 19 334. Q. Yes.
 20 A. I'm not sure. I don't know. I believe
 21 it has interest, but I don't know. Don't know the
 22 details.
 23 335. Q. Can you ask Mr. Doig whether interest
 24 is being charged on the BDT loan to Lisa and if so,
 25 what amount?

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1 MR. OPOLSKY: Same answer.
 2 --- UNDER ADVISEMENT NO. 11
 3 BY MR. WOYCHESHYN:
 4 336. Q. Turn to Exhibit G, sir, of your
 5 affidavit. We see that the assignment of causative
 6 action is signed by Patrick Doig as president of BDT,
 7 David Harry as treasurer of Lisa and Calvin Shields as
 8 director of Xela. Were you involved in the
 9 negotiation of this agreement, sir?
 10 A. No, I was not.
 11 337. Q. Certainly Mr. Shields would've spoken
 12 to you before signing this?
 13 A. Yes. We agreed on providing BDT the
 14 necessary guarantees.
 15 338. Q. Sorry, so you spoke to Mr. Shields
 16 about this, but your evidence is that you didn't
 17 review this before it was signed?
 18 A. We had a conversation about it.
 19 339. Q. You and Mr. Shields?
 20 A. We agreed -- yes. We agreed on
 21 providing BDT the necessary guarantees in order to
 22 continue funding the litigation as the only source of
 23 funding for the litigation.
 24 340. Q. David Harry is a director and treasurer
 25 of Lisa. You know him?

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1 A. I know him.
 2 341. Q. Am I right that Cal Shields is the
 3 president of Lisa?
 4 A. He was.
 5 342. Q. When did that stop to be the case?
 6 A. I'm not sure the exact date. But it
 7 either was last year or early this year. But I'm not
 8 sure of the date.
 9 343. Q. Could you ask Mr. Shields or review
 10 Xela's records to see when Mr. Shields ceased to be
 11 the president of Lisa?
 12 MR. OPOLSKY: Yes, we can do that.
 13 --- UNDERTAKING NO. 6
 14 BY MR. WOYCHESHYN:
 15 344. Q. Mr. Gutierrez, do you know who was on
 16 the board of directors of BDT as of January 24, 2018?
 17 A. I don't know for sure.
 18 345. Q. Can you ask Mr. Doig?
 19 MR. OPOLSKY: I didn't hear the date. What
 20 date?
 21 MR. WOYCHESHYN: January 24, 2018, the day
 22 of the assignment of causative action attached as
 23 Exhibit G to the witness's affidavit.
 24 MR. OPOLSKY: We'll take that under
 25 advisement.

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1 --- UNDER ADVISEMENT NO. 12
 2 BY MR. WOYCHESHYN:
 3 346. Q. Do you know, sir, what analysis --
 4 well, let me take a step back. How long has Mr. Doig,
 5 to your knowledge, been involved with BDT?
 6 A. I don't know for certain, but it's a
 7 few years.
 8 347. Q. What is BDT's business? Or what was
 9 it? Let me start first with between 2004 and 2009
 10 when you were a director, what was its business?
 11 A. BDT is the owner of the intellectual
 12 property and the technology and recipes that the
 13 Arturo's restaurants in Venezuela operate under.
 14 348. Q. At least when you were there it was a
 15 holding company?
 16 A. BDT?
 17 349. Q. It held assets but had no operations of
 18 its own.
 19 A. BDT, it's never been nor a holding
 20 company, nor an operation. It's been an owner of the
 21 intellectual property. And the franchisor, the
 22 relationship between BDT and PAICA is the relationship
 23 of a franchisor/franchisee.
 24 350. Q. To your knowledge, has that business
 25 structure changed since you left as a director?

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1 A. Not that I know, but I don't know what
2 has happened for sure.

3 351. Q. Are you aware of Lisa -- pardon me.
4 Are you aware of BDT ever loaning millions of dollars
5 to any other third party in support of litigation
6 besides Lisa?

7 A. Beside Lisa? Not to my knowledge.

8 352. Q. Certainly when you were there it wasn't
9 in the litigation-funding business?

10 A. BDT wasn't in the litigation-funding
11 business, but it was helping Lisa on this particular
12 case.

13 353. Q. If BDT holds IP, where does it obtain
14 revenue from or where did it obtain revenue from when
15 you were involved?

16 A. When I was involved, it was through
17 technical assistance fees and royalties paid by PAICA
18 to BDT for the Arturo's technology, brand, recipes.

19 354. Q. Other than PAICA was there any other
20 source of BDT from BDT -- for BDT?

21 A. No, not when I was there.

22 355. Q. Do you know what, before signing the
23 causative act -- assignment of causative action
24 agreement on or about January 24, 2018, do you know
25 what due diligence BDT did before it agreed to take a

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1 percentage of the recovery in the Avicola litigation?
2 A. I'm not aware of that.

3 356. Q. Can you ask Mr. Doig that question?
4 MR. OPOLSKY: I'll take it under advisement.
5 --- UNDER ADVISEMENT NO. 13
6 MR. WOYCHESHYN: To the extent that BDT
7 prepared any analysis or assessment of the probability
8 of recovery in the Avicola litigation that's not
9 protected by any privilege, I'd ask that you ask Mr.
10 Doig to provide that to us.

11 MR. OPOLSKY: Sorry, I had difficulty
12 hearing that. Can you repeat it?

13 MR. WOYCHESHYN: To the extent that BDT
14 engaged in any analysis with regards to the prospects
15 of recovery in the Avicola litigation, that analysis
16 or assessment was reduced into writing and is not
17 protected by any privilege, I'd like you to ask Mr.
18 Doig to provide that to you and you provide it to me.

19 MR. OPOLSKY: Under advisement.
20 --- UNDER ADVISEMENT NO. 14
21 BY MR. WOYCHESHYN:

22 357. Q. Would you agree, Mr. Gutierrez, that
23 BDT is a related party to Xela?

24 A. BDT was a related party to Xela.

25 358. Q. But is no longer a related party?

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1 A. It's no longer.

2 359. Q. Just so I understand, at some point
3 prior to June 2016, on your evidence it ceased to be a
4 related party?

5 A. I don't know the date. I understand
6 that that was before the date.

7 360. Q. That would be the same for PAICA? Your
8 evidence would be that it was a related party, but
9 some point in or around 2016 it stopped being a
10 related party to Xela?

11 A. Yes.

12 361. Q. I'm showing you a copy of a creditor
13 list that I received through your counsel at Torys.
14 There's two copies there. I received it this week.
15 It's entitled Xela Creditor List, prepared June 1st,
16 2019 and as of December 31st, 2018. Do you see that?

17 A. Yes.

18 362. Q. Have you seen this before, sir?

19 A. Yes.

20 363. Q. If we look at the bottom of the page it
21 says, "Due to related parties," and according to this
22 document, both BDT and PAICA are listed as related
23 parties. You see that, sir?

24 A. Yes.

25 364. Q. Are you saying that this document is

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1 incorrect?

2 A. I didn't prepare the document.

3 365. Q. Do you know who did?
4 A. I presume that somebody in the
5 accounting. Some accountant's been doing this. I'm
6 not an accountant, so I don't prepare documents like
7 this.

8 366. Q. But you are the president of Xela,
9 right?

10 A. I am the president of Xela.

11 367. Q. And you are the only employee of Xela?

12 A. Yes.

13 368. Q. You can't tell me who prepared this?
14 A. Well, there is an accountant that
15 assist me with it.

16 369. Q. Who?
17 A. His name is Thomas Lam.

18 370. Q. L-A-M?
19 A. Yes.

20 371. Q. Mr. Lam didn't run this creditor list
21 by you for your approval?
22 A. He prepared the document on -- he
23 prepared this document on the request because it was
24 needed to determine who the creditors were.

25 372. Q. Sorry, are you saying you just didn't

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1 review it before it was sent over or you just didn't
 2 pick up that it lists both BDT and PAICA as related
 3 parties?
 4 A. Frankly, I reviewed the document. I'm
 5 not keen on the terminology like you are on this
 6 issue. Because as I am not a lawyer, I'm just not
 7 looking at those issues. I'm just looking what is
 8 owed and to whom and that's what I care, and this is
 9 what this documents tells.
 10 MR. WOYCHESHYN: If we can mark that as the
 11 next exhibit, please.
 12 --- EXHIBIT NO. D: Xela Creditor List prepared June 1st,
 13 2019
 14 BY MR. WOYCHESHYN:
 15 373. Q. To your knowledge, Mr. Gutierrez, is
 16 there an updated creditor list or is the most recent
 17 version that exists?
 18 A. This is the most recent I've seen.
 19 MR. OPOLSKY: This is the version that was
 20 sent to you yesterday?
 21 MR. WOYCHESHYN: Yes.
 22 MR. OPOLSKY: Two days ago?
 23 BY MR. WOYCHESHYN:
 24 374. Q. Yes. This week. I have a few more
 25 questions on the creditor list, sir, and I'm fine if

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1 you answer by way of undertaking. Just let me know
 2 what you can't answer sitting here. But the first
 3 question is whether any of the creditors listed on
 4 Exhibit D have a judgement currently against Xela?
 5 A. Of this list?
 6 375. Q. Yes.
 7 MR. OPOLSKY: We'll...
 8 MR. WOYCHESHYN: I'm fine to take it by way
 9 of undertaking.
 10 MR. OPOLSKY: We will advise you to the best
 11 of our knowledge whether any of -- the best of Mr.
 12 Gutierrez's knowledge as to whether any of the
 13 creditors on this list have a final judgement as
 14 opposed to a claim. Is that your question?
 15 MR. WOYCHESHYN: Yes. An actual judgement.
 16 MR. OPOLSKY: A court judgement?
 17 MR. WOYCHESHYN: Correct.
 18 THE DEPONENT: I'm not aware of any court
 19 judgement other than my sister's.
 20 BY MR. WOYCHESHYN:
 21 376. Q. If you'll learn something else, you'll
 22 let me know?
 23 A. Sorry.
 24 377. Q. If you learn that one of these
 25 creditors does have a judgement and you recall, you'll

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1 let me know?
 2 MR. OPOLSKY: Yes.
 3 THE DEPONENT: Yes.
 4 MR. OPOLSKY: We will let you know.
 5 --- UNDERTAKING NO. 7
 6 BY MR. WOYCHESHYN:
 7 378. Q. Have any of the creditors listed on
 8 Exhibit D started legal proceedings to collect the
 9 debt as against Xela to your knowledge?
 10 MR. OPOLSKY: You can answer.
 11 THE DEPONENT: Not to my knowledge.
 12 BY MR. WOYCHESHYN:
 13 379. Q. Now, on the right-hand side there's a
 14 note that says sort of middle of the page, these
 15 should in fact -- sorry, pardon me -- "These should be
 16 in fact netted out to zero or have a balance owing, in
 17 particular Amex Xela is in collections of \$80,000.00
 18 and owing." Do you know what that's in reference to,
 19 sir?
 20 A. I'm sorry?
 21 380. Q. Do you know what that's in reference
 22 to?
 23 A. Well, there is an American Express bill
 24 that not paid once Xela's accounts were frozen. So
 25 that is in a collections agency, but it's not a court

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1 ruling of any sort as far as I know.
 2 381. Q. As far as you know, no lawsuit has been
 3 started?
 4 A. As far as I know, no.
 5 382. Q. If you learn that there has been a
 6 lawsuit started by any of the creditors listed on the
 7 Exhibit D, will you let me know whether Xela has
 8 entered into tolling agreement with any of those
 9 creditors with respect to the debts allegedly owed to
 10 that creditor?
 11 A. If I learn about something, yes.
 12 MR. WOYCHESHYN: Let your counsel --
 13 Counsel, you're fine with that?
 14 MR. OPOLSKY: Yes. I'm fine with that.
 15 --- UNDERTAKING NO. 8
 16 THE DEPONENT: Sorry.
 17 BY MR. WOYCHESHYN:
 18 383. Q. On the top of the page, Exhibit D,
 19 there is the first accounts payable and accrued
 20 liabilities CRGO and there's four different CRGOs. I
 21 take that CRGO is a reference to Carey Rodriguez?
 22 A. That's correct.
 23 384. Q. That's Juan Rodriguez's law firm?
 24 A. That's correct.
 25 385. Q. Underneath that, immediately under CRGO

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1 agreement there is CKS Consulting. Do you see that?
 2 A. Correct.
 3 386. Q. I take it that's Cal Shields
 4 Consulting?
 5 A. Correct.
 6 387. Q. According to this document, he's owed
 7 roughly \$91,000.00 U.S.?
 8 A. That's correct.
 9 388. Q. I take it that those monies relate to
 10 services he provided as director, officer of Xela or
 11 one of its subsidiaries?
 12 A. I don't know the exact -- this detail
 13 of this particular amount, but he used to receive fees
 14 as a director -- no longer -- as well as over the
 15 years he provided some consulting services to the
 16 group. So I don't know exactly what's in that amount.
 17 389. Q. Do you know when last services he
 18 provided for which he sought a fee were provided?
 19 A. I don't know.
 20 390. Q. I'm showing you and your counsel, sir,
 21 some answers to undertakings from the examination of
 22 Calvin Shields as a corporate representative of Xela
 23 on July 27, 2017. We see on Page 3, Undertaking 35,
 24 there's an answer that Mr. Shields gave based on Mr.
 25 Korol's knowledge, but it attaches a list of creditors

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1 and that was sometime in 2017. And if we turn a few
 2 more pages in, this is the fifth page of the document
 3 I've provided to you. There's a Xela creditor list
 4 prepared October 27, 2017, you see that?
 5 A. I see that.
 6 391. Q. On this creditor list there is CKS
 7 Consulting for \$91,000.00 U.S. and then there's an
 8 asterisk and it says the last invoice was May 31,
 9 2017. Do you see that?
 10 A. Where is that?
 11 MR. OPOLSKY: It's at the bottom of the
 12 writing below the double line.
 13 THE DEPONENT: That's what it says.
 14 BY MR. WOYCHESHYN:
 15 392. Q. I take it sitting here today, sir, you
 16 have no reason to doubt that all the services provided
 17 by Mr. Shields for which he seeks consulting fees were
 18 provided before May 31st, 2017?
 19 A. I have no reason to doubt anything he
 20 said.
 21 393. Q. The amount listed on both creditor
 22 lists for a Rijk, or Rijk -- R-I-J-K -- Zwann re FQI,
 23 the FQI, that's in reference to Fresh Quest
 24 International?
 25 A. That's correct.

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1 394. Q. There's a listed debt there for over
 2 \$1,000,000.00. Do you see that?
 3 A. That's correct.
 4 395. Q. Did Mr. Zwann actually commence
 5 proceedings in Netherlands?
 6 A. I'm not aware of that.
 7 396. Q. And Fresh Quest has had no operations
 8 and has been effectively closed since 2015?
 9 A. Correct.
 10 MR. WOYCHESHYN: Can we mark this as Exhibit
 11 E? This is the answers to undertakings of Cal Shields
 12 --- EXHIBIT NO. E: Answers to undertakings of Cal Shields
 13 BY MR. WOYCHESHYN:
 14 397. Q. If we can go back to Exhibit D, sir,
 15 the creditor list from this week, the more updated
 16 creditor list. This may just be a typographical
 17 error, but under the third row for Carey Rodriguez re
 18 FQI, the U.S. amount is 35,000 and then when it's
 19 converted to Canadian it's 296,000. I suspect what
 20 happened is they the Quetzal's exchange rate rather
 21 than the Canadian/U.S. dollar exchange rate. But if
 22 you can speak to Mr. Lam and let me know what the -- I
 23 just need to know which is correct.
 24 MR. OPOLSKY: We will undertake to let you
 25 know which number is correct.

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1 --- UNDERTAKING NO. 9
 2 BY MR. WOYCHESHYN:
 3 398. Q. Thank you. Sticking with Exhibit D.
 4 If we go down to shareholders, there is an amount of
 5 \$395,432.00 to Carmen Gutierrez. Do you see that?
 6 A. I see that.
 7 399. Q. That's your mother?
 8 A. That's correct.
 9 400. Q. She was never personally a shareholder
 10 in Xela, was she?
 11 A. No, she wasn't.
 12 401. Q. So do you know what the \$395,000.00
 13 relates to?
 14 A. I'm not a hundred percent sure. I
 15 actually don't know the detail. It's been there for a
 16 long time.
 17 402. Q. Who would know the details on that?
 18 A. I'd have to ask. I'll ask Mr. Lam to
 19 check the numbers.
 20 403. Q. If you could ask Mr. Lam to advise what
 21 the \$395,432.00 listed on the Exhibit D in relation to
 22 Carmen Gutierrez relates to and advise?
 23 MR. OPOLSKY: Okay.
 24 --- UNDERTAKING NO. 10
 25 BY MR. WOYCHESHYN:

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1 404. Q. If you keep Exhibit D open and then if
 2 we could turn back to your affidavit, Paragraph 75.
 3 Seven-five. Page 26 of the record, Page 17 of your
 4 affidavit at the bottom of the page you say at
 5 Paragraph 75, "Regarding amounts due to shareholders,
 6 part of the debt Xela owes to shareholders is secured.
 7 The sum of \$276,162.00 is the subject of a registered
 8 security interest under the Personal Property Security
 9 Act, Ontario, that, as stated below, is in favour of
 10 Arturo Gutierrez." Do you know what that debt relates
 11 to, sir?
 12 A. It's part of its shareholder loans. I
 13 lent Xela a lot of money since its beginning and
 14 that's been there for a very long time. This is just
 15 the balance.

16 405. Q. When I look at the creditor list marked
 17 as Exhibit D, I see that there's a note payable to
 18 J.A.G. and that's Juan Arturo Gutierrez, right?
 19 A. Where are you looking at?

20 406. Q. Sorry, Exhibit D. The creditor list.
 21 A. J.A.G. is my father. Yes.

22 407. Q. So there's a note payable for 261,745
 23 and then there appears to be a debit for a promissory
 24 note for 14,967. I just don't understand how the
 25 276,162 figure is arrived at.

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1 MR. OPOLSKY: We will undertake to reconcile
 2 those figures.
 3 --- UNDERTAKING NO. 11
 4 BY MR. WOYCHESHYN:

5 408. Q. Thank you. We talked about your father
 6 passing in June 2016. Has the estate made any demand
 7 for payment on the shareholder note?
 8 A. Not that I'm aware of.

9 409. Q. In the past three years has Xela
 10 prepared financial statements on a consolidated basis?
 11 A. Xela has never prepared any
 12 consolidated statements. Never did.

13 410. Q. I'm done with Exhibit D. If we can
 14 turn to Page 16 of the record, Page 7 of your
 15 affidavit dealing with the Florida litigation. I just
 16 have a few questions about that. As far as I
 17 understand it and I know you've attached a number of
 18 documents, but I just want to confirm: BDT is the
 19 plaintiff in the Florida litigation?
 20 A. That's correct.

21 411. Q. And Juan Rodriguez is a lawyer of
 22 record for BDT?
 23 A. Until recently he was.

24 412. Q. He's no longer the lawyer of record?
 25 A. I'm -- my understanding is that he is

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1 not.
 2 413. Q. If we look at page -- Paragraph 28 on
 3 Page 8 of your affidavit you start by saying, "I'm
 4 advised by counsel of record in Florida that after BDT
 5 served the writs of garnishment, Banco Santander
 6 removed the matter to federal court where it is
 7 currently pending." Who is the counsel that you were
 8 referring to?
 9 A. Sorry, where are you? I missed.

10 414. Q. Paragraph 28. 28.
 11 A. Twenty-eight.

12 415. Q. Page 8.
 13 A. In the past Juan Rodriguez was the
 14 lawyer for BDT. Since I'm not part of BDT I don't
 15 have any direct contact with him. But I do with the
 16 lawyers for Lisa.

17 416. Q. Okay. So at Paragraph 28, what you
 18 were referring to there, is counsel of record in
 19 Florida the counsel for Lisa?
 20 A. Yes.

21 417. Q. Who is counsel for Lisa in the Florida
 22 litigation?
 23 A. It's the lawyer in Miami is called
 24 Allan Joseph.

25 418. Q. Has Mr. Joseph always been the lawyer

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1 for Lisa in the Florida litigation?
 2 A. That is correct.

3 419. Q. Turning back to Paragraph 27 of your
 4 affidavit. Just so I'm clear, when you say at the
 5 bottom of Page 7, Page 16 of the application record,
 6 "I have been advised by counsel for litigation Panama
 7 and also by counsel of record in Florida that BDT
 8 sought to satisfy its judgement against Lisa by
 9 pursuing Villamorey for Lisa's unpaid dividends," the
 10 counsel of record in Florida that you were referring
 11 to there is Mr. Joseph?
 12 A. Yes. There is -- there's several
 13 different attorneys working there.

14 420. Q. Yes. I'm not trying to trick you, sir.
 15 I'm just trying to understand the source of the
 16 information for Paragraph 27 in that sentence.
 17 A. Yeah, it came from the legal team. I
 18 don't remember exactly who personally I talked to
 19 about it.

20 421. Q. Either Mr. Joseph or someone at his
 21 firm?
 22 A. Someone at his firm or another firm
 23 that's assisting us.

24 422. Q. What other firm is assisting you?
 25 A. It's Mr. Andrew Durkovic.

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1 423. Q. Lisa has two firms that's helping it in
 2 the Florida litigation?
 3 A. Mr. Durkovic is a legal advisor for
 4 Lisa overall.
 5 424. Q. Is he a Florida lawyer or is he based
 6 in Panama?
 7 A. He's based in Washington, actually.
 8 425. Q. So my information is that Mr. Rodriguez
 9 initially acted for both BDT and Lisa in the Florida
 10 litigation, do I have that wrong?
 11 A. As far as I know, Mr. Rodriguez never
 12 represented Lisa in the Florida litigation.
 13 426. Q. The Florida litigation is being funded,
 14 from Lisa's perspective, from the funds advanced by
 15 BDT?
 16 A. From Lisa's perspective, that's
 17 correct.
 18 427. Q. You don't know the source of the funds
 19 from the BDT side?
 20 A. I don't know firsthand.
 21 MR. OPOLSKY: I think we've already given
 22 you an undertaking on that.
 23 BY MR. WOYCHESHYN:
 24 428. Q. Yes. If you turn to Paragraph 89 of
 25 your affidavit. This is on Page 20 of your affidavit,

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1 Page 29 of the application record. You say at
 2 Paragraph 89, "I'm not aware of any material prejudice
 3 that CCAA proceeding would cause for Xela's
 4 creditors." Did I read that right?
 5 A. Yes.
 6 429. Q. Have you been involved in a CCAA
 7 proceeding before, sir?
 8 A. No.
 9 430. Q. When you say material prejudice, what
 10 do you mean?
 11 A. I mean that the proceedings of CCAA
 12 cannot cause any harm to any of the parties involved.
 13 431. Q. Your evidence or your understanding is
 14 that delay would not be prejudicial to any creditor?
 15 A. Delay? What do you mean with that? I
 16 don't understand the question.
 17 432. Q. We can agree, sir, that under what Xela
 18 is proposing in the CCAA that there will be no monies
 19 paid to creditors until there is either a settlement
 20 or a final judgement in the Florida litigation, right?
 21 A. Correct.
 22 433. Q. We agree that that could be months
 23 away, right?
 24 A. We don't know.
 25 434. Q. Or it could be years away, right? We

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1 don't know?
 2 A. It could be very close.
 3 435. Q. I'm suggesting to you, sir, that that
 4 unknown period of delay is prejudicial to creditors.
 5 Do you agree or disagree with that?
 6 A. Not if that secures payment.
 7 436. Q. And if it doesn't secure payment, you'd
 8 agree with me that the delay would be prejudicial?
 9 A. The CCAA proceedings would facilitate
 10 reaching a resolution and collecting the dividends
 11 that will protect the rights of all creditors, not
 12 just one creditor. And as president of the company I
 13 have to look after all creditors.
 14 437. Q. Your understanding of what the CCAA
 15 will do certainly doesn't come from your experience;
 16 you just told me you've never been involved in one
 17 before?
 18 A. I haven't been involved.
 19 438. Q. So that's based on information that you
 20 received from others?
 21 A. It's based on my understanding and how
 22 the process works. And also my business experience, I
 23 know that this -- I know that this situation will be
 24 resolved very soon.
 25 439. Q. What situation?

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1 A. The situation in Florida.
 2 440. Q. Why do you say that?
 3 A. Because we have a trial date, because
 4 we have the -- Lisa has -- I'm sorry, Lisa and BDT
 5 have the reason, the truth on their side. So I'm not
 6 going to speculate, so you have a specific question,
 7 ask me the specific question.
 8 441. Q. You're no stranger to litigation,
 9 that's fair?
 10 A. Yeah.
 11 442. Q. You know that even if there is a trial
 12 and a judgement that there could be appeals of that in
 13 Florida?
 14 A. I understand that.
 15 443. Q. You know firsthand that appeals can be
 16 lengthy?
 17 A. I understand that, yeah.
 18 444. Q. It can take months if not over a year?
 19 A. I understand that.
 20 445. Q. You understand that in 2015 Justice
 21 Newbould found that Xela had oppressed Margarita's
 22 interests?
 23 A. I understand what the ruling was.
 24 446. Q. And also that you personally also
 25 oppressed Margarita's interests?

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1 MR. OPOLSKY: Are you asking him for whether
 2 he understands that that's what Justice Newbould
 3 found?
 4 MR. WOYCHESHYN: Correct.
 5 THE DEPONENT: I understand what he found.
 6 BY MR. WOYCHESHYN:
 7 447. Q. You understand that he ordered
 8 Margarita to be paid \$4.25 million for her Tropic
 9 shares?
 10 A. I understand.
 11 448. Q. You understand that decision was upheld
 12 by a divisional court?
 13 A. I understand.
 14 449. Q. You understand that Court of Appeal
 15 denied leave to appeal?
 16 A. I do.
 17 450. Q. You agree that Xela has never
 18 voluntarily paid any amount towards the judgement?
 19 A. Xela has been doing -- well, first
 20 there was \$134,000.00, if I'm not mistaken the amount,
 21 that was in the bank accounts that went to payment,
 22 and Xela has been doing everything in its ability to
 23 obtain the funds to be able to satisfy the judgement
 24 as well as the other creditors.
 25 451. Q. The \$134,000.00 that you just

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1 referenced, that was money that was garnished by
 2 Margarita?
 3 A. That's my understanding.
 4 452. Q. So back to my question. Since 2017
 5 when the judgement was final, Xela has not voluntarily
 6 paid any money towards the judgement?
 7 A. Xela has not been in the possibility to
 8 do it, but it's been looking for every -- every option
 9 to collect and obtain funds to pay, satisfy the
 10 judgement.
 11 453. Q. We can agree that under the proposed
 12 CCAA plan as currently contemplated, there is no
 13 deadline by which Margarita will receive any funds to
 14 pay down her judgement?
 15 A. I guess that that will be defined by
 16 the court when the CCAA is discussed and approved.
 17 MR. OPOLSKY: If this is a good time, I
 18 would like to run to the bathroom.
 19 MR. WOYCHESHYN: Sure.
 20 --- OFF THE RECORD (2:56 P.M.) ---
 21 --- UPON RESUMING (3:03 P.M.) ---
 22 BY MR. WOYCHESHYN:
 23 454. Q. Mr. Gutierrez, if you could please turn
 24 to Page 17 of your affidavit, Page 26 of the record,
 25 Paragraph 71. I just want to confirm something, and

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1 I'm fine for you to confirm it by way of undertaking.
 2 Paragraph 71 says, "As at May 31st, 2018, Xela's total
 3 liabilities had a book value of approximately
 4 \$83,000,000.00. The liabilities of Xela consisted of
 5 the following," and one of the categories listed under
 6 liabilities is due to related parties and that's for
 7 the amount of 72,944,120 and I just want to confirm
 8 that that figure listed in the chart at Paragraph 71
 9 of your affidavit includes amounts owing to both BDT
 10 and PAICA.
 11 A. Yes, because they were related in the
 12 past, so we just keep keeping them in the same total.
 13 MR. OPOLSKY: Counsel, just to draw your
 14 attention. That figure is the same sum as in the
 15 bottom right-hand side of Exhibit D.
 16 BY MR. WOYCHESHYN:
 17 455. Q. That's what I figured. Thank you. If
 18 we can look at Page 21 of your affidavit, Paragraph --
 19 Page 30 of the application record when you talk about
 20 the DIP loan. Capital D, capital I, capital P.
 21 A. Yes.
 22 456. Q. You understand DIP to be debtor in
 23 possession?
 24 A. Sorry, where? Which paragraph are we
 25 talking about?

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1 457. Q. Ninety-three.
 2 A. Ninety-three, okay. Yes. What's the
 3 question?
 4 458. Q. You understand DIP to be debtor in
 5 possession?
 6 A. Yes.
 7 459. Q. Paragraph 94 of your affidavit you say
 8 Xela has sourced DIP financing from a numbered
 9 company, 10357235 Canada Ltd.?
 10 A. Yes.
 11 460. Q. That's owned by Thomas Gutierrez and
 12 Andres Gutierrez?
 13 A. That's correct.
 14 461. Q. Andres is A-N-D-R-E-S. They are your
 15 two sons?
 16 A. That's correct.
 17 462. Q. Andres is Juan Andres, right?
 18 A. That's correct.
 19 463. Q. And Thomas is Thomas Daniel?
 20 A. That's correct.
 21 464. Q. Andres is 38 years old?
 22 A. Yes.
 23 465. Q. And Thomas 31?
 24 A. Yes.
 25 466. Q. To your knowledge are they the only

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1 shareholders of the numbered company listed at
 2 Paragraph 94 of your affidavit?
 3 A. I believe so, but I'm not a hundred
 4 percent sure.
 5 467. Q. Could you ask them?
 6 MR. OPOLSKY: I'll take that under
 7 advisement.
 8 --- UNDER ADVISEMENT NO. 15
 9 BY MR. WOYCHESHYN:
 10 468. Q. Do you know when they incorporated that
 11 numbered company, sir?
 12 A. I don't know.
 13 469. Q. I'm showing you a corporate search for
 14 that company and according to this it looks like the
 15 certificate of corporation, if you look at Page 2, was
 16 on August 8th, 2017. Do you see that?
 17 A. Where is that?
 18 470. Q. Under certificate of ---
 19 A. Oh here in the bottom. Yeah. This one
 20 here?
 21 471. Q. Yes. Under certificate of
 22 incorporation it says August 18, 2017. You see that?
 23 MR. OPOLSKY: You're referring to the last
 24 bolded line on the page?
 25 MR. WOYCHESHYN: Correct.

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1 THE DEPONENT: Okay. I see that. Sorry.
 2 BY MR. WOYCHESHYN:
 3 472. Q. I take it that you have no personal
 4 involvement in this numbered company?
 5 A. No.
 6 473. Q. Any reason to doubt that it was
 7 incorporated on August 8, 2017?
 8 MR. OPOLSKY: I think that it says what it
 9 says. If this the corporate registration, it says
 10 what it says.
 11 MR. WOYCHESHYN: The next exhibit.
 12 MR. BORTOLIN: F.
 13 --- EXHIBIT NO. F: Corporate search for 10357235 Canada
 14 Ltd
 15 BY MR. WOYCHESHYN:
 16 474. Q. Do you know what the business of that
 17 numbered company is, sir?
 18 A. Sorry? What's the business they do?
 19 475. Q. Yes. What's the business of the
 20 numbered company?
 21 A. I am a hundred percent of everything
 22 they do because I'm not part of it, but I know they're
 23 in -- they're selling biodegradable plastics and some
 24 other things.
 25 476. Q. Now, the biodegradable plastics

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1 business, I thought that there was a Xela-related
 2 company called Greenpak that was involved in that line
 3 of business?
 4 A. Sorry. No, there is no Greenpak
 5 related Xela.
 6 477. Q. Did I dream that in technicolour or was
 7 there not a business called Greenpak?
 8 A. There was a company that was started
 9 years ago under that name --
 10 478. Q. And it was involved ---
 11 A. -- and that was under Arven.
 12 479. Q. Arven.
 13 A. Yeah.
 14 480. Q. And it was in the packaging business,
 15 right?
 16 A. It was in the biodegradable packaging.
 17 481. Q. Andres was involved in that business?
 18 A. Yes.
 19 482. Q. Can you ask either of your sons -- and
 20 just so we're clear, you only have two sons, right?
 21 A. Sorry?
 22 483. Q. You only have the two sons? You have
 23 two daughters, but you also have two sons?
 24 A. That's correct.
 25 484. Q. You only have two sons?

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1 A. That's correct.
 2 485. Q. Can you ask either of your sons what
 3 business the 10357235 Canada Limited is involved in
 4 other than the biodegradable packaging business?
 5 MR. OPOLSKY: We'll take that under
 6 advisement.
 7 --- UNDER ADVISEMENT NO. 16
 8 BY MR. WOYCHESHYN:
 9 486. Q. Your son's company has provided or
 10 agreed to provide a facility for \$500,000.00, sir?
 11 A. That's correct.
 12 487. Q. Do you know the source of those funds?
 13 A. They have been working together for a
 14 long time in different things.
 15 488. Q. Other than the biodegradable packing
 16 business, anything else to your knowledge?
 17 A. I don't work with them and they work
 18 independently.
 19 489. Q. Do you know when Greenpak stopped being
 20 associated with Xela?
 21 A. Greenpak was a part of Arven.
 22 490. Q. Right. But is this after Arven was
 23 separated from Xela or before?
 24 A. Greenpak started before that.
 25 491. Q. Right. So I'll ask my question: when

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1 did Greenpak stop being affiliated with Xela?
 2 A. Together with Arven.
 3 492. Q. So sometime around 2016 on your
 4 evidence?
 5 A. Correct.
 6 493. Q. Are your sons also involved in a
 7 business called Arturo's Technical Services?
 8 A. Yes.
 9 494. Q. What is Arturo's Technical Services?
 10 A. It provides some assistance to the
 11 Arturo's companies, as far as I know.
 12 495. Q. Which Arturo's companies.
 13 A. I mean the BDT, I presume. Maybe
 14 PAICA, I assume.
 15 496. Q. You don't know?
 16 A. I'm not part of it.
 17 497. Q. But, sir, you're president of Xela,
 18 right?
 19 A. Yes. But Xela is not part of that.
 20 498. Q. Are you saying, sir, that Xela has no
 21 interest in what Arturo's does?
 22 A. Arturo's is not part of Xela anymore.
 23 499. Q. Your evidence is that you as president
 24 of Xela or even individually are completely
 25 uninterested in what happens with Arturo's?

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1 A. I can only talk about that what I know,
 2 not what I hear.
 3 500. Q. What type of technical assistance do
 4 they provide?
 5 A. I don't know for sure.
 6 501. Q. Have you been to Arturo's Technical
 7 Services website?
 8 A. Not to the website.
 9 502. Q. Do you know the name Julio Fabrini?
 10 A. Yes.
 11 503. Q. He was a former employee of Xela?
 12 A. He was former executive of Xela's.
 13 504. Q. He was a former executive?
 14 A. Yeah. He's left Xela several years
 15 ago.
 16 505. Q. If I suggested to you that Mr. Fabrini
 17 helped your sons set up the website for Arturo's
 18 Technical Services, would you have any reason to doubt
 19 that?
 20 A. I think it's a possibility.
 21 506. Q. Is your evidence, sir, that the
 22 opportunity for Arturo's Technical Services to provide
 23 services to BDT and Arturo's, that that opportunity
 24 came entirely independent of you? That's not an
 25 opportunity that you presented to your sons?

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1 A. I don't understand what you exactly
 2 mean in the question.
 3 507. Q. That Arturo's Technical Services
 4 obtained the contract or ability to provide services
 5 to BDT and Arturo's entirely separate from your
 6 involvement?
 7 A. Yeah. They don't need my involvement
 8 to do what they do. I'm not involved. I haven't been
 9 involved for a while.
 10 508. Q. We talked before about Eduardo San
 11 Juan, do you remember that?
 12 A. Yes.
 13 509. Q. Is his first name also Jose? Is it
 14 Jose Eduardo San Juan?
 15 A. I believe that's his first name. Yes.
 16 510. Q. He ---
 17 A. He's also known -- he's always been
 18 known as Eduardo. I don't know. I think Jose might
 19 be his first name. Yeah.
 20 511. Q. He's a director of BDT?
 21 A. He was. I'm not sure if he continues.
 22 I assume he is.
 23 512. Q. Turn to page -- pardon me, Paragraph
 24 107 of your affidavit at the bottom of Page 23 of your
 25 affidavit, Page 20 -- 32 of the application record.

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1 MR. OPOLSKY: Sorry, can you give me that
 2 paragraph reference again?
 3 MR. WOYCHESHYN: Paragraph 107.
 4 MR. OPOLSKY: Thank you.
 5 BY MR. WOYCHESHYN:
 6 513. Q. Just let me know when you've had a
 7 chance to read Paragraphs 107 and 108, sir. Ready?
 8 A. Yeah. What's the question?
 9 514. Q. I just want to confirm, so we know that
 10 Xela has no operations, right?
 11 A. Correct.
 12 515. Q. Xela itself has no cash flow?
 13 A. At this time, no.
 14 516. Q. The litigation fees associated with the
 15 Avicola litigation are all funded by BDT?
 16 A. That's correct.
 17 517. Q. And yet Xela is seeking an
 18 administrative charge of \$500,000.00, I have that
 19 right?
 20 A. Yeah. But that's -- that's to help
 21 support the -- the proceedings.
 22 518. Q. It says in Paragraph 108 that Xela
 23 worked with RSM to estimate the proposed quantum of
 24 the charge. Who was it from Xela?
 25 A. Well, I represent Xela.

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1 519. Q. So it was you that worked with RSM to
 2 come up with the \$500,000.00 charge?
 3 A. Through counsel, too, I presume. I
 4 don't know exactly what your question is. I don't
 5 understand your question.
 6 520. Q. My question, sir, is how on earth is it
 7 reasonable in your view for there to be a \$500,000.00
 8 charge for a company that has no operations and is
 9 having its litigation entirely funded by I'll say a
 10 related party, but I understand that you say a third
 11 party?
 12 MR. OPOLSKY: Don't answer that. I'm not
 13 going to let him answer a question of whether
 14 something is reasonable or not. That's a legal
 15 assessment.
 16 --- REFUSAL NO. 3
 17 BY MR. WOYCHESHYN:
 18 521. Q. So Paragraph 108 you say Xela worked
 19 with RSM to estimate the proposed quantum of the
 20 administrative charge and believes it to be reasonable
 21 and appropriate in view of the complexities of the
 22 company's CCAA proceeding. So your belief in the
 23 reasonableness, sir, is based on what? Xela's belief
 24 in the reasonableness, which you put in issue in your
 25 affidavit at Paragraph 108, what's the basis for

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1 Xela's belief in the reasonableness of that
 2 \$500,000.00 charge?
 3 A. I really don't understand your
 4 question. If you can explain it to me a little bit
 5 clearer because I don't know what you mean.
 6 522. Q. Xela says that \$500,000.00 is
 7 reasonable in terms of a charge. I'm asking why.
 8 A. The charge for what? For the cost of
 9 the CCAA?
 10 523. Q. Yes.
 11 A. Well, that's an estimated -- estimation
 12 made after the consultation with the -- with the
 13 proposed -- how you call it? The RSM.
 14 524. Q. The monitor?
 15 A. The monitor. Thank you.
 16 525. Q. I take it what happened, sir, is the
 17 monitor just put forward a number and you didn't
 18 object to it?
 19 A. That's not exactly accurate, but that's
 20 the number that made sense.
 21 526. Q. Based on what?
 22 A. Based on the time that we presume it's
 23 going to take to resolve this matter.
 24 527. Q. Right. But you have no prior
 25 experience in CCAA proceedings, you told me that

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1 already. So didn't you just take the number that the
 2 monitor gave you and adopt it?
 3 A. I don't have a prior experience, but I
 4 am a businessman and I'm not an idiot or ignorant, so
 5 I estimated the numbers that were presented to me and
 6 they sounded reasonable to me. I don't -- like I'm
 7 not saying that this is the only number either. I
 8 don't know the future either.
 9 528. Q. There was another number proposed to
 10 you?
 11 A. This is the number that seems
 12 reasonable that was put forward.
 13 529. Q. By RSM?
 14 A. In consultation with them. Yes.
 15 530. Q. Paragraph 109 of your affidavit, sir.
 16 This is under the heading "Directors and Officers
 17 Charge." Paragraph 109 you say, "To ensure that Xela
 18 is able to continue its involvement in the litigation
 19 described above, Xela requires the ongoing
 20 participation of its directors and officers." Just to
 21 be clear, that is the only people involved are you and
 22 Mr. Shields?
 23 A. That's correct.
 24 531. Q. And as between you and Mr. Shields, who
 25 has more involvement?

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1 A. Myself.
 2 532. Q. Does Mr. Shields have any involvement?
 3 A. On the legal procedures and the
 4 litigation, just what's necessary. He's aware of
 5 what's going on. I obtain his advice when it's
 6 necessary. Neither I or him are lawyers, so
 7 litigation is in hands of the legal team.
 8 533. Q. Help me with this, sir. Your evidence
 9 is that you have no involvement with BDT?
 10 A. I no longer have involvement with BDT.
 11 534. Q. Right. And you've attached to your
 12 affidavit as Exhibit G an assignment of causative
 13 action that assigns Lisa's interests in the Avicola
 14 litigation to BDT, right?
 15 A. Right.
 16 535. Q. Why do you need to be involved in
 17 litigation?
 18 A. Because Lisa is the owner of the
 19 shares.
 20 536. Q. Lisa's ---
 21 A. Lisa has to be part in the ligation.
 22 Lisa is subsidiary of Xela.
 23 537. Q. Lisa, on your own evidence, sir, that
 24 you've attached to your affidavit, Lisa's assigned its
 25 rights in the litigation to BDT.

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1 A. But not the ownership of the shares.
 2 Lisa is the one that is the plaintiff in the majority
 3 on all the cases except the one in Florida. And my
 4 involvement is necessary because I am the -- the one
 5 that's been involved from the beginning. I know -- I
 6 have the knowledge.
 7 538. Q. So how can you say, sir, that you need
 8 to be involved in litigation, but you have no
 9 involvement with BDT, when BDT is the one that
 10 actually holds the rights to the litigation now?
 11 A. BDT is funding the litigation. Lisa is
 12 the one that's litigating.
 13 539. Q. That's different, sir, than what
 14 Exhibit G to your affidavit says. Let's read it
 15 together. "As a result of negotiation between the
 16 parties, BDT agrees to fund the litigation going
 17 forward, which could result in millions of dollars of
 18 expenses. In return, Lisa will assign all causative
 19 actions of all current and future lawsuits involving
 20 the Avicola holdings." You see that?
 21 A. Yeah. I understand what that means.
 22 540. Q. Lisa's ---
 23 A. I don't ---
 24 541. Q. Lisa's duty, sir ---
 25 MR. OPOLSKY: Sorry, I think he was not done

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1 answering his question.
 2 BY MR. WOYCHESHYN:
 3 542. Q. Finish. Sorry, I did interrupt.
 4 A. I said I read that and I'm not a lawyer
 5 and I didn't write the causative actions words in
 6 there. So my understanding is that what Lisa has
 7 assigned to BDT is the benefits of the results of the
 8 litigation are in exchange of funding it, and Lisa is
 9 the one that's act -- the actor in all the cases in
 10 Guatemala and Panama.
 11 543. Q. But you told me earlier that you spoke
 12 to Mr. Shields about this proposal before it was
 13 signed?
 14 A. When it was signed. I learned it was
 15 signed. Yes.
 16 544. Q. Right. You don't remember sitting here
 17 today whether you reviewed it before it was signed?
 18 A. I don't understand what -- I don't
 19 understand what you're --
 20 545. Q. You're telling me ---
 21 A. -- trying to ask me.
 22 546. Q. I'm asking you don't remember whether
 23 you reviewed this Exhibit G before it was signed?
 24 A. We discussed it and I -- as I'm telling
 25 you what our understanding was. We were assigning the

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1 benefits of the -- that's why it says 30 percent and
 2 70 percent split.
 3 547. Q. I know.
 4 A. And that's of the results of the
 5 litigation.
 6 548. Q. I know. You told ---
 7 A. The actions remain in the
 8 responsibility of Lisa and BDT is funding them like in
 9 the past.
 10 549. Q. You told me before that you had
 11 discussed it before it was signed. My question is
 12 specific. Did you look at the agreement, the
 13 assignment of causative action attached as Exhibit G
 14 before it was signed?
 15 A. I already answered that question.
 16 550. Q. No, you didn't, sir. You said you
 17 discussed it. You didn't say you actually looked at
 18 it. My question is did you look at it?
 19 A. I discussed it.
 20 551. Q. Okay. Now, looking at it now, you see
 21 how in the fourth last paragraph it says, "Lisa agrees
 22 to fully cooperate with BDT on a reasonable basis"?
 23 Do you see that?
 24 A. Yes.
 25 552. Q. All right.

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1 A. Lisa is cooperating, and Lisa is the
 2 one that is acting in the different legal cases.
 3 553. Q. It's cooperating, sir, because it no
 4 longer holds the rights in the litigation. The rights
 5 in litigation belong to BDT.
 6 A. But I don't understand what the
 7 difference of what you're asking me or what is in
 8 there. I don't.
 9 554. Q. So your evidence, sir, is you don't
 10 understand the difference between whether Lisa owns
 11 the right to pursue Avicola litigation versus the
 12 obligation to share in recoveries in the Avicola
 13 litigation with BDT? You don't understand the
 14 difference between those two?
 15 MR. OPOLSKY: He's answered the question and
 16 I think ultimately you're asking for a legal
 17 determination of what the contract means --
 18 MR. WOYCHESHYN: No.
 19 MR. OPOLSKY: -- which he's not able to give
 20 you.
 21 --- REFUSAL NO. 4
 22 BY MR. WOYCHESHYN:
 23 555. Q. When you say you discussed the Exhibit
 24 G, sir, are you saying you specifically know that you
 25 did not review it before it was signed, or you don't

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1 remember whether you reviewed it before it was signed?
 2 MR. OPOLSKY: Are you asking whether he saw
 3 this piece of paper before it was signed?
 4 BY MR. WOYCHESHYN:
 5 556. Q. Yes.
 6 A. The answer is no, I didn't see it
 7 before it was signed.
 8 557. Q. But you knew it was being signed
 9 because you discussed it with Cal Shields?
 10 A. We discussed the terms.
 11 558. Q. Let me just see. When you discussed it
 12 with Cal Shields, you knew that it dealt with Avicola
 13 litigation?
 14 A. Ask the question again.
 15 559. Q. When you discussed Exhibit G with Cal
 16 Shields, you knew that the document being signed
 17 related to the Avicola litigation?
 18 A. Yes. To the benefits of it.
 19 560. Q. Right. And as we said before, the
 20 Avicola litigation relates to the Avicola shares and
 21 that is by far the largest asset of Xela or any of its
 22 subsidiaries?
 23 A. Correct.
 24 561. Q. And as president and director of Xela,
 25 you didn't feel it important to look at the document

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1 before it was being signed?
 2 A. The truth of the matter here is that
 3 the litigation requires funding. BDT has been
 4 providing the funding. And there has been a lot of
 5 effort to make it impossible for Lisa to continue
 6 litigation because it's the only way Lisa would lose.
 7 So my responsibility as president of Xela is to make
 8 sure that the litigation continues. The ownership of
 9 Lisa is Xela's., the ownership of the shares belong to
 10 Lisa, but BDT is funding it and it deserves payment
 11 for the funding it's putting. Anybody that would fund
 12 litigation would require a similar type of conditions.
 13 562. Q. Just so that I understand your answer,
 14 sir, are you saying as long as you were securing
 15 funding to pursue the Avicola litigation, you didn't
 16 think it was important to actually have a look at the
 17 agreement between BDT and Lisa with respect to the
 18 litigation?
 19 A. No, because they -- I wasn't there when
 20 it was signed. Mr. Shields is a responsible
 21 businessman and it was signed on the terms that we
 22 agreed. So the legal terminology you're trying to put
 23 in here, I cannot comment on because I'm not a lawyer.
 24 So I really don't understand where you're going to.
 25 563. Q. No, I just want to understand what you

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1 just said. You just said, sir, that the agreement
 2 signed as Exhibit G was signed on the terms you
 3 discussed with Mr. Shields, is that -- did I get that
 4 right?
 5 A. To my understanding, what I understand
 6 when I read this document, it is within what him and I
 7 talked about.
 8 564. Q. With all the lawyers that Xela has, did
 9 you bother to get legal advice on the agreement before
 10 it was signed?
 11 MR. OPOLSKY: Please don't answer that.
 12 --- REFUSAL NO. 5
 13 BY MR. WOYCHESHYN:
 14 565. Q. I don't want to know -- I don't know
 15 what the advice was; I'm asking whether you received
 16 advice.
 17 A. I cannot comment on anything that we
 18 discussed with our lawyers.
 19 566. Q. I'm not asking you to say what you said
 20 to your lawyer or what your lawyer may have said back.
 21 I'm asking whether Xela bothered to get legal advice?
 22 MR. OPOLSKY: Don't answer the question.
 23 --- REFUSAL NO. 6
 24 THE DEPONENT: On the instructions of my
 25 lawyer, I'm not answering.

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1 BY MR. WOYCHESHYN:
 2 567. Q. Did Lisa bother to get legal advice
 3 before it signed the agreement at Exhibit G?
 4 MR. OPOLSKY: Don't answer the question.
 5 --- REFUSAL NO. 7
 6 THE DEPONENT: Same answer.
 7 BY MR. WOYCHESHYN:
 8 568. Q. Paragraph 112 of your affidavit.
 9 Actually, the bottom or Paragraph 111. This is Page
 10 33 of the application record, Page 24 of your
 11 affidavit. Xela is seeking a charge in favour of
 12 president and former directors and officers on the
 13 assets, property and undertakings of the company in
 14 the maximum amount of \$100,000.00, and that's defined
 15 as the directors and officers charge. That will allow
 16 Xela to continue to benefit from the expertise and
 17 knowledge of its directors and officers. And you say
 18 in Paragraph 112 that that quantum of the directors
 19 and officers charge has been considered by RSM and
 20 negotiated by Xela and its directors and officers. I
 21 take it that you were the one that was involved in
 22 that negotiation and not Mr. Shields?
 23 A. Correct.
 24 569. Q. Carrying on in Paragraph 112, you state
 25 Xela believes that that charge is reasonable in the

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1 circumstances. You see that?
 2 A. Yes.
 3 570. Q. What liability does that charge protect
 4 against?
 5 A. What is your question regarding
 6 exactly?
 7 571. Q. What do you need that charge for?
 8 A. The charge of the -- that's in case
 9 that there is any litigation against the directors.
 10 572. Q. Right. But certainly you understand,
 11 sir, that as part of a CCAA filing there would be a
 12 stay of all actions?
 13 A. I understand --
 14 573. Q. Against Xela?
 15 A. -- that. Yes.
 16 574. Q. So that's not a risk?
 17 A. That would be for ---
 18 MR. OPOLSKY: Just if we're commenting on
 19 legal niceties, there's a stay of actions against
 20 Xela. There's not a stay of action against its
 21 directors and officers.
 22 BY MR. WOYCHESHYN:
 23 575. Q. Right. So that's the concern? That's
 24 what you understand the charge to be, is if there are
 25 proceedings commenced individually against either you

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1 or Mr. Shields?
 2 A. Correct.
 3 576. Q. Has there been any threat of those
 4 proceedings, sir?
 5 A. None that I'm aware of, but there is
 6 always the possibility.
 7 577. Q. For a company with no operations?
 8 A. Well, from the people who are attacking
 9 the company.
 10 578. Q. I take it, sir, your evidence isn't
 11 that you would not be willing to participate as, or
 12 continue as a director and officer of Xela if that
 13 charge wasn't there? You're not saying that, are you?
 14 A. Me personally ---
 15 MR. OPOLSKY: Sorry, can you ask that
 16 question without double negatives?
 17 BY MR. WOYCHESHYN:
 18 579. Q. Sure. If there was no \$100,000.00
 19 directors and officers charge, would you continue to
 20 serve as a director and officer as Xela?
 21 A. I personally would.
 22 580. Q. Do you know whether Mr. Shields would?
 23 A. I have not discussed that with him.
 24 581. Q. I take it that he hasn't told you that
 25 he would resign if there was no charge?

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1 A. He has not said anything one way or the
 2 other.
 3 582. Q. I know I asked you earlier, sir, and
 4 you confirmed that you had never been involved in a
 5 CCAA proceeding, so my questions are going to be a bit
 6 different so just bear with me. Xela has never been
 7 involved in a CCAA proceeding to your knowledge,
 8 right?
 9 A. Never.
 10 583. Q. And Xela has never been placed into
 11 receivership before?
 12 A. No.
 13 584. Q. You agree with me?
 14 A. Yes.
 15 585. Q. None of Xela's Canadian subsidiaries
 16 have ever sought CCAA protection to your knowledge?
 17 A. No.
 18 586. Q. And none of Xela's Canadian
 19 subsidiaries have ever been placed into receivership?
 20 A. Sorry, I couldn't hear very well.
 21 587. Q. None of Xela's Canadian subsidiaries
 22 have every been placed into receivership?
 23 A. No.
 24 588. Q. You agree with me?
 25 A. Yes.

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1 589. Q. And yet, sir, I understand that you are
 2 concerned that if a receivership is put in place or a
 3 receiver is put in place over Xela that that will
 4 result in a fire sale of Avicola shares?
 5 MR. OPOLSKY: Counsel, are you referring to
 6 a portion of his affidavit?
 7 MR. WOYCHESHYN: Paragraph 5.
 8 MR. OPOLSKY: Paragraph 5 of your affidavit.
 9 THE DEPONENT: Yes.
 10 BY MR. WOYCHESHYN:
 11 590. Q. So that's your concern, that there will
 12 be a fire sale of Avicola shares?
 13 A. That is a concern for everybody
 14 involved in this.
 15 591. Q. Who is everyone?
 16 A. All the creditors and Xela.
 17 592. Q. So all the creditors listed on Exhibit
 18 D that we looked at before?
 19 A. I assume that every creditor will be
 20 concerned about that because Xela is trying to do and
 21 the reason we offered CCAA is because we're trying to
 22 put together a plan so all creditors are protected.
 23 593. Q. But there is no plan right now?
 24 A. That's what the CCAA is for, to put
 25 together the plan.

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1 594. Q. Right. But you told me earlier, sir,
2 that plan won't come for months, if longer.
3 A. That's your speculation. I said it
4 could be very soon. We don't know for sure. It's
5 more than one option to resolve this matter.
6 MR. WOYCHESHYN: Do you have Exhibit D?
7 MR. BORTOLIN: D.
8 BY MR. WOYCHESHYN:
9 595. Q. Groia and Company is no longer counsel
10 to Xela, right?
11 A. Correct.
12 596. Q. Has Groia and Company expressed any
13 concern with Xela being placed into receivership?
14 A. I have not talked to them.
15 597. Q. Epic Realty Partners Inc., I take it
16 that that is a former landlord?
17 A. Former landlord, yes.
18 598. Q. Has anyone at Epic Realty Partners Inc.
19 raised any concern with Xela being placed into
20 receivership?
21 A. I have not talked to any of them.
22 599. Q. Am I right, sir, that you haven't
23 talked to any of the creditors about the CCAA plan
24 other than the creditors that are related parties or
25 shareholders?

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1 A. The ones that -- yeah, the ones that we
2 talked to, they all have the same concern.
3 600. Q. Right. But the ones that you talked to
4 are either shareholders or related parties?
5 A. Shareholders? Not shareholders. Xela
6 has only one shareholder; that was my father.
7 601. Q. Presumably you spoke to your mother
8 about this?
9 A. Yes.
10 602. Q. Your mother is the estate trustee for
11 your father's estate?
12 A. That's correct.
13 603. Q. Other than speaking to your mother and
14 speaking to related parties as listed on Exhibit D, do
15 I have it correct that you haven't spoken to any other
16 creditors regarding whether they prefer a CCAA or a
17 receivership?
18 A. I have not spoken to all of them, I
19 have spoken to a few. But the issue here is that
20 everybody wants to get, collect -- collect these
21 dividends, related or not related -- sorry, collect
22 the debts. Xela has always been in the best position
23 to negotiate a solution. We've been attempting to do
24 so with my sister, too.
25 MR. OPOLSKY: Hold on. I'm going to stop

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1 you and remind you that all settlement discussions are
2 privileged. I would ask you not to put any of them
3 into the record.
4 THE DEPONENT: Sorry about that. But so
5 what I want to say is that Xela has had the best
6 interest all along to satisfy that judgement as well
7 as all the other creditors, and we've been doing our
8 best to do it, and the CCAA avenue is the one that
9 gives the best option. And going to that paragraph
10 that you were reading before, there's a very
11 legitimate risk that a receiver appointed by my sister
12 would attempt to sell those shares in a fire sale, and
13 that's a concern.
14 BY MR. WOYCHESHYN:
15 604. Q. Do you remember my question, sir?
16 A. Yeah. That was your question, if there
17 was a concern that the fire sale could occur.
18 605. Q. That concern was four questions ago.
19 My question that I asked you was other than the people
20 listed -- other than your mother and those listed as
21 related parties, you haven't spoken to any other
22 creditors listed on Exhibit D regarding whether they
23 prefer a CCAA proceeding over a receivership?
24 A. There is a few of these creditors that
25 have signed in their agreement to participate; that's

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1 further in the affidavit. Those are the ones that we
2 have talk -- I have talked to and those are the ones
3 that have expressed concern.
4 606. Q. Other than those in the support
5 agreement, your evidence is you haven't to spoken to
6 any other credits?
7 A. Not all -- not all of them.
8 607. Q. Sir, I'm just trying to understand who
9 you've spoken to. It's not that complicated. You've
10 told me that you spoke to the people in the support
11 agreement; fine. I asked you to confirm that that's
12 everybody you've spoken to and you said it's not all
13 of them. Which other ones?
14 A. I've said everybody that signed the
15 consent are the ones I spoken to and they're the ones
16 that expressed their concern.
17 608. Q. Yes. And I want to know and I'm
18 entitled to know which other creditors you've spoken
19 to.
20 A. I already answer who I talked to. The
21 ones that signed the consent. Everybody I talked to
22 has signed the consent.
23 609. Q. And no one else?
24 A. No.
25 610. Q. Now, when you use that terminology,

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1 fire sale, sir -- actually, one more question about
 2 Exhibit D. You see here there's Heenan Blaikie
 3 listed?
 4 A. That's a law firm?
 5 611. Q. Yes. Sir, you understand that that law
 6 firm ceased to operate in 2014?
 7 A. I did not know that.
 8 612. Q. Back to your use of the words fire
 9 sale. So just so I understand what you mean by that,
 10 what I take it you mean is that a fire sale means that
 11 the shares will be sold quickly, right? That's one
 12 aspect?
 13 A. Mm-hmm.
 14 613. Q. Yes?
 15 MR. OPOLSKY: Are you again referring to
 16 Paragraph 5?
 17 MR. WOYCHESHYN: Yes. I'm trying to
 18 understand what he means by a fire sale.
 19 THE DEPONENT: What's the question?
 20 BY MR. WOYCHESHYN:
 21 614. Q. I take it that there's two aspects to a
 22 fire sale as you use those words: one is timing, that
 23 the sale will happen quickly; and two is that they'll
 24 be sold for below what you think the fair value is, is
 25 that right?

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1 A. There's a third one. And it's because
 2 considering the circumstances of the litigation, there
 3 is only one potential purchaser, which is the Cousins.
 4 615. Q. Right. But, sir, you told me earlier
 5 in your evidence that you haven't in the past five
 6 years even tried to market the shares.
 7 A. Because of the litigation there is no
 8 parties that are in the poultry industry or investors
 9 that would be interested in acquiring this minority
 10 position.
 11 616. Q. You don't know that because you haven't
 12 bothered to market the shares in the past five years.
 13 MR. OPOLSKY: Is that question?
 14 MR. WOYCHESHYN: Yes.
 15 THE DEPONENT: Well, you're telling me that
 16 we haven't bothered. I already told you we have tried
 17 in the past to find buyers.
 18 BY MR. WOYCHESHYN:
 19 617. Q. More than five years ago?
 20 A. Several times over the 20 years.
 21 618. Q. Okay. So there's three aspects to the
 22 fire sale then: one is they'll be sold very quickly;
 23 two is they'll be sold for less than their true value;
 24 and third is they'll be sold to the Cousins? Three
 25 aspects?

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1 A. They are the only feasible purchaser
 2 and they are interested parties in this matter. So
 3 that definitely would be very harmful for Xela and for
 4 its stockholders, for BDT and the other creditors,
 5 presumably including Margarita.
 6 619. Q. At Paragraph 83 of your affidavit, sir.
 7 A. What number again?
 8 620. Q. Eighty-three. It's on Page 19 of your
 9 affidavit and Page 28 of the application record.
 10 Paragraph 83 you say, "Until this litigation provides
 11 a source of revenue to Xela, Xela will be unable to
 12 pay its numerous creditors, including Ms. Castillo."
 13 And what you're referring to there is the Avicola
 14 litigation, right?
 15 A. That's correct.
 16 621. Q. You say, "Nevertheless, Ms. Castillo
 17 has undertaken specific action to place Xela into
 18 equitable receivership, proceedings that will not
 19 offer the same protection and benefits to all actors
 20 as that available under the CCAA." And you told me
 21 before, sir, you had no prior experience with either
 22 the CCAA or a receivership, right?
 23 A. No.
 24 622. Q. So that cannot be information that
 25 obtain -- that originates from you, right?

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1 A. It's plain and simple logic that a
 2 process like a CCAA would protect the interest of all
 3 the creditors.
 4 623. Q. I want to be clear that I want your
 5 evidence, sir, because you've put in issue in
 6 Paragraph 83 that the CCAA will provide better
 7 protection to the creditors in an equitable
 8 receivership and I want to know what protections and
 9 benefits that the CCAA provides that an equitable
 10 receivership will not provide on your own evidence?
 11 A. A CCAA procedure will allow the
 12 litigation to continue under the supervision of the
 13 monitor, while the receivership, in my understanding,
 14 is that it would do the opposite.
 15 624. Q. Anything else? Is that all?
 16 A. I answered the question.
 17 625. Q. I just want to make sure that's the
 18 totality of your evidence on that point.
 19 A. Yeah.
 20 626. Q. You understand, sir, that if a receiver
 21 is appointed that neither my firm nor my client will
 22 control the receiver? Do you understand that?
 23 A. I don't.
 24 627. Q. You understand that if a receiver is
 25 appointed that that receiver will owe a duty to all

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1 creditors?
 2 A. I don't know that.
 3 628. Q. You understand, sir, that the receiver
 4 could decide to continue the Avicola litigation?
 5 A. I don't know what the receiver would
 6 do.
 7 629. Q. Do you know, sir, that if your receiver
 8 was appointed and tried to sell the Avicola shares
 9 that that sale would ultimately require court
 10 approval? Do you understand that?
 11 A. I don't know. I don't know the
 12 procedure, but...
 13 630. Q. At Paragraph 87 of your Affidavit, sir,
 14 you say, "Given the liquidity crisis faced by Xela,
 15 court protection is a prerequisite to achieving this
 16 result. Without a stay of proceedings in the context
 17 of a CCAA filing, Xela and its directors and officers
 18 would be unable to continue Xela's involvement in the
 19 various disputes that are underway." What do you mean
 20 by that, sir?
 21 A. Because of the -- I -- what I mean by
 22 that is that without the proper framework to protect
 23 the rights of all the parties involved, it will be
 24 very difficult if not impossible to continue.
 25 631. Q. Are you saying, sir, that if a receiver

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1 was appointed over Xela that you would not cooperate
 2 with the receiver in -- with respect to the Avicola
 3 litigation?
 4 A. I did not say that.
 5 632. Q. Turn to Paragraph 38 of your affidavit.
 6 A. Thirty?
 7 633. Q. Thirty-eight, pardon me. It's Page 10
 8 of your affidavit, Paragraph 38, Page 30 -- 19 of the
 9 application record, pardon me. This is under the
 10 heading, "The above litigation represents the only
 11 realistic avenue of recourse for Xela and its
 12 creditors." And the ligation you're referring to
 13 there is the Avicola litigation, right? Right?
 14 A. I'm reading the paragraph.
 15 634. Q. Okay.
 16 A. The Avicola litigation, correct.
 17 635. Q. Your evidence, sir, is enabling the
 18 above litigation, which is the Avicola litigation, to
 19 continue, provides the most sensible result for Xela
 20 and its stakeholders. Did I read that correctly?
 21 A. Sorry, where are you reading?
 22 636. Q. Paragraph 38.
 23 A. Yeah. Yes. That's right.
 24 637. Q. I just want to understand, your
 25 evidence is that that's the most sensible result for

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1 Xela and its stakeholders?
 2 A. That's correct.
 3 638. Q. And one you're referring to there is
 4 the creditors of Xela as well?
 5 A. Absolutely. All included.
 6 639. Q. Just so I'm clear, your evidence is
 7 that that's the most sensible approach despite the
 8 fact that there's no end to the litigation, the
 9 Avicola litigation in sight?
 10 A. There is an end in sight. And having
 11 the presence of the monitor injects another element,
 12 which is a Canadian oversight.
 13 640. Q. When do you say all the Avicola
 14 litigation will be wound up?
 15 A. I cannot answer that question. Nobody
 16 knows.
 17 641. Q. You agree with me that there's no
 18 certainty in the outcome of the Avicola litigation?
 19 A. There's no certainty in the outcome of
 20 anything in life. It's not even a certainty that we
 21 can go down the elevator without an accident.
 22 642. Q. Well, one thing that's certain is ---
 23 A. It's not a certainty, anything.
 24 643. Q. One thing that is certain is that over
 25 \$50,000,000.00 has been spent in the Avicola

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1 litigation on your side, right?
 2 A. Yes. Fighting for an asset that is
 3 worth close to a billion dollars.
 4 644. Q. In the course of 20 years, the only
 5 final judgement that your side has obtained is less
 6 than \$5,000,000.00 U.S.?
 7 A. It is the only portion of the case that
 8 has ended. But all the other portions are advancing
 9 very positively.
 10 645. Q. Your evidence, sir, is it's sensible to
 11 continue down that path?
 12 A. That what, sorry?
 13 646. Q. Your evidence is that it's sensible to
 14 continue down the path that you have for the past 20
 15 years?
 16 A. Absolutely. We are getting very close
 17 to the end of it. As I explained before, there's a
 18 lot of recourses that have been used in the past that
 19 delayed things for years. Those recourses are no
 20 longer available.
 21 MR. WOYCHESHYN: Just give me a few minutes,
 22 please.
 23 --- OFF THE RECORD (3:52 P.M.) ---
 24 --- UPON RESUMING (3:56 P.M.) ---
 25 BY MR. WOYCHESHYN:

1 647. Q. Subject to the answers to undertakings,
2 advisements, refusals and anything arising from these,
3 and also subject to any additional document
4 production, those are all my questions. Thank you
5 very much, Mr. Gutierrez.

6 A. Thank you.

7 RE-EXAMINATION BY MR. OPOLSKY:

8 648. Q. I have a brief re-examination. Mr.
9 Gutierrez, do you recall that in response to a
10 question by opposing counsel you said that you were
11 either away or on leave from 2014 to 2017?

12 A. That is correct.

13 649. Q. I say away or on leave because I don't
14 have a transcript in front of me. What were you doing
15 during that period?

16 A. Yeah. I took a leave of absence of
17 business since earlier -- early 2014 because I ran for
18 president of Guatemala in 2015.

19 MR. OPOLSKY: That's the entirety of my re-
20 examination.

21 CONTINUED EXAMINATION BY MR. WOYCHESHYN:

22 650. Q. Just one question arising from that.
23 Sir, when you ran for president in 2015, that wasn't
24 the only time you ran for president of Guatemala?
25 A. No. I did also in 2011.

1 651. Q. You didn't take a leave of absence for
2 that?

3 A. I did.

4 652. Q. You did?

5 A. Yes, I did.

6 MR. WOYCHESHYN: Okay. That's it.

7
8 --- WHEREUPON THE EXAMINATION WAS ADJOURNED AT 3:58 P.M.
9

10
11 I hereby certify that this is the
12 examination of JUAN GUTIERREZ, taken
13 before me to the best of my skill
14 and ability on the 26th day of June,
15 2019.

16
17
18 -----
19 Devon Lockett - Court Reporter
20

21
22 Reproductions of this transcript are in direct
23 violation of O.R. 587/91 Administration of Justice Act
24 January 1, 1990, and are not certified without the
25 original signature of the Court Reporter

Appendix “D”

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c.
C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF XELA
ENTERPRISES LTD.

Applicant

* * * * *

ANSWER CHART OF THE APPLICANT

Undertakings/Advisements/Refusals from the Cross-Examination of Juan Guillermo Gutierrez
Held in Toronto on June 26, 2019

No.	Q. #	P. #	U/A/R	Question	Answer
1.	62-64	17	U	To provide the minutes from Xela's most recent board meeting, which occurred a week or two weeks ago, subject to any claims of privilege.	Upon further inquiry, Mr. Gutierrez understands that no minutes were recorded during this board meeting. This is a correction to the answer Mr. Gutierrez provided in response to question 64 of his cross-examination.
2.	78-81	20	A	To advise when Juan Jose Rodriguez ceased being an officer of Xela.	April 1, 2016.

No.	Q. #	P. #	U/A/R	Question	Answer
3.	106-111	24-25	A	To advise when Eduardo San Juan ceased being an employee of Xela or any of its subsidiaries.	In the first half of 2016.
4.	112	25-26	U	To provide an English translation of the valuation slide deck attached as Exhibit "B" to the affidavit of Juan Guillermo Gutierrez, sworn June 17, 2019 ("Gutierrez Affidavit").	A translation was provided by email on June 28, 2019.
5.	113-115	26	A	To advise whether Eduardo San Juan is a chartered or certified business valuator.	He is not.
6.	146-147	34-36	A	To advise when Xela became "insolvent" as that term is understood by Mr. Gutierrez (i.e. that Xela could not meet its ongoing liabilities).	Mr. Gutierrez understands Xela to have become insolvent at the time it could not continue operations or continue paying its bills. This occurred at approximately the same time Xela's bank accounts were garnished, which impaired Xela's ability to operate and meet its current obligations.
7.	148-151	36-37	U	To advise if Mr. Gutierrez's knowledge is something other than that Xela has been "insolvent" (as that term is understood by Mr. Gutierrez, i.e. that Xela could not meet its ongoing liabilities) since some time in 2017.	This is consistent with Mr. Gutierrez's knowledge.

No.	Q. #	P. #	U/A/R	Question	Answer
8.	185-186	44	A	To advise if there are any trial dates scheduled for any of the proceedings ongoing in Guatemala.	<p>Mr. Gutierrez understands from counsel for the Guatemalan litigation that there are no trial dates scheduled for proceedings in Guatemala. Due to how the Guatemalan legal system works in respect of civil disputes such as the ones in which Lisa is involved, trials are not routinely conducted. Rather, matters are largely litigated on paper.</p> <p>That being said, Mr. Gutierrez has learned from counsel for the Guatemalan litigation that the court adjudicating a matter between Lisa S.A. ("Lisa") and one of the Avicola companies, in relation to whether Lisa's claims for dividends are time-barred, informed the parties that a decision will be rendered in July 2019. An exact date was not provided.</p>
9.	184-188	44-45	A	Other than the Panamanian proceeding, which is tied to the Florida litigation, to advise whether Xela or any of its subsidiaries currently have any outstanding judgments in their favour anywhere in the world in relation to the Avicola litigation.	There are currently no judgments in respect of which Xela or any of its subsidiaries are owed a specific sum of money in relation to the Avicola litigation.
10.	207	49	R	To advise whether Xela or any of its subsidiaries have received a monetary settlement offer to resolve all of the Avicola litigation.	Refusal maintained.

No.	Q. #	P. #	U/A/R	Question	Answer
11.	208-210	49-51	R	To advise whether Xela or any of its subsidiaries have received an offer of money conditioned on settlement of the Avicola litigation, without revealing the amount of the offer.	Refusal maintained.
12.	282-284	68	U	To advise when Mr. Gutierrez ceased to be on the board of Empresas Arturo International.	April 25, 2017.
13.	294-299	70-71	A	To ask Patrick Doig the name of the trust managed by Alexandria Trust Corporation and referred to at paragraph 17 of the Gutierrez Affidavit.	The ARTCARM Trust.
14.	302	71	A	To ask Patrick Doig who the beneficiaries are of the trust managed by Alexandria Trust Corporation and referred to at paragraph 17 of the Gutierrez Affidavit. In the alternative, to ask Mr. Doig which of Mr. Gutierrez's family members are beneficiaries of the trust.	Mr. Gutierrez understands the following from Mr. Doig: Mr. Gutierrez's children are beneficiaries of the trust, but Mr. Gutierrez is not a beneficiary of the trust. Mr. Doig is unaware of whether there are any other beneficiaries of the trust. Mr. Doig is not the trustee.
15.	312-314	73-74	U	To advise if Mr. Gutierrez becomes aware that the amount of funds advanced by BDT Investments Inc. ("BDT") to Lisa for the purpose of funding the Avicola litigation is currently less than US \$50 million.	Mr. Gutierrez understands the current amount to be less than US \$50 million. However, this amount excludes interest. With interest included (as set out in response to question 335), the amount owing is greater than US \$50 million.
16.	320-321	74-75	A	To advise how BDT is funding the US \$80,000 to \$100,000 in litigation expenditures, i.e. where that money is coming from.	Mr. Gutierrez understands from Mr. Doig that BDT derives its income from royalties and technical assistance fees.

No.	Q. #	P. #	U/A/R	Question	Answer
17.	332	78	A	To ask Mr. Doig whether BDT has any security in support of its loans to Lisa other than the security described at paragraphs 20 and 21 of the Gutierrez Affidavit.	There is no such other security.
18.	335	78-79	A	To ask Mr. Doig whether interest is being charged on the BDT loan to Lisa and, if so, what amount.	No interest is being charged on amounts owed by Lisa except in respect of the sum of US \$16,685,000 secured under the promissory note and stock pledge agreement dated January 5, 2009 and attached as Exhibit "F" to Mr. Gutierrez's affidavit. Interest on this amount accrues in accordance with the terms of the promissory note and stock pledge agreement, which specifies a rate of 8.5% per annum, except in the event of default, in which case interest accrues at a rate of 10% per annum.
19.	343	80	U	To either ask Calvin Shields or review Xela's records to determine when Mr. Shields ceased being president of Lisa.	Mr. Shields ceased being president of Lisa as a result of a shareholder meeting in January 2019, where a new board was elected. This change was entered in the Panamanian registry in March 2019.
20.	344-345	80-81	A	To ask Mr. Doig who was on the board of directors of BDT as of January 24, 2018, the date of the assignment of causative action attached as Exhibit "G" to the Gutierrez Affidavit.	Mr. Doig has advised Mr. Gutierrez that the following individuals were on the board at the time: Patrick Doig, Gilles Gosselin, Ryan Highland, Eduardo San Juan, and Andres Gutierrez.

No.	Q. #	P. #	U/A/R	Question	Answer
21.	355-356	82-83	A	To ask Mr. Doig what due diligence BDT did before it agreed to take a percentage of the Avicola litigation by signing the assignment of causative action on January 24, 2018.	Mr. Gutierrez understands the following from Mr. Doig. BDT reviewed the status of the cases comprising the Avicola litigation and received information from Lisa's counsel. BDT also reviewed the valuation of Lisa's interest in Avicola prepared by Mr. San Juan and attached as Exhibit "B" to the Gutierrez Affidavit. Based on all of this, BDT concluded that Lisa had a reasonable chance of success.
22.	356	83	A	To the extent that BDT engaged in any analysis with regards to the prospects of recovery in the Avicola litigation, and if that analysis was reduced into writing and is not protected by any privilege, to ask Mr. Doig to provide that analysis.	Mr. Gutierrez understands from Mr. Doig that no such written analysis exists.
23.	374-377	86-88	U	To advise if Mr. Gutierrez learns that one of the creditors listed on the creditor list marked as Exhibit "D" during Mr. Gutierrez's cross-examination has an outstanding judgment against Xela.	<p>Rijk Zwan has an outstanding judgment against Xela in the Netherlands. This relates to a guarantee that Xela provided on behalf of its indirect subsidiary, Fresh Quest Inc. This judgment corresponds to the debt owed to Rijk Zwan that appears on the creditor list marked as Exhibit "D" during Mr. Gutierrez's cross-examination.</p> <p>Rijk Zwan did commence proceedings against Xela in the Netherlands, resulting in the above-noted judgment. This is a correction to Mr. Gutierrez's answer to question 395 of his cross-examination.</p>

No.	Q. #	P. #	U/A/R	Question	Answer
24.	382	89	U	If Mr. Gutierrez learns that there has been a lawsuit started by any of the creditors listed on the creditor list marked as Exhibit "D" during Mr. Gutierrez's cross-examination, to advise whether Xela has entered into a tolling agreement with any of those creditors with respect to the debts allegedly owed to that creditor.	Mr. Gutierrez is not aware of any ongoing lawsuit against Xela or any such tolling agreements having been entered into with creditors.
25.	397	92	U	With respect to the creditor list marked as Exhibit "D" during Mr. Gutierrez's cross-examination, there is a figure owing to CRGO: FQI. The US amount is \$35,616, and the amount converted to Canadian is \$296,797. This is may just be a typographical error, but to ask Thomas Lam and advise which amount is the correct amount owing.	<p>Mr. Gutierrez understands from Mr. Lam that the US amount is the more accurate figure. However, Mr. Gutierrez has come to understand from Mr. Lam that additional sums owing to CRGO were excluded from the amounts provided in the creditor list because they were incurred after Xela ceased operations and were thus not recorded in Xela's system. Including these amounts, the total amount owing to CRGO for legal matters is \$332,117.</p> <p>As indicated on the creditor list, \$500,000 is owed to CRGO in addition to the sums above. This amount stems from services provided by CRGO prior to 2005.</p>
26.	398-403	93	U	With respect to the creditor list marked as Exhibit "D" during Mr. Gutierrez's cross-examination, there is a figure of \$395,432 in relation to Carmen Gutierrez. To ask Mr. Lam and advise what this figure is in relation to.	Mr. Gutierrez understands from Mr. Lam that this amount is the result of an unsecured, non-interest-bearing loan provided to Xela by Carmen Gutierrez.

No.	Q. #	P. #	U/A/R	Question	Answer
27.	404-407	94-95	U	Paragraph 75 of the Gutierrez Affidavit states that the sum of \$276,162 owing to the estate of Juan Arturo Gutierrez ("Arturo") is secured. In the creditor list marked as Exhibit "D" during Mr. Gutierrez's cross-examination, there is a note payable to Arturo for \$261,745, and then there appears to be a debit for a promissory note for \$14,967. To advise how the figure of \$276,162 is arrived at.	The figure of \$276,162 was miscalculated. The amount of \$261,745 should have been netted against the amount of \$14,967. Thus, the amount owing to the Arturo estate is \$246,778.
28.	459-467	105-106	A	To ask Thomas Gutierrez and Andres Gutierrez whether they are the only two shareholders of 10357235 Canada Ltd. and advise.	Thomas Gutierrez and Andres Gutierrez are the only two shareholders of 10357235 Canada Ltd.
29.	485	109	A	To ask Thomas Gutierrez and Andres Gutierrez what business 10357235 Canada Ltd. is involved in other than the biodegradable packaging business.	10357235 Canada Ltd. is not involved in any other business.
30.	520	114	R	To advise how it is reasonable for there to be a \$500,000 Administration Charge for a company that has no operations and is having its litigation funded by another party.	Refusal maintained.
31.	553-554	121	R	In reference to the assignment agreement attached as Exhibit "G" to Mr. Gutierrez's affidavit, to confirm whether the effect of this was to make BDT the owner of the rights in the Avicola litigation, as opposed to obligating Lisa to share recoveries in the Avicola litigation with BDT.	Refusal maintained.
32.	564-566	124	R	In reference to the assignment agreement attached as Exhibit "G" to Mr. Gutierrez's affidavit, to advise whether Xela bothered to get legal advice on the agreement before it was signed.	Refusal maintained.

No.	Q. #	P. #	U/A/R	Question	Answer
33.	567	125	R	In reference to the assignment agreement attached as Exhibit "G" to Mr. Gutierrez's affidavit, to advise whether Lisa bothered to get legal advice on the agreement before it was signed	Refusal maintained.

Appendix “E”

January 24, 2018

ASSIGNMENT OF CAUSATIVE ACTION

This Agreement is between the parties: BDT Investments LTD., domiciled in Barbados, referred to as (BDT) and Lisa S.A., referred to as (LISA), Xela Enterprises and Lisa S.A. are related parties.

BDT has monies outstanding from LISA of \$46,786,171 and from Xela Enterprises Ltd. of \$18,507,140.

Due to financial circumstances, BDT is concerned that LISA and Xela Enterprises Ltd. do not have the wherewithal to repay BDT amounts owed unless litigation involving the AVICOLA holdings, owned by LISA, is continued and funded.

As a result of negotiations between the parties, BDT agrees to fund the litigation going forward which could result in millions of dollars of expenses. In return, LISA will assign all causative actions of all current and future lawsuits involving the AVICOLA holdings.

Furthermore, BDT agrees to pay LISA 30% net of expenses of any settlement and/or collection of funds directly or indirectly relating to any related litigation. Expenses shall be comprised of all current monies owed by LISA, plus any statutory withholding taxes, plus any related contingency fees, bonuses, and commissions if applicable.

LISA agrees to fully co-operate with BDT on a reasonable basis.

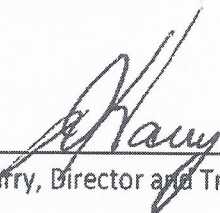
For further clarity, BDT shall be reimbursed for past debts from both LISA and XELA and related future debts plus 70% of the net proceeds arising from an AVICOLA settlement or judgement that is successfully collected.

The parties are in agreement as evidenced below:

This Agreement is dated January 24, 2018.



Patrick Doig, President
BDT Investment Inc.



David Harry, Director and Treasurer
Lisa S.A.



Calvin K. Shields, Director
Xela Enterprises Ltd.

Appendix “F”

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

MARGARITA CASTILLO

APPLICANT

- AND -

**XELA ENTERPRISES LTD., TROPIC INTERNATIONAL LIMITED,
FRESH QUEST, INC., 696096 ALBERTA LTD., JUAN GUILLERMO
GUTIERREZ AND CARMEN S. GUTIERREZ, AS EXECUTOR OF THE
ESTATE OF JUAN ARTURO GUTIERREZ**

RESPONDENTS

**AND IN THE MATTER OF THE RECEIVERSHIP OF XELA ENTERPRISES
LTD.**

**AFFIDAVIT OF NOAH GOLDSTEIN
(Sworn October 17, 2019)**

I, Noah Goldstein, of the City of Toronto, in the Province of Ontario, MAKE OATH AND
SAY:

1. I am a Vice President and Managing Director of KSV Kofman Inc. ("KSV").
2. Pursuant to an order (the "Receivership Order") of the Ontario Superior Court of Justice (Commercial List) (the "Court") made on July 5, 2019 KSV was appointed as the receiver and manager ("Receiver") of Xela Enterprises Limited.
3. I have been integrally involved in this mandate since the date of the Receivership Order. As such, I have knowledge of the matters to which I hereinafter depose.

4. On October 17, 2019, the Receiver finalized its First Report to Court in which it provided a summary of the Receiver's fees for the period commencing January 7, 2019 to August 31, 2019.

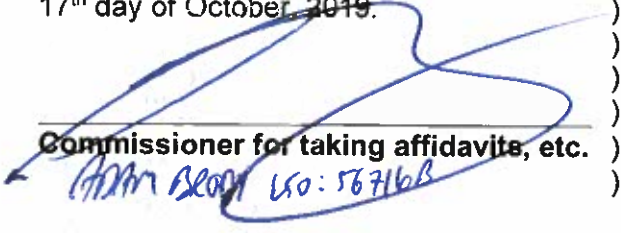
5. I hereby confirm that attached as Exhibit "A" hereto is a true copy of the account of KSV for the period indicated and confirm that this account accurately reflects the services provided by KSV in this matter and the fees and disbursements claimed by it.

6. Additionally, attached hereto as Exhibit "B" is a summary of roles, hours and rates charged by members of KSV who have worked on this matter, and I hereby confirm that the list represents an accurate account of such information.

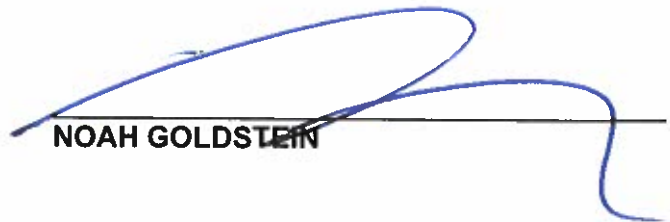
7. I consider the accounts to be fair and reasonable considering the circumstances connected with this matter.

8. I also confirm that the Receiver has not received, nor expects to receive, nor has the Receiver been promised any remuneration or consideration other than the amounts claimed in the accounts.

SWORN BEFORE ME at the City of)
Toronto, in the Province of Ontario, this)
17th day of October, 2019.)



Commissioner for taking affidavits, etc.)
Adam B. Brown LSO: 56716B)



NOAH GOLDSTEIN

THIS IS EXHIBIT "A" REFERRED TO IN THE
AFFIDAVIT OF NOAH GOLDSTEIN
SWORN BEFORE ME THIS 17th DAY OF OCTOBER, 2019

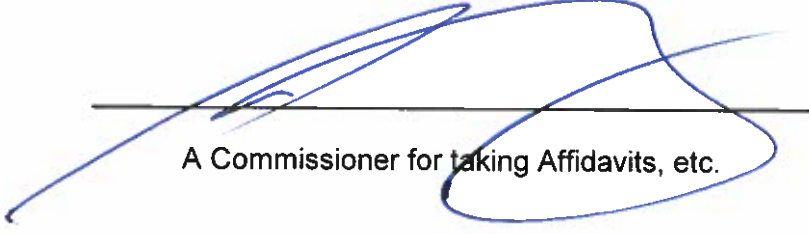


A Commissioner for taking Affidavits, etc.

Xela Enterprises Limited
Schedule of Professionals' Time and Rates
 For the Period from January 7, 2019 to August 31, 2019

Personnel	Title	Duties	Hours	Billing Rate (\$ per hour)	Amount (\$)
Robert Kofman	Managing Director	Overall responsibility	26.70	725	19,357.50
Noah Goldstein	Managing Director	All aspects of mandate	29.50	575	16,962.50
Other staff and administrative			3.05	125-200	443.75
Total fees					36,763.75
Total hours					59.25
Average hourly rate					\$ 620.49

THIS IS EXHIBIT "B" REFERRED TO IN THE
AFFIDAVIT OF NOAH GOLDSTEIN
SWORN BEFORE ME THIS 17th DAY OF OCTOBER, 2019



A Commissioner for taking Affidavits, etc.



kvs advisory inc.

150 King Street West, Suite 2308

Toronto, Ontario, M5H 1J9

T +1 416 932 6262

F +1 416 932 6266

ksvadvisory.com

INVOICE

Xela Enterprises Ltd.
c/o KSV Kofman Inc.
150 King Street West, Suite 2308
Toronto, ON M5H 1J9

September 11, 2019

Invoice No: 1394
HST #: 818808768 RT0001

Re: Xela Enterprises Ltd. (the "Company")

For professional services rendered from January 7, 2019 to August 31, 2019 by KSV Kofman Inc., in its capacity as Court-appointed receiver of the Company ("Receiver"), including:

Pre-Receivership Activities

- Corresponding with Bennett Jones LLP ("Bennett Jones"), counsel to Margarita Castillo (the "Applicant"), the applicant in the receivership proceedings, concerning matters related to the receivership application, including the history of these proceedings, the scope of the receiver's authority and the motion materials;
- Reviewing the receivership application materials, including the Affidavit of the Applicant and commenting on the receivership order;
- Corresponding with Bennett Jones regarding the status of the receivership application;
- Corresponding with Torys LLP ("Torys"), counsel to the Company, regarding the receivership application and the Company's application for protection under the Companies' Creditors Arrangement Act ("CCAA");
- Reviewing the Company's CCAA application materials and discussing same with Bennett Jones and Aird & Berlis LLP ("A&B"), counsel to the Receiver;
- Reviewing the transcript from the cross examination of Juan Gutierrez, the principal of the Company, conducted on June 17, 2019;
- Attending at Court on July 4, 2019 in connection with the receivership application;

Receivership Activities

- Attending a meeting on July 10, 2019 with the Applicant and Bennett Jones;
- Reviewing and commenting on a letter prepared by A&B dated July 8, 2019 to Mr. Gutierrez advising of the receivership and its implications;
- Attending a meeting on July 15, 2019 with Torys, A&B and Mr. Gutierrez;
- Preparing a letter and detailed list of questions for Mr. Gutierrez and sending same to Torys on July 19, 2019 (the "Information Request");
- Reviewing responses received to the Information Request from Torys on August 9, 2019;
- Reviewing, commenting and executing a confidentiality agreement between the Receiver and Mr. Gutierrez;
- Reviewing a proposal (the "Proposal") for settlement between the Lisa Group and Avicola Villalobos Group ("Avicola") received by the Receiver on August 14, 2019;
- Reviewing and commenting on a letter prepared by A&B to Torys dated August 19, 2019 regarding the Proposal;
- Preparing a list of follow up questions to Mr. Gutierrez and sending same to Torys on August 22, 2019;
- Working to become familiar with the status and history of the litigation involving the Company;
- Reviewing and commenting on a letter prepared by A&B to Stikeman Elliot LLP, Canadian counsel to Avicola, dated August 29, 2019; and
- To all other meetings, calls and discussions not specifically referenced above.

Total fees and disbursements per attached time summary	\$	36,829.67
HST		<u>4,787.86</u>
Total Due	\$	<u><u>41,617.53</u></u>

KSV Kofman Inc.
Xela Enterprises Ltd.
Time Summary

For the period January 7, 2019 to August 31, 2019

Personnel	Rate (\$)	Hours	Amount (\$)
Robert Kofman	725	26.70	19,357.50
Noah Goldstein	575	29.50	16,962.50
Other staff and administration		3.05	443.75
Subtotal		59.25	36,763.75
Out of pocket disbursements			65.92
Total Fees and Disbursements			36,829.67

Appendix “G”

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

BETWEEN:

MARGARITA CASTILLO

Applicant

- and -

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

Respondents


AFFIDAVIT OF STEVEN L. GRAFF
(Sworn October 10, 2019)

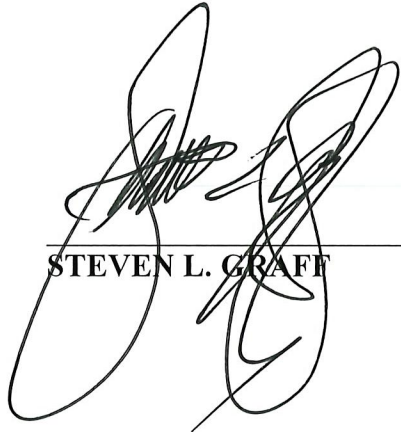
I, **STEVEN L. GRAFF**, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am a partner at Aird & Berlis LLP and, as such, I have knowledge of the matters to which I hereinafter depose. Aird & Berlis LLP has acted as counsel for KSV Kofman Inc. (“KSV”), in its capacity as Court appointed Receiver and continues to do so.
2. Aird & Berlis LLP has prepared Statements of Account in connection with its mandate as counsel to KSV, namely,

(a) an account dated September 17, 2019 in the amount of \$49,177.68 in respect of the period from January 10, 2019 to September 11, 2019. Attached hereto and marked as **Exhibit "A"** to this my affidavit is a copy of the Statement of Account. The average hourly rate of Aird & Berlis LLP is \$549.44.

3. This Affidavit is made in support of a motion to, *inter alia*, approve the attached account of Aird & Berlis LLP and the fees and disbursements detailed therein and for no improper purpose.

SWORN before me at the City of)
Toronto, in the Province of Ontario,)
this 10th day of October, 2019)
)
)

)
A Commissioner, etc.)



STEVEN L. GRAFF

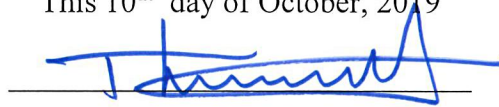
Attached is Exhibit "A"

Referred to in the

AFFIDAVIT OF STEVE GRAFF

Sworn before me

This 10th day of October, 2019

A handwritten signature in blue ink is written over a horizontal line. The signature is stylized and appears to be the name of the Commissioner.

Commissioner for taking Affidavits, etc

KSV Kofman Inc.
In its capacity as Receiver

September 17, 2019 Account 645141

Lawyer	Call to Bar	2019 average/hr	Total Time	Value
Steven L. Graff	1991	\$825.00	18.80	\$15,510.00
Kyle B. Plunkett	2011	\$475.00	52.90	\$25,127.50
Kathryn A. Esaw	2010	\$495.00	1.20	\$594.00
Shakaira L. John	2017	\$340.00	1.0	\$340.00
Banking Clerk				
Shannon Morris		\$370.00	0.50	\$185.00
Articling Student				
Peter Dalglish		\$275.00	3.20	\$880.00

IN ACCOUNT WITH:



Brookfield Place, 181 Bay Street, Suite 1800
Toronto, Ontario, Canada M5J 2T9
T 416.863.1500 F 416.863.1515
airdberlis.com

KSV Advisory Inc.
2308-150 King Street West
Box 42
Toronto, ON
M5H 1J9

Attention: Mr. Noah Goldstein

Account No.: 645141

PLEASE WRITE ACCOUNT NUMBERS
ON THE BACK OF ALL CHEQUES

File No.: 41611/148591

September 17, 2019

Re: Receivership of Xela Enterprises Ltd.

FOR PROFESSIONAL SERVICES RENDERED on your behalf throughout the period ended September 11, 2019

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
PD	10/07/19	\$275.00	0.50	\$137.50	Meeting to discuss project on creating chart summarizing entities involved in Xela receivership for K. Plunkett
PD	14/07/19	\$275.00	0.70	\$192.50	Drafting chart of entities involved in Xela receivership for K. Plunkett
PD	15/07/19	\$275.00	2.00	\$550.00	Drafted entities chart for K. Plunkett; revised chart with list of directors and officers
KAE	16/01/19	\$495.00	1.20	\$594.00	Review materials for potential CJA filing and discuss with K Plunkett
SLG	11/01/19	\$825.00	0.20	\$165.00	Discussion with K. Esaw regarding facts and statements
SLG	15/01/19	\$825.00	0.20	\$165.00	Emails with R. Kofman re attendance
SLG	16/01/19	\$825.00	0.30	\$247.50	Discussion with K. Plunkett re: stay of proceedings
SLG	22/01/19	\$825.00	0.20	\$165.00	Address 9:30 appointment attendance

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SLG	11/02/19	\$825.00	0.20	\$165.00	Emails re schedule for hearing and examinations
SLG	27/02/19	\$825.00	0.30	\$247.50	Telephone call with R. Kofman re status
SLG	04/07/19	\$825.00	0.50	\$412.50	Emails and discussion with K. Plunkett on proceeding and form of order
SLG	05/07/19	\$825.00	0.40	\$330.00	Review letter to debtor re control of litigation and review emails
SLG	10/07/19	\$825.00	0.30	\$247.50	Discussion with K. Plunkett re meeting and set up of process
SLG	11/07/19	\$825.00	1.30	\$1,072.50	Discussion with K. Plunkett re details and position; review
SLG	15/07/19	\$825.00	0.80	\$660.00	Discussion with K. Plunkett re meeting and outcome; draft and review list of questions
SLG	16/07/19	\$825.00	3.00	\$2,475.00	Prepare for and attend meeting at Torys with J. Gutierrez, A. Slavens and KSV re history and next steps
SLG	26/07/19	\$825.00	0.20	\$165.00	Emails with A. Slavens
SLG	07/08/19	\$825.00	0.30	\$247.50	Emails re disclosure
SLG	08/08/19	\$825.00	0.30	\$247.50	Review emails on Confi Agreement and disclosure
SLG	14/08/19	\$825.00	0.60	\$495.00	Meeting with student and K. Plunkett re status, next steps, strategy and further meeting; review emails with A. Slavens and S. Case
SLG	15/08/19	\$825.00	0.20	\$165.00	Review emails with R. Kofman and A. Slavens
SLG	18/08/19	\$825.00	0.80	\$660.00	Review document and answers to inquiries; telephone call with B. Kofman
SLG	19/08/19	\$825.00	0.80	\$660.00	Telephone call with R. Kofman, N. Goldstein and K. Plunkett on approach

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SLG	21/08/19	\$825.00	0.30	\$247.50	Emails re answers to questions and prepare follow up list
SLG	22/08/19	\$825.00	1.80	\$1,485.00	Emails with A. Slavens; review of letter to A. Slavens and Confi instructions
SLG	23/08/19	\$825.00	0.80	\$660.00	Review and revise Confi Agreement; telephone call with K. Plunkett
SLG	28/08/19	\$825.00	0.80	\$660.00	Telephone call with R. Kofman and K. Plunkett; review emails; consider approach re settlement and protocol
SLG	29/08/19	\$825.00	1.00	\$825.00	Review emails on status and letter to Stikemans (K. Kay) and response
SLG	30/08/19	\$825.00	0.10	\$82.50	Coordinate call with Stikeman
SLG	03/09/19	\$825.00	0.40	\$330.00	Review Protocol
SLG	04/09/19	\$825.00	1.10	\$907.50	Review and revise protocol on information, exchange and settlement; discussion with K. Plunkett
SLG	05/09/19	\$825.00	0.20	\$165.00	Telephone call with A. Slavens; discussions with K. Plunkett re status
SLG	09/09/19	\$825.00	0.30	\$247.50	Discussion with KSV re [REDACTED] with Stikemans and [REDACTED]
SLG	10/09/19	\$825.00	0.80	\$660.00	Conference call with K. Kay, A. Kreadon and KSV reps re requests for information; discussion with K. Plunkett
SLG	11/09/19	\$825.00	0.30	\$247.50	Conference call with Bennett Jones on status
SLJ	05/07/19	\$340.00	1.00	\$340.00	Discussion w/ K. Plunkett re next steps; Draft letter re receivership order
SRM	05/07/19	\$370.00	0.20	\$74.00	Conduct prelim; Order, review and report on corporate profile for Xela Enterprises Ltd.

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SRM	08/07/19	\$370.00	0.20	\$74.00	Order, review and report on BC and ON PPSA searches against Xela Enterprises Ltd.
SRM	09/07/19	\$370.00	0.10	\$37.00	Review certified PPSA search on Xela Enterprises Ltd. and report on same
KBP	10/01/19	\$475.00	1.00	\$475.00	Review and consider draft Notice of Motion; email exchange with client regarding [REDACTED].
KBP	14/01/19	\$475.00	0.90	\$427.50	Review and consider draft order; email exchange with N. Goldstein regarding same; attend call with N. Goldstein regarding same.
KBP	15/01/19	\$475.00	1.10	\$522.50	Review and consider motion record of applicant; email exchange with N. Goldstein regarding materials and timing.
KBP	16/01/19	\$475.00	0.90	\$427.50	Review and consider draft order; email exchange with S. Zwieg regarding same.
KBP	17/01/19	\$475.00	1.10	\$522.50	Review and provide comments on draft court materials; email exchanges with Bennett Jones team regarding same.
KBP	18/01/19	\$475.00	0.60	\$285.00	Review and respond to emails from Bennett Jones; email exchange with client regarding order.
KBP	22/01/19	\$475.00	1.20	\$570.00	Prepare and attend scheduling motion for receiver application; email to client regarding results.
KBP	11/02/19	\$475.00	0.30	\$142.50	Review and consider email from client regarding status and update regarding responding materials.
KBP	03/04/19	\$475.00	0.20	\$95.00	Review and consider update email from N. Goldstein.
KBP	27/05/19	\$475.00	0.20	\$95.00	Review and consider emails from client regarding updates; email exchange with N. Goldstein.

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
KBP	02/07/19	\$475.00	1.10	\$522.50	Review and consider CCAA application materials; email exchange with client.
KBP	04/07/19	\$475.00	1.60	\$760.00	Review and consider draft appointment order; provide comments to N. Goldstein; review and consider correspondence from applicant; review court materials; attend call with N. Goldstein to discuss updates and next steps.
KBP	05/07/19	\$475.00	1.10	\$522.50	Review and respond to various emails from N. Goldstein; review and provide comments on draft letter to client team; review and consider emails from working group and A. Slavens.
KBP	07/07/19	\$475.00	0.70	\$332.50	Revise and circulate updated letter to J. Guiterrez; email exchange with client team regarding same; revise and update letter.
KBP	08/07/19	\$475.00	1.00	\$475.00	Review and respond to various emails from client team regarding correspondence to debtor; draft and finalize letter and send out same.
KBP	09/07/19	\$475.00	1.10	\$522.50	Prepare and review materials for meeting with Applicant team at Bennett Jones; attend call with N. Goldstein.
KBP	10/07/19	\$475.00	2.10	\$997.50	Prepare and attend meeting with M. Castillo et al at Bennett Jones; review and respond to emails from N. Goldstein; review and consider Panama counsel; instruct P. DalGLISH regarding chart.
KBP	11/07/19	\$475.00	0.30	\$142.50	Email exchange with client team regarding [REDACTED];
KBP	12/07/19	\$475.00	0.30	\$142.50	Attend call with N. Goldstein to discuss updates and pre-meeting issues.
KBP	14/07/19	\$475.00	2.00	\$950.00	Review and consider email from B. Kofman; review and consider materials in preparation for meeting

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
					with client team.
KBP	15/07/19	\$475.00	2.50	\$1,187.50	Attend meeting with client team to discuss strategy and pre-meeting with J. Gutierrez; draft question list for meeting; email exchange with client team regarding same; review draft org chart summary.
KBP	16/07/19	\$475.00	4.00	\$1,900.00	Prepare and attend meeting with J. Gutierrez and Torys; attend follow up call with N. Goldstein.
KBP	18/07/19	\$475.00	1.10	\$522.50	Review and provide comments on draft letter request to Torys; email exchange with client regarding same.
KBP	19/07/19	\$475.00	0.70	\$332.50	Review and finalize letter to Torys; attend call with N. Goldstein to discuss next steps.
KBP	26/07/19	\$475.00	0.60	\$285.00	Review and consider emails between client and Torys; email to A. Slavens regarding proposal for global settlement.
KBP	30/07/19	\$475.00	0.20	\$95.00	Review and consider email exchange between N. Goldstein and A. Slavens regarding request for information.
KBP	01/08/19	\$475.00	0.60	\$285.00	Review and consider email exchange between client and A. Slavens; email to client regarding same; review and consider emails with confidentiality agreement.
KBP	05/08/19	\$475.00	1.00	\$475.00	Review and consider emails from A. Slavens and draft CA; review appointment order and draft response to client team regarding same.
KBP	06/08/19	\$475.00	0.40	\$190.00	Review and consider email exchange with A. Slavens regarding disclosure of information from J. Guteirrez; email exchange with B. Kofman regarding same.

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
KBP	07/08/19	\$475.00	0.90	\$427.50	Email exchange with Torys team regarding request for disclosure; attend calls with A. Slavens; review and provide comments on NDA to client team.
KBP	08/08/19	\$475.00	1.30	\$617.50	Attend call with A. Slavens; revise and provide mark-up of confidentiality acknowledgment to working group; circulate final draft to Torys.
KBP	09/08/19	\$475.00	1.50	\$712.50	Revise and circulate confidentiality acknowledgment; review and consider initial response from Torys regarding disclosure; email exchanges with S. Case.
KBP	12/08/19	\$475.00	1.10	\$522.50	Email exchange with S. Case regarding disclosure; review and consider disclosure documents and response.
KBP	13/08/19	\$475.00	0.80	\$380.00	Email exchange with Torys team regarding settlement proposal; review and consider disclosure and emails from client team regarding same.
KBP	14/08/19	\$475.00	0.90	\$427.50	Attend meeting with team to discuss responses to questions and [REDACTED]; email exchange with B. Kofman regarding same.
KBP	19/08/19	\$475.00	1.50	\$712.50	Prepare and attend call with client team regarding updates and review of disclosure; draft letter to Torys regarding settlement and follow-up questions; review and consider email exchanges between client and Torys.
KBP	20/08/19	\$475.00	1.10	\$522.50	Review and update list of follow-up questions to client team; email exchange with A. Slavens; provide comments on draft questions and circulate same to S. Graff.

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
KBP	22/08/19	\$475.00	1.10	\$522.50	Review and revise follow up questions; circulate same to client team; review and respond to emails from A. Slavens; email exchange with client team;
KBP	23/08/19	\$475.00	1.10	\$522.50	Review and consider email from S. Case and further disclosure; email to Torys regarding follow-up questions; revise and finalize questions to Juan Gutierrez; email exchanges with B. Kofman.
KBP	26/08/19	\$475.00	1.00	\$475.00	Email exchanges with A. Slavens; review and consider letter from Torys; various email exchanges with client team; attend without prejudice call with Torys [REDACTED].
KBP	28/08/19	\$475.00	1.30	\$617.50	Attend call with client team to discuss updates and [REDACTED]; attend call with A. Slavens; draft and circulate responses to Torys; review and consider draft letter; review protective order.
KBP	29/08/19	\$475.00	1.70	\$807.50	Draft letter to K. Kay at Stikemans; draft email to A. Slavens; review and consider emails from A. Slavens; meet with student to discuss [REDACTED] review and consider protective order.
KBP	30/08/19	\$475.00	1.00	\$475.00	Review and respond to various emails from client team regarding letter to Stikemans; circulate letter to Stikemans; review and respond to emails from A. Slavens regarding [REDACTED]
KBP	01/09/19	\$475.00	0.80	\$380.00	Review and consider [REDACTED];
KBP	03/09/19	\$475.00	2.00	\$950.00	Review and provide comments on mark-up from Bennett; revise and circulate updated NDA to client and Bennett; review and provide comments on [REDACTED] circulate same to S. Graff.

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
KBP	04/09/19	\$475.00	1.10	\$522.50	Revise and update [REDACTED]; circulate same to Torys; email exchange with Bennett regarding NDA.
KBP	06/09/19	\$475.00	0.60	\$285.00	Review and respond to Bennett Jones regarding NDA and disclosure documents; attend call with N. Goldstein regarding same.
KBP	09/09/19	\$475.00	0.60	\$285.00	Attend call with client to discuss telephone conference with Stikemans team; email exchanges with client regarding [REDACTED] and NDA with Margarita Castillo.
KBP	10/09/19	\$475.00	0.60	\$285.00	Attend call with Stikemans to discuss request for information; review and respond to emails from Bennett Jones.
KBP	11/09/19	\$475.00	1.00	\$475.00	Attend call with Bennett Jones team to discuss updates; attend call with A. Slavens to discuss [REDACTED] and proposed 9:30 chambers appointment; email to client team regarding same.
TOTAL:			<u>77.60</u>	<u>\$42,636.50</u>	

Name	Hours	Rate	Value
Peter Dalglish (PD)	3.20	\$275.00	\$880.00
Kathryn A. Esaw (KAE)	1.20	\$495.00	\$594.00
Steven L. Graff (SLG)	18.80	\$825.00	\$15,510.00
Shakaira L. John (SLJ)	1.00	\$340.00	\$340.00
Shannon R. Morris (SRM)	0.50	\$370.00	\$185.00
Kyle B. Plunkett (KBP)	52.90	\$475.00	\$25,127.50

OUR FEE \$42,636.50
HST at 13% \$5,542.75

DISBURSEMENTS

COST INCURRED ON YOUR BEHALF AS AN AGENT

Due Diligence-Gov Fee	\$11.00	
Search Under P.P.S.A.	\$24.50	
Total Agency Costs		\$35.50

Subject to HST

Photocopies	\$383.50	
Photocopies - Local	\$315.50	
Imaging/Scanning	\$71.25	
Binding and Tabs	\$36.00	
Taxi	\$10.40	
Corporate Search	\$20.00	
Service Provider Fee	\$15.50	
Total Disbursements		\$852.15
HST at 13%		\$110.78

AMOUNT NOW DUE

\$49,177.68

THIS IS OUR ACCOUNT HEREIN
Aird & Berlis LLP

Steven L. Graff
E.&O.E.

PAYMENT OF THIS ACCOUNT IS DUE ON RECEIPT

IN ACCORDANCE WITH THE SOLICITORS ACT, ONTARIO, INTEREST WILL BE CHARGED AT THE RATE OF 1.5% PER ANNUM ON UNPAID AMOUNTS CALCULATED FROM A DATE THAT IS ONE MONTH AFTER THIS ACCOUNT IS DELIVERED.

GST / HST Registration # 12184 6539 RT0001

NOTE: This account may be paid by wire transfer in Canadian funds to our account at The Toronto-Dominion Bank, TD Centre, 55 King Street West, Toronto, Ontario, M5K 1A2. Account number 5221521, Transit number 10202, Swift Code TDOMCATTOR. Please include the account number as reference.

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MARGARITA CASTILLO
Applicant

AND

XELA ENTERPRISES LTD. ET AL
Respondents

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
PROCEEDING COMMENCED AT TORONTO

AFFIDAVIT OF FEES

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Lawyers for KSV Kofman Inc.

**CONFIDENTIAL APPENDICES
TO THE FIRST REPORT
OF THE RECEIVER**

(Subject to a request for a sealing order)

CONFIDENTIAL – APPENDIX “1”

(Subject to a request for a sealing order)

CONFIDENTIAL – APPENDIX “2”

(Subject to a request for a sealing order)

37580207.1

TAB 4

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<p>HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO AS REPRESENTED BY THE MINISTER OF FINANCE Legal Services, 11th Floor, 777 Bay Street Toronto, ON M5G 2C8</p> <p>Kevin J. O'Hara Tel: (416) 327-8463 Fax: (416) 325-1460 Email: kevin.ohara@ontario.ca</p>	<p>CORPORACION ARVEN, LIMITED First Floor Hastings House, Balmoral Gap Hastings, Christ Church Barbados</p> <p>Attention: Patrick A. Doig Tel: (246) 434-2640 Fax: (246) 435-0230</p>

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MARGARITA CASTILLO

- and -

XELA ENTERPRISES LTD., TROPIC INTERNATIONAL LIMITED, FRESH QUEST, INC., 69096 ALBERTA LTD., JUAN GUILLERMO GUTIERREZ and CARMEN S. GUTIERREZ, as Executor of the Estate of Juan Arturo Gutierrez

Applicant

Respondents

CV-11-9062-00CL

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

Proceedings commenced at Toronto

**MOTION RECORD
(returnable October 29, 2019)**

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