

**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

RESPONDING MOTION RECORD

August 21, 2020

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Juan Guillermo Gutierrez

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TAB 1

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

**ONTARIO
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Respondents

AFFIDAVIT OF JUAN GUILLERMO GUTIERREZ

I, Juan Guillermo Gutierrez, of the City of Toronto, in the Province of Ontario,
MAKE OATH AND SAY:

1. I Juan Guillermo Gutierrez am the President of Xela Enterprises Ltd. ("**Xela**") and as such, have knowledge of the matters contained in this affidavit. Where the statements made herein are based on information and/or belief, I state the source of the information and/or belief, and verily believe it to be true.

I. BACKGROUND

2. The Motion that has been brought by the Receiver, which is returnable August 28, 2020 is a surprise to Xela. When the parties were last before the Court, the Receiver had asked that sanctions be ordered against me, Xela's sole shareholder, asserting, among other things, non-cooperation with the Receiver's

attempt to take control of the board of directors of LISA, S.A. ("**LISA**"), an indirect subsidiary of Xela in Panama, as described in the Receiver's Second Report and related supplements (collectively the "**Second Report**").

3. The Second Report, however, was incomplete and/or inaccurate in various material respects and was based almost entirely on hearsay. In response, I submitted a sworn affidavit to correct the record, and my counsel insisted upon cross-examining the Receiver before the Court rendered any decision.
4. Rather than continuing on that course, however, the Receiver agreed to adjourn the Motion for Sanctions *sine die*, and the parties expressed a desire to cooperate going forward on all issues, including those of concern to Xela's management and ownership. To address the Receiver's stated concerns, the Court issued its Endorsement dated March 24, 2020 (the "March 24 Endorsement"), requiring me to provide any documents I had not previously supplied to the Receiver: (a) regarding LISA's efforts in December 2019 to borrow sums sufficient to terminate the receivership; (b) that were described in the Court's October 29, 2019 Disclosure Order, including documents relating to BDT's loan advances to LISA and/or Xela; and (c) regarding the transfer in February 2020 of LISA's interest in the Avicola Group to BDT in satisfaction of the more than US\$50 million in litigation funding given to LISA by BDT since 2005 (the "BDT Assignment"). The March 24, 2020 Endorsement also included an Annex A containing a list of specific questions for me to answer concerning my knowledge of the BDT Assignment.
5. I responded in a timely and truthful manner to the questions in Annex A, although I had scant information myself, and I had no additional documents responsive to

the March 24 Endorsement.¹ However, it is in my own interest to work with the Receiver with the ultimate goal of discharging the receivership, and my expressed desire to cooperate was genuine. Accordingly, I requested assistance from LISA in correspondence dated April 15, 2020, as follows:

Nevertheless, As the owner of Xela, which indirectly owns LISA, I urge LISA and its management to cooperate with the Receiver in every respect and to the fullest extent possible. This instruction applies, without limitation, to the Receiver's request that LISA add certain additional Directors, that LISA supply answers to certain written questions referenced in the Toronto Court's Endorsement dated 24 March 2020, and that LISA supply any documents and information in its possession or control requested by the Receiver.

Attached hereto and marked as **Exhibit "A"** is a true copy of my letter dated April 15, 2020.

6. I sent a second, similar letter to LISA on April 22, 2020, urging its cooperation:

I refer to my letter dated April 15th, 2020. Having not received a response, and anticipating the possibility that you may not have received a copy of the Court's endorsement dated March 24, 2020, I am attaching a copy. As you can see, Paragraph 3 of the Court's Endorsement asks LISA to respond to certain questions, and I would urge compliance.

7. Attached hereto and marked as **Exhibit "B"** is a true copy of my letter dated April 22, 2020.

¹ At my request, LISA and BDT are prepared – subject to an agreement to preserve the confidentiality of their respective private financial information – to give the Receiver a copy of a set of documents evidencing more than US\$50 million in advances made by BDT to LISA dating to 2005. Those documents were produced in the Miami garnishment case in response to Villamore's false allegation that BDT's Panama judgment was unsupported by actual funding from BDT.

8. Despite Xela's requests, LISA resisted and asked the Receiver to consider the various issues LISA had previously raised, including the yet-unresolved question of whether more than USD 4 million of LISA's Villamorey dividends had already been paid to Margarita Castillo by the majority shareholders in the form of a sham loan granted to Margarita Castillo by a Panamanian entity, Villamorey, through the G&T Bank in Guatemala.
9. On May 4, 2020, Cambridge LLP wrote to Aird & Berlis LLP (the "**May 4 Letter**") and provided a copy of LISA's response. Attached hereto and marked as **Exhibit "C"** is a true copy of the May 4, 2020 letter.
10. Recognizing that it might not satisfy the Receiver, Cambridge LLP suggested that the parties discuss the issue:

In any event, we emphasize that Xela and Mr. Gutierrez intend to continue cooperating with the Receiver. In that regard, Mr. Gutierrez wrote to LISA on April 15, 2020, and again on April 22, 2020, formally requesting LISA's assistance with the Receiver's requests. LISA's response is attached as Annex B. Unfortunately, it may not fully address the Receiver's requests, and we are prepared to discuss next steps. (Emphasis added.)

11. The May 4 Letter also set out the position regarding what Xela understood the remaining outstanding issues to be. In addition, the May 4 Letter asks the Receiver to report any contact with my cousins or their lawyers – who are monitoring these proceedings in hopes of benefiting from the receivership – and to provide a spreadsheet of payments received by the Receiver and/or its counsel to fund these proceedings. Without exception, the May 4 Letter was

cooperative and constructive in response to the Receiver's request and shows good faith on Xela's part (and my own) in trying to resolve all remaining issues.

12. What followed, however, was a period of almost three months of complete silence from the Receiver and its counsel. The Receiver made no effort to contact Cambridge LLP to discuss the remaining Xela documents requested by the Receiver as discussed in the May 4 Letter (many of which are duplicative of the thousands of pages of documents I already supplied to the Receiver), or any of the other issues in the May 4 Letter. Most surprisingly, after three months of silence, the Receiver made no effort to discuss delivery of the Xela documents demanded from Arturos Technical Services, Ltd. ("**ATS**"), electing instead to file the Motion and involve the Court in matters that counsel might resolve amicably in the exercise of good faith.
13. Further, the current motion – coming, as it does, on the heels of a request for sanctions against me – might be taken to imply non-cooperation on my part. Nothing could be further from the truth. The Receiver's requests for information have often been duplicative, and I have admittedly been confused by the Receiver's continuing focus on activities that seem ill-suited to collecting Xela's receivables, but I have done everything in my power to respond to his requests.
14. Conversely, the Receiver has ignored Xela's request for information concerning his contacts (if any) with my cousins and/or their lawyers, nor has he provided information about his source(s) of income for these proceedings.

Collection of Xela Assets

15. Regarding the Receiver's primary focus – the collection of assets held by Xela – the May 4 Letter provided the following update and invited the Receiver to participate:

[W]e understand that a new action for damages has been commenced in Panama's Court No. 6 against Villamorey, relating to the non-payment of LISA dividends. A copy of the Complaint is attached as Annex A. We hope that the Receiver is amenable to helping develop these claims and assisting in the enforcement of the anticipated LISA Judgement payment order referenced above.

16. Again, the Receiver has not responded to this invitation, but has elected to file this Motion instead, after three months of silence.

A. Transfer of LISA's Avicola Group Interest to BDT

17. Regarding the Receiver's concerns over the transfer of LISA's Avicola Group interest to BDT in satisfaction of LISA's longstanding debt, Xela suggested a cost-saving approach:

This, of course, brings up the subject of BDT. As you know, BDT held a Panamanian judgment for US\$19,184,680 against LISA, stemming from an unpaid promissory note from LISA to BDT for litigation financing disbursements during the 2005-2008 timeframe. BDT also held a related judgment lien against all of LISA's assets. In its capacity as creditor, BDT had been willing to subordinate its claim to "the reasonable requirements of the receivership," which we understand signified BDT's willingness to allow the Castillo Judgment and

reasonable receivership expenses to be paid out of sums received from enforcement of the LISA Judgment.

While Xela cannot speak for BDT, we understand that BDT has its own interest in satisfying the Castillo Judgment. We might suggest, therefore, as a first course of action, that the Receiver request BDT's future cooperation in connection with the LISA Judgment, as a more efficient, reliable and less costly alternative to challenging the validity of the transfer through some form of adversarial process.

B. Arturo's Technical Services/Gabinvest Share Register and Share Certificates

18. Regarding the primary subject of the Motion – the Receiver's request for property/documents maintained by ATS and for the Gabinvest share register and share certificates – the May 4 Letter states as follows:

Separately, we refer to your letter dated April 3, 2020, directed to Arturo's Technical Services Ltd. ("ATS"), requesting production of any property or documents of Xela in ATS' possession. We also refer to your letter dated April 21, 2020, to Mr. Greenspan, asking for the whereabouts of the Gabinvest share register and share certificates. As these requests may be related, we address them together.

In Canada, Xela has one full storage unit of documents at a rental facility in Barrie. Separately, there are documents housed at ATS's offices in Toronto, and ATS also controls four decommissioned servers belonging to Xela at a datacenter in North York. The documents in all three of those locations are

peppered with attorney/client communications and other confidential and protectable information, which must be reviewed under some satisfactory protocol before they can be delivered to the Receiver. Mr. Gutierrez does not presently know the location of the Gabinvest shares and certificates, but he believes that they are likely amongst the records in Barrie. (Emphasis added.)

II. THE MOTION SHOULD NOT BE GRANTED WITHOUT A DOCUMENT REVIEW PROTOCOL THAT RELIABLY PROTECTS AGAINST THE POTENTIAL IMPROPER DISCLOSURE OF PRIVILEGED MATERIAL

19. Accompanying this Opposition is my Affidavit dated March 22, 2020 (the “**Gutierrez Affidavit**”). As stated above, Xela has documents in three separate places:

- (a) in a storage unit at a rental facility in Barrie;
- (b) at ATS's offices in Toronto; and
- (c) on four decommissioned servers at a datacenter in North York.

I stated that I do not believe that any documents relevant to LISA's (now BDT's) collection efforts, or to any of the concerns raised by the Receiver, are located at any of the three locations, and that the cost associated with reactivating the servers and reviewing the documents and data would outweigh the potential benefit to the stakeholders.

20. However, if it is appropriate for the Receiver to proceed in this fashion, Xela is prepared to work with the receiver to resolve issues relating to document disclosure. As stated above, Xela has documents in three separate locations in Ontario. First, Xela maintains a storage unit at a third-party facility in Barrie that

contains documents belonging to Xela. To my knowledge, those documents are not subject to privilege or any other concerns that might limit the Receiver's access. Accordingly, Xela's counsel is prepared to provide contact information and any consent necessary to give the Receiver unimpeded access to the storage unit in Barrie, subject only to a potential lien by the storage facility, stemming from Xela's inability to stay current on its rental payments for the unit.

21. Second, ATS holds some documents belonging to Xela at the ATS offices in Toronto. To my knowledge, those documents are not subject to privilege or any other concerns that might limit the Receiver's access, and Xela will consent to providing the Receiver with unimpeded access to those documents.
22. Third, ATS controls four decommissioned servers belonging to Xela, which are in the possession of a third-party vendor located at the Cogent datacenter in North York, Ontario. As ATS told the Receiver's counsel in writing in April 2020, those servers have been offline and unused for at least two years, during which time no software upgrades or other forms of maintenance have been performed. As a result, there is some cost associated with properly starting and accessing the servers. ATS offered to provide the Receiver with a quote, although I do not believe the Receiver responded.
23. I am informed by ATS and I verily believe that the servers have been unused since approximately 2017. The servers used the Windows 2008 operating system, which is no longer supported by Microsoft. Consequently, even if the necessary security patches are available to prevent viruses and other intrusions when the servers are restarted, there is no guarantee against data corruption.

24. Separately, while the servers do contain data owned by Xela, they also contain data owned by various other persons and entities. Once the servers are restarted, I am informed by ATS that ATS' IT personnel will be able to isolate the data owned by Xela. However, within Xela's own data, there are unquestionably some documents containing information subject to privilege(s) held by third parties, although I cannot identify those third parties without accessing and reviewing the data.
25. Xela and I object to the notion that Xela may not assert its own privileges as against the Receiver in these circumstances. Xela has a pending complaint for conspiracy in the Toronto courts against Ms. Castillo and the Avicola Group majority shareholders, which remains unresolved. At the same time, Paragraph 4(b) of the Receiver's Appointment Order might be construed as giving the Receiver the right to share Xela's privileged materials with Ms. Castillo under nothing more than the thin protection of a non-disclosure agreement.
26. Accordingly, while Xela believes the Receiver's desire to retrieve Xela's documents from ATS is counterproductive to the ultimate cause, any Order requiring production should also implement a protocol under which: (a) third parties are given a reasonable opportunity to assert privileges; (b) Xela and/or I retain the right to assert privilege as against the Receiver, subject to this Court's review; and (c) the Receiver is barred from sharing privileged Xela information with Ms. Castillo or any other person or entity.

III. CAMBRIDGE LLP SHOULD NOT BE REQUIRED TO DELIVER UP THEIR FILES

27. The Motion requests for an Order requiring Cambridge LLP to deliver up access to their files in these proceedings for inspection by the Receiver. The request is unduly burdensome and oppressive, and there is no valid rationale for it. Cambridge LLP acts for me. Solicitor-client privilege is one of the most important tenets of the legal system. The receiver has no right to review Cambridge LLP's files, especially in light of some of the claims that may be advanced against the Applicants in this proceeding.

IV. THE RECEIVER SHOULD BE COMPELLED TO DISCLOSE ITS FUNDING SOURCE(S) AND ANY COMMUNICATIONS WITH ANY PERSON PURPORTING TO ACT FOR THE MAJORITY SHAREHOLDERS OF THE AVICOLA GROUP

28. From the outset of these proceedings, the Receiver's attitude toward Xela and me has been hostile and dismissive. The Receiver has depleted resource on matters unlikely to yield any income for Xela's creditors, while showing little interest in Xela's most promising asset, the unpaid dividends wrongfully withheld by the Avicola Group. Counsel for Banco Santander International conceded on the record in the Miami garnishment case that he had received private, confidential LISA documents from the Receivership.² Similarly, the Receiver's reaction to LISA's loan commitment in December 2019 is difficult to understand, as it in effect prevented a discharge. Indeed, the Receiver's strategy to date – unnecessarily perpetuating the receivership, taxing the resources of Xela and its affiliates, while adding to the stable of lawyers addressing issues unrelated to the collection of LISA's unpaid dividends – is precisely aligned with the 20-year litigation strategy of the Avicola Group.

² In fairness, the document in question had already been produced to counsel for Santander in discovery in the garnishment case. However, counsel elected to use as a deposition exhibit a version of the document that had not been produced in discovery, and when questioned about it, he admitted that he had obtained the document from the receivership.

29. It was on the basis of these concerns that Cambridge LLP requested, in the May 4 Letter, the following information from the Receiver:

Lastly, as matter of housekeeping, we would request that the Receiver provide Xela with two categories of information. First, we respectfully request that the Receiver produce to us a complete record of his funding sources for this receivership, showing at least the payor names, dates and amounts of payment. Second, we ask that the Receiver identify any and all communications between KSV (including its partners, associates and other personnel) and any person acting on behalf of Villamorey and/or the Avicola Group and/or any of their affiliates regarding this receivership, and provide copies of any such communications as are in writing.

30. The requested information is both reasonable and appropriate as a check against inappropriate conduct in receivership matters. To date, however, the Receiver has provided none of the requested information, and the Court should require him to comply.

V. THE RECEIVER'S THIRD REPORT IS INACCURATE AND/OR INCOMPLETE

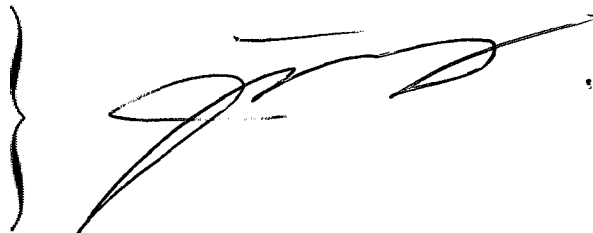
31. The Receiver's Third Report is inaccurate and incomplete in various material respects, as set out in the Gutierrez Affidavit.
32. I swear this Affidavit in response to the Receiver's motion to compel disclosure and for no other or improper purpose.

SWORN BEFORE ME via video conference at the City of Toronto, in the Province of Ontario on August 21, 2020.



Commissioner for Taking Affidavits
(or as may be)

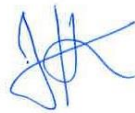
N. JOAN KASOZI (LSO# 70332Q)



JUAN GUILLERMO GUTIERREZ

EXHIBIT A

This is Exhibit "A" referred to in the Affidavit of Juan Guillermo Gutierrez sworn August 21, 2020.



Commissioner for Taking Affidavits (or as may be)

N. JOAN KASOZI (LSO#70332Q)



April 15, 2020

Mr. Harald Johannessen Hals
President
LISA, S.A.
6 Av "A" 8-00, Zona 9
Edificio Centro Operativo, Penthouse B
Guatemala, Guatemala

Re: Receivership over Xela

Dear Harald:

As you know, the Receiver with authority over Xela in Toronto (the "Receiver") has requested that LISA provide documents and information to him. I further understand from conversations with you that LISA has been responsive and has provided information to the Receiver's representatives as requested.

Nevertheless, as the owner of Xela, which indirectly owns LISA, I would call on LISA and its management to continue to cooperate with the Receiver in every respect and to the fullest extent possible. In particular, I would ask that LISA cooperate with the Receiver's request that LISA add certain additional Directors, that LISA supply answers to certain written questions referenced in the Toronto Court's Endorsement dated 24 March 2020, and that LISA continue to provide documents and information in its possession or control requested by the Receiver.

Please let me know if you have any questions or concerns.

Sincerely,


A handwritten signature in blue ink, appearing to read "J. Gutierrez", is written over the printed name.

Juan Guillermo Gutierrez
President
Xela Enterprises Ltd.

cc: Aird & Berlis
KSV
Brian Greenspan
Chris Macleod

EXHIBIT B

This is Exhibit "B" referred to in the Affidavit of Juan Guillermo Gutierrez sworn August 21, 2020.



Commissioner for Taking Affidavits (or as may be)

N. JOAN KASOZI (LSO#70332Q)



April 22, 2020


Mr. Harald Johannessen Hals
President
LISA, S.A.
6 Av "A" 8-00, Zona 9
Edificio Centro Operativo, Penthouse B
Guatemala, Guatemala

Re: Follow up to Receivership over Xela

Dear Harald:

I refer to my letter dated April 15th, 2020. Having not received a response, and anticipating the possibility that you may not have received a copy of the Court's Endorsement dated March 24th, 2020, I am attaching a copy. As you can see, Paragraph 3 of Court's Endorsement asks LISA to respond to certain questions, and I would urge compliance.

Thank you,

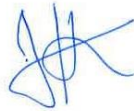


Juan Guillermo Gutierrez
President
Xela Enterprises Ltd.

cc: Aird & Berlis
KSV
Brian Greenspan
Chris Macleod

EXHIBIT C

This is Exhibit "C" referred to in the Affidavit of Juan Guillermo Gutierrez sworn August 21, 2020.



Commissioner for Taking Affidavits (or as may be)

N. JOAN KASOZI (LSO# 70332Q)



CAMBRIDGE LLP

Toronto + Burlington + Ottawa + Elliot Lake

May 4, 2020

SENT VIA EMAIL TO KPLUNKETT@AIRDBERLIS.COM

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

Kyle B. Plunkett
Aird & Berlis LLP
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Dear Mr. Plunkett:

**Re: Receivership of Xela Enterprises Ltd. ("Xela")
Ontario Court File No. CV-11-9062-00CL**

In connection with the referenced receivership, and in the spirit of cooperation, we write to address what we understand are the outstanding issues. We appreciate the recent assurances concerning the Receiver's focus, and we trust that we can now advance smoothly toward looking after all of LISA's creditors and, ultimately, protecting the stakeholders.

Collection by Xela

Reports from Panama are promising concerning collection of at least part of LISA's unpaid dividends. To repeat, as you know, LISA has a final judgment in Panama requiring Villamorey to disgorge all unpaid Villamorey dividends of LISA (the "LISA Judgment"). Although the LISA Judgment does not quantify those unpaid dividends, LISA prevailed in 2019 in a Constitutional appeal that required the Court of first instance to make the calculation. Accordingly, LISA submitted the limited Villamorey financial information it had in 2019, which shows more than US\$23 million in unpaid Villamorey dividends, including interest, is due to LISA. No contradicting evidence was submitted by Villamorey.

Naturally, like everywhere else, Panama has been effected by the Coronavirus, and the courts were closed until recently. However, we are optimistic that the Court will issue its final payment order in an amount exceeding US\$23 million in relatively short order.

Separately, we understand that a new action for damages has been commenced in Panama's Court No. 6 against Villamorey, relating to the non-payment of LISA dividends. A copy of the Complaint is attached as Annex A. We hope that the Receiver is amenable to helping develop these claims and assisting in the enforcement of the anticipated LISA Judgement payment order referenced above.

BDT

This, of course, brings up the subject of BDT. As you know, BDT held a Panamanian judgment for US\$19,184,680 against LISA, stemming from an unpaid promissory note from LISA to BDT for litigation financing disbursements during the 2005-2008 timeframe. BDT also held a related judgment lien against all of LISA's assets. In its capacity as creditor, BDT had been willing to subordinate its claim to "the reasonable requirements of the receivership," which we understand signified BDT's willingness to allow the Castillo Judgment and reasonable receivership expenses to be paid out of sums received from enforcement of the LISA Judgment.

While Xela cannot speak for BDT, we understand that BDT has its own interest in satisfying the Castillo Judgment. We might suggest, therefore, as a first course of action, that the Receiver request BDT's future cooperation in connection with the LISA Judgment, as a more efficient, reliable and less costly alternative to challenging the validity of the transfer through some form of adversarial process.

Cooperation by Xela

In any event, we emphasize that Xela and Mr. Gutierrez intend to continue cooperating with the Receiver. In that regard, Mr. Gutierrez wrote to LISA on April 15, 2020, and again on April 22, 2020, formally requesting LISA's assistance with the Receiver's requests. LISA's response is attached as Annex B. Unfortunately, it may not fully address the Receiver's requests, and we are prepared to discuss next steps.¹

¹ As an aside, Annex B contains some disturbing information causing us to question the appropriateness of the Receiver's choice of counsel in Panama. Among other things, we understand that false documents were submitted to the Public Registry in Panama City in an effort to alter the corporate structure of LISA and/or Gabinvest. More recently, one of LISA's lawyers swore out an affidavit claiming that Mr. Almengor – formerly with the Mossack Fonseca law firm that featured so prominently in the Panama Papers – offered him an illicit payment to disregard the instructions of LISA's management and instead assist the Receiver's efforts to take control of LISA. Attached as Annex C is a copy of that affidavit. We are confident that the Receiver had no prior knowledge, but it now seems wholly inappropriate for the Hatstone firm to have any role in either LISA or Gabinvest. Indeed, we understand that a criminal complaint has been filed against Mr. Almengor in Panama as a consequence of these developments.

Separately, we refer to your letter dated April 3, 2020, directed to Arturo's Technical Services Ltd. ("ATS"), requesting production of any property or documents of Xela in ATS' possession. We also refer to your letter dated April 21, 2020, to Mr. Greenspan, asking for the whereabouts of the Gabinvest share register and share certificates. As these requests may be related, we address them together.

In Canada, Xela has one full storage unit of documents at a rental facility in Barrie. Separately, there are documents housed at ATS's offices in Toronto, and ATS also controls four decommissioned servers belonging to Xela at a datacenter in North York. The documents in all three of those locations are peppered with attorney/client communications and other confidential and protectable information, which must be reviewed under some satisfactory protocol before they can be delivered to the Receiver. Mr. Gutierrez does not presently know the location of the Gabinvest shares and certificates, but he believes that they are likely amongst the records in Barrie.

You have also asked for documents evidencing BDT's litigation funding to LISA. That same request was made in the garnishment case by Villamorey, in support of its assertion that BDT's judgment against LISA in Panama was fraudulent. Xela will ask LISA's counsel in the garnishment case to provide the Receiver with a full set of the documents produced in the garnishment case, subject to a suitable non-disclosure agreement. Incidentally, we note that the Court in the garnishment case concluded that, although the financial records were incomplete, Villamorey had not shown that BDT had defrauded the Court by presenting the BDT Judgment.

G&T Bank Loan to Margarita Castillo

We emphasize the importance of resolving whether Ms. Castillo in fact received LISA dividends in the form of a loan from G&T Bank in Guatemala in 2010, with which she funded the oppression action that led to the Castillo Judgment and, ultimately, to this receivership. In this regard, we would ask that the Receiver request from Ms. Castillo a copy of the loan documents, along with copies of all payment records and communications with G&T Bank. This may require Judge McEwen's involvement, and we would request the Receiver's support in that regard. We also request the Receiver's assistance to bring the issue to adjudication in Canada as soon as possible.

Housekeeping

Lastly, as matter of housekeeping, we would request that the Receiver provide Xela with two categories of information. First, we respectfully request that the Receiver produce to us a complete record of his funding sources for this receivership, showing at least the payor names, dates and amounts of payment. Second, we ask that the Receiver identify any and all communications between KSV (including its partners, associates and other personnel) and

any person acting on behalf of Villamorey and/or the Avicola Group and/or any of their affiliates regarding this receivership, and provide copies of any such communications as are in writing.

Once again, we appreciate and hope to advance the new spirit of cooperation, and we look forward to discussing these issues in the near future.

Yours very truly,

CAMBRIDGE LLP

Per:



CHRISTOPHER MACLEOD

CRM/tr

Signed Electronically on behalf of Mr. Macleod

Encl: Annex A - Complaint

cc: Via Email

Mr. Adam Slavens

Mr. Bobby Kofman

Mr. Noah Goldstein

Mr. Brian Greenspan

CORRECCIÓN DE DEMANDA

Proceso ordinario de mayor cuantía
interpuesto por LISA, S.A. contra
VILLAMOREY, S.A.

EXP. 89620-19

SEÑOR JUEZ SEXTO DE CIRCUITO CIVIL DEL PRIMER DISTRITO JUDICIAL DE
PANAMÁ:

La Firma Forense **Quiroz Govea & Asociados**, sociedad civil debidamente inscrita a la Ficha 27201, de la Sección Mercantil del Registro Público de Panamá, con oficinas ubicadas en Altos de Bethania, Calle Nombre de Dios, Casa No. 44D, correo electrónico quirozgovealegal@gmail.com, teléfonos 6666-4225 y 6676-5382, lugar donde recibimos notificaciones profesionales, representada en este acto por los abogados **JOAO JAVIER QUIRÓZ GOVEA**, varón, panameño, mayor de edad, soltero, con cédula 8-800-1947 e idoneidad 15450 y **JAVIER ALEXIS QUIRÓZ MURILLO**, varón, panameño, mayor de edad, casado, portador de la cédula No. 8-220-986 y la idoneidad 1193, actuando en nuestra calidad de apoderados especiales de **LISA, S.A.**, sociedad anónima, debidamente registrada en la Sección Mercantil del Registro Público de Panamá, al Folio 117512 (S), Ficha 117512, Imagen 186, Rollo 11750, con domicilio en Panamá, Ciudad de Panamá Altos de Bethania, Calle Nombre de Dios, Casa No. 44D, cuyo representante legal es el señor **HARALD JOHANNESSEN HALS**, varón, soltero, mayor de edad, ciudadano guatemalteco, con pasaporte 242086470, quien puede ser ubicado en el mismo domicilio de la empresa **LISA, S.A.** concurrimos ante Usted, con el fin de presentar corrección de demanda ordinaria de mayor cuantía por daños y perjuicios, lucro cesante, daño emergente y daño moral, contra **VILLAMOREY, S.A.**, sociedad anónima, debidamente registrada en la Sección Mercantil del Registro Público de Panamá, al Folio 9146 (S), Tomo 814, Asiento 133501, Rollo 367, Imagen 298, Ficha 9146, con domicilio en Panamá, Ciudad de Panamá, Corregimiento de Bella Vista, Avenida Federico Boyd con calle 51, Scotia Plaza, Piso 11, apto 11, cuyo representante legal es el señor **RAMIRO LOPEZ NIMATUJ**, varón, guatemalteco, mayor de edad, cuyo pasaporte se desconoce, quien puede ser ubicado en el mismo domicilio de la sociedad **VILLAMOREY, S.A.** lugar en donde recibe notificaciones, causados por la retención y no pago de los dividendos correspondientes a mi poderdante, desde el periodo 2010 hasta la fecha, por lo que la cuantía de la presente demanda asciende a un monto de **VEINTITRÉS MILLONES**

NOVECIENTOS CINCUENTA Y NUEVE MIL CIENTO CATORCE DÓLARES AMERICANOS EN MONEDA DE CURSO LEGAL (USD\$23,959,114.00).

Fundamentamos la presente demanda en las siguientes consideraciones de hecho y de derecho:

Primero.- Nuestra mandante, la sociedad **LISA, S.A.**, es legítima accionista de la entidad **VILLAMOREY, S.A.**, toda vez que es poseedora del certificado de acción número uno (1), que certifica que **LISA, S.A.** es propietaria de tres mil trescientas treinta y tres (3,333) acciones de la sociedad aquí demandada, tal como consta en la copia autenticada del certificado de acciones que en su momento aportaremos al proceso en curso y en el hecho primero del Acta de fecha 30 de noviembre de 2018, que también aportamos en la etapa correspondiente.

Segundo.- El informe de los Estados Financieros del año 2017 de la sociedad **VILLAMOREY, S.A.**, mostrado en el Acta de fecha 30 de noviembre de 2018, reflejan claramente que existen dividendos retenidos hasta dicho periodo, por la suma de **TRECE MILLONES QUINIENTOS SETENTA MIL TRESCIENTOS TREINTA Y CUATRO DÓLARES AMERICANOS EN MONEDA DE CURSO LEGAL (USD\$13,570,334.00).**

Tercero.- Se menciona en el *Párrafo de énfasis* contenido en la página 12 del Informe de Auditoría Independiente al 31 de diciembre de 2015 y 2014 de nuestra contraparte, que: *"Villamorey, S.A. es miembro de un grupo de compañías relacionadas y como se menciona en la nota 7 a los estados financieros, su principal relación con estas compañías, es la inversión que tiene en ellas y el pago de los dividendos que se decretan".*

Cuarto.- Según el antedicho informe de auditoría, para el año 2015, **VILLAMOREY, S.A.** tenía una cuenta por pagar a favor de **LISA, S.A.** en concepto de dividendos e intereses acumulados, por la suma de **NOVENTA Y NUEVE MILLONES NOVECIENTOS DOS MIL OCHOCIENTOS QUINCE QUETZALES (Q\$99,902,815.00)**, que equivalen a **TRECE MILLONES DIECIOCHO MIL**

DOSCIENTOS OCHO DÓLARES AMERICANOS CON SETENTA Y CINCO CENTAVOS EN MONEDA DE CURSO LEGAL (USD\$13.018.208,75), aproximadamente; y para el periodo 2014, por el mismo concepto, la suma de CINCUENTA Y CUATRO MILLONES QUINIENTOS OCHENTA Y NUEVE MIL QUETZALES (Q\$54,589,077.00), que equivalen a SIETE MILLONES CIENTO TRECE MIL CUATROCIENTOS VEINTINUEVE DÓLARES AMERICANOS CON CINCUENTA Y OCHO CENTAVOS EN MONEDA DE CURSO LEGAL (USD\$7,113,429.58), aproximadamente.

Quinto.- Por su parte, Informe del Auditor Independiente al 31 de diciembre de 2010 y 2009, de **VILLAMOREY, S.A.**, refleja un saldo de dividendos por pagar a accionistas, por un monto de TREINTA Y TRES MILLONES OCHOCIENTOS SETENTA Y DOS MIL CUATROCIENTOS SETENTA Y OCHO QUETZALES (Q\$33,872,478.00), que equivalen a CUATRO MILLONES CUATROCIENTOS TRECE MIL OCHOCIENTOS OCHENTA DÓLARES AMERICANOS CON TRES CENTAVOS EN MONEDA DE CURSO LEGAL (USD\$4,413,880.03), aproximadamente.

Sexto.- En este orden, es preciso resaltar el contenido del Artículo 37 de nuestra Ley No. 32 de 1927, a saber:

"Artículo 37. A los accionistas podrá pagarse los dividendos de las utilidades netas de la compañía o del exceso de su activo sobre su pasivo, pero no de otra manera. La compañía podrá declarar y pagar dividendos sobre la base de la cantidad actualmente pagada por acciones que han sido parcialmente pagadas."

Séptimo.- Al respecto, el jurista Juan Pablo Fábrega Pollieri en su Tratado sobre la Ley de Sociedades Anónimas Panameñas (2018, pp. 257-269), nos provee el siguiente análisis:

"En la mayoría de las jurisdicciones los dividendos son concebidos como los beneficios económicos declarados a favor de los accionistas, derivados de las utilidades obtenidas por la sociedad durante un ejercicio fiscal o retenidas en periodos fiscales anteriores. Nuestra legislación no define el concepto. El presente artículo establece como fuente de pago de dividendos no solo las

“utilidades netas”, es decir, las ganancias obtenidas tras deducir gastos e impuestos y reservas legales que establezcan las normas que regulen una actividad particular, sino también bienes que formen parte del exceso de sus activos sobre su pasivo.

(...)

Dividendo no es lo mismo que utilidad, aun cuando en nuestro medio se utilizan ambos vocablos como sinónimos, Manuel Osorio define el dividendo como “Cuota que corresponde a cada acción, proporcional a su monto, al dividir sus ganancias una sociedad comercial (cita del autor). En sentido comercial y empresarial, el dividendo es el “Cuociente que en las sociedades resulta de dividir el total de la utilidad líquida obtenida durante el ejercicio societario, por el número de las acciones que integran el capital social. (cita del autor).

El citado Diccionario de Derecho Comercial y de la Empresa define la utilidad, en el contexto contable, como “...el beneficio que arroja el ejercicio empresarial”.

Tratándose de sociedades, ese beneficio, exigible en toda organización empresarial comercial para evitar maniobras perjudiciales al derecho de los socios y al deber de mantener incólume el capital social, es la parte del activo consumible, sin que deteriore la parte de capital necesaria para compensar el pasivo y garantizar la integridad del capital societario.”

Así, la utilidad es la ganancia neta que obtiene la sociedad durante su ejercicio económico, tras deducir gastos e impuestos, y el dividendo es la cuota-parte de esa ganancia que corresponde a cada accionista en atención a la cantidad de acciones de que sea propietario, luego de que el órgano corporativo respectivo declare su pago.

Respecto a los dividendos, Primer Tribunal Superior de Justicia del Primer Distrito Judicial ha comentado:

“La norma citada permite inferir que el pago de dividendos, a quienes hayan invertido en acciones de una sociedad anónima, deriva de la posibilidad de que hayan producido utilidades o exceso de su activo sobre su pasivo. Por lo tanto, no existiendo en el pago social de RADIO SOBERANA, S.A. alguna otra fórmula que admitiera la repartición de dividendos, debía el actor demostrar que la aludida sociedad anónima se ubicaba en alguno de los dos presupuestos que contempla el artículo 37 citado, a efectos de estimar que, en efecto, a dicho actor debió repartírsele dividendos, conforme las utilidades percibidas y el porcentaje accionario que posee.” (Sentencia de 16 de diciembre de 1999)

(...)

Al emplear la norma el verbo auxiliar “podrá”, está haciendo referencia a una potestad y no a un deber, potestad esta que se materializaría efectuándose el pago de la manera que preceptúa el artículo 37. Por ello, el dividendo como tal no se origina sino hasta cuando es declarado, tras la aprobación de los resultados de la sociedad al concluir su año fiscal; de ahí que constituya una mera expectativa de derecho para los accionistas. Mientras no se declare, la utilidad se mantendrá retenida por la sociedad en una cuenta de superávit hasta que se decida su reparto.

(...)

Si la sociedad se debe a los accionistas y la inversión en la compra de acciones persigue una finalidad mercantil, el pago de dividendos constituye la esencia del derecho societario. (...)

Sobra decir que para recibir dividendos se requiere tener la calidad de accionista o, como se vio al tratar la disposición de

las acciones, ser usufructuario o beneficiario de este derecho, conferido por un accionistas en virtud de una relación contractual.

(...)

Una vez declarado el dividendo por el órgano corporativo que corresponda, nace la obligación de pagarlo en la fecha establecida, convirtiéndose los accionistas, en acreedores de la sociedad. Es usual que se apruebe el pago de utilidades en partidas a lo largo del año, en vez de que se haga de un solo contado. Los accionistas contarán con legitimación para demandar a la sociedad en caso de morosidad.

En atención a lo dispuesto en el numeral 2 del artículo 1652 del Código de Comercio, prescribirá en el plazo de tres años el derecho de los accionistas a demandar judicialmente a la sociedad por la mora en el pago de los dividendos que hubieran sido declarados, por tratarse de una pretensión derivada de la relación societaria en lo que se refiere a los derechos y obligaciones de la sociedad para con los socios.

(...)

La recepción del dividendo corresponderá a las personas registradas como propietarias de las acciones, al usufructuario o beneficiario del referido derecho (...), a la fecha en que se declare el pago respectivo. Como los dividendos se pueden pagar en forma diferida, en varias partidas, será necesario que las partes definan en el contrato a quién corresponderá recibir los mismos, de darse la venta o el usufructo de las acciones antes de hacerse el pago de los dividendos declarados."

Octavo.- Sobre el particular Artículo 37 y su interpretación, salta a la vista que los dividendos tienen que ser declarados y su pago autorizado por la sociedad para con sus accionistas, y que el no pago en la fecha determinada es el que genera una falta o mora que tiene consecuencias de índole judicial. Y es que, nuestra apoderada se encuentra en un limbo jurídico respecto a cuantificar el periodo a partir del cual la no recepción de sus dividendos ha entrado en mora, puesto que **VILLAMOREY, S.A.**, no ha otorgado información respecto a saber si durante todos estos años que han pasado ha declarado dividendos y fijado una fecha de pago de los mismos. Los estados financieros, que aquí adjuntamos, no proveen claridad en cuanto a saber en qué cuenta se encuentran los dividendos por pagar, si es en una cuenta de superávit, o si han sido declarados y se encuentran retenidos.

Noveno.- Lo que sí es cierto, es que el patrimonio de nuestra poderdante se ha visto altamente perjudicado por la omisión de **VILLAMOREY, S.A.** en cuanto al pago de los dividendos que corresponden a **LISA, S.A.** Es oportuno manifestarnos frente a la flexibilidad que nuestro régimen societario y comercial otorga a las entidades

mercantiles respecto a sus relaciones con los accionistas, en este caso, la declaración y pago de dividendos, y que todavía con ello, incorpora una excepción de prescripción para el reclamo judicial por mora en el pago de los dividendos, cuyo tratamiento ya ha sido *ut supra* explicado. Empero, lo anterior no significa que los dividendos prescriban –es un derecho inalienable e inalterable–, y tampoco es óbice para que nuestro sistema judicial se vea impedido de combatir las arbitrariedades que una sociedad pueda manipular accionariamente en contra de sus inversionistas, más específicamente, sus dueños. Por ende, es preciso, y eso hemos hecho, centrarnos en los daños y perjuicios que tal omisión ha causado en la sociedad demandante.

Décimo.- En este sentido, queremos dejar por sentado que el objeto de la acción aquí interpuesta no es el mero reclamo de los dividendos dejados de percibir desde el año 2010, en perjuicio de nuestra apoderada, sino: a) acreditar el nexo existente entre **LISA, S.A.**, como titular del 33% de las acciones de **VILLAMOREY, S.A.**; b) evidenciar las obligaciones resultantes de la relación contractual y estatutaria que tiene **LISA, S.A.** dentro de su participación en **VILLAMOREY, S.A.**, es decir: recibir dividendos de su capital invertido y pagado; c) probar que como resultado de la falta de pago de los dividendos de **VILLAMOREY, S.A.**, en detrimento de los derechos societarios que **LISA, S.A.** tiene sobre esa otra sociedad, deviene el incumplimiento de una obligación contractual al accionista resultante de su inversión en la entidad demandada; y d) que como tal comportamiento de omisión sistemática data de un periodo de casi 10 años, **LISA, S.A.**, se ha visto lesionada en su patrimonio al tener una cuenta por cobrar que le afecta sus estados financieros, así como la rentabilidad, solvencia y liquidez con la que ha de afrontar sus costos y gastos operativos y como sociedad inversionista que es.

Undécimo.- A tales efectos, el monto tasado al cual ascienden los daños y perjuicios, así como el lucro cesante y daño emergente ocasionado por el no pago de los dividendos a que tiene derecho **LISA, S.A.** dentro de su participación en **VILLAMOREY, S.A.**, es de **VEINTITRÉS MILLONES NOVECIENTOS CINCUENTA**

236 Y NUEVE MIL CIENTO CATORCE DÓLARES AMERICANOS EN MONEDA DE
237 CURSO LEGAL (USD\$23.959.114.00), los cuales se desglosan a continuación:

Daños y perjuicios por dividendos dejados de pagar	\$14,894,472
Intereses	\$8,698,900
Gastos legales	\$365,742
Total	\$23,959,114

238
239 **Duodécimo.-** Sobre la consagración normativa de “daños y perjuicios”, el Código
240 Civil dicta lo siguiente:

241 *“Artículo 991. La indemnización de daños y perjuicios*
242 *comprende, no sólo el valor de la pérdida que haya sufrido, sino*
243 *también el de la ganancia que haya dejado de obtener el*
244 *acreedor, salvo las disposiciones contenidas en los artículos*
245 *anteriores.*
246
247 *Artículo 992. Los daños y perjuicios de que responde el deudor*
248 *de buena fe son los previstos o que se hayan podido prever al*
249 *tiempo de constituirse la obligación y que sean consecuencia*
250 *necesaria de su falta de cumplimiento. En caso de dolo,*
251 *responderá el deudor de todos los que conocidamente se deriven*
252 *de la falta de cumplimiento de la obligación.”*
253
254

255 **Decimotercero.-** Es así como los registros contables y estados financieros de **LISA,**
256 **S.A.** arrojan la cantidad de VEINTITRÉS MILLONES NOVECIENTOS CINCUENTA
257 Y NUEVE MIL CIENTO CATORCE DÓLARES AMERICANOS EN MONEDA DE
258 CURSO LEGAL (USD\$23.959.114.00), relacionados directamente al flujo de
259 capital dejado de percibir en cuanto a los montos que le debe **VILLAMOREY, S.A.**
260 en dividendos no pagados.

261
262 **Decimocuarto.-** Nuestra jurisprudencia patria ya se ha manifestado en cuanto a
263 que conductas como la que nos ocupa se transforman en una indemnización por
264 daños y perjuicios:

265 *“El demandante considera que la Autoridad Marítima de*
266 *Panamá, le causo daño y perjuicios económicos, al no haber*
267 *adoptado las medidas administrativas requeridas para que la*
268 *empresa PANAMA PORTS COMPANY, S.A. pagara la suma de DOS*
269 *MILLONES DIECINUEVE MIL SEISCIENTOS TREINTA Y TRES*
270 *BALBOAS CON DIECIOCHO CENTÉSIMOS (B/2,019,633.18), en*
271 *concepto de indemnización por utilidades no percibidas, en el*
272 *término señalado, por lo que a su juicio, la Autoridad Marítima*
273 *de Panamá, está obligada a pagar a K.M.R.G.,S.A., la suma de*
274 *TRES MILLONES QUINIENTOS MIL BALBOAS (B/.3,500,000.00),*
275 *en concepto de intereses generados desde que existía la*

276 obligación del pago de la indemnización por las utilidades no
 277 percibidas, más otros perjuicios ocasionados (lucro cesante).
 278

279 Efectivamente consta en autos que el pago de la indemnización
 280 que les correspondía a la empresa K.M.R.G.S.A., producto de la
 281 rescisión de los contratos de concesión y arrendamiento que
 282 tenía con la Autoridad Portuaria Nacional, que debían hacerse el
 283 15 de septiembre de 1999, no se hizo efectivo hasta noviembre de
 284 2008, o sea nueve (9) años después, lo que implica la existencia
 285 de un daño pecuniario a la empresa, por tanto se encuentra el
 286 daño probado.”
 287

288 Sentencia de 16 de marzo de 2011. Caso: K.M.R.G., S.A. c/
 289 Autoridad Marítima de Panamá.
 290

291 **Decimoquinto.-** Si bien, son esos dividendos dejados de pagar en concepto de
 292 dividendos, el daño y perjuicio directo ocasionado a **LISA, S.A.**, tal ausencia
 293 ocasiona un vacío en la contabilidad financiera y fiscal de nuestra apoderada, que
 294 genera al igual que dicta la jurisprudencia, un daño pecuniario a la compañía,
 295 como se desarrolla en los hechos anteriores y se acreditará a través de las pruebas
 296 periciales, testimoniales y de informe, que han de ser practicadas en el curso del
 297 presente proceso ordinario de mayor cuantía.
 298

299 **Decimosexto.-** Como bien se ha expresado al inicio del libelo, la cuantía de la
 300 demanda se basa en los daños y perjuicios, así como el lucro cesante, el daño
 301 emergente y el daño moral, dimanantes del no pago de tales dividendos, que por
 302 sus intereses y tasación, asciende a un monto de **VEINTITRÉS MILLONES**
 303 **NOVECIENTOS CINCUENTA Y NUEVE MIL CIENTO CATORCE DÓLARES**
 304 **AMERICANOS EN MONEDA DE CURSO LEGAL (USD\$23,959,114.00).** Al
 305 respecto y por su importancia para el caso, procedemos a resaltar el siguiente
 306 concepto jurisprudencial:

307 “La Sala estima necesario citar al jurista Gilberto Martínez Rave,
 308 quien describe como daño emergente y el lucro cesante, en su
 309 obra “Responsabilidad Civil Extracontractual”, estableciendo
 310 que estos implican daños patrimoniales o materiales. El autor en
 311 mención señala que:
 312 El daño emergente es: “el empobrecimiento directo del
 313 patrimonio del perjudicado...lo conforma lo que sale del
 314 patrimonio del perjudicado para atender el daño y sus efectos o
 315 consecuencias. Por su parte, considera que lucro cesante es “la
 316 frustración o privación de un aumento patrimonial. La falta de
 317 rendimiento, de productividad, originada por los hechos
 318 dañosos. ” (Gilberto Martínez Rave, Responsabilidad Civil

319 *Extracontractual, 8ª edición, Biblioteca Jurídica Diké, 1995, págs.*
 320 *194 y 195).*"

321
 322 Sentencia de 2 de febrero de 2017. Proceso: Indemnización.
 323 Caso: Maybeth Coronado c/ Caja de Seguro Social. Magistrado:
 324 Abel Augusto Zamorano.

325
 326

327 **Decimoséptimo.-** Así las cosas, no cabe ninguna duda sobre la pertinencia y
 328 juridicidad que acompañan la pretensión de la demandante, **LISA, S.A.**, sobre la
 329 búsqueda judicial de indemnización sobre el daño, perjuicio y lucro sufrido a raíz
 330 de las dolosas conductas de **VILLAMOREY, S.A.**, en el manejo de los dividendos y
 331 su retención. En cuanto al derecho de resarcimiento, nuestra más alta
 332 corporación de justicia se ha manifestado en este sentido:

333 *"En reiteradas ocasiones la Sala ha dejado expuesto que*
 334 *tradicionalmente la doctrina y la jurisprudencia conceptúan el*
 335 *daño resarcible como el menoscabo que se experimenta en el*
 336 *patrimonio de los valores económicos que lo componen (daño*
 337 *patrimonial o material) conformado por el daño emergente*
 338 *y lucro cesante, y, también la lesión a los sentimientos, al honor*
 339 *o las afecciones (daño moral)."*

340

341 Auto de 13 de mayo de 2016. Proceso: indemnización. Caso:
 342 Cecilia Sanjur y Paola Patiño c/ Caja de Seguro Social.
 343 Magistrado sustanciador: Victor Benavides

344

345 **Decimoctavo.-** Por consiguiente, además de ser un derecho de **LISA, S.A.**, es un
 346 deber y obligación de **VILLAMOREY, S.A.**, indemnizarle por los daños y perjuicios,
 347 el lucro cesante, daño material y daño moral -tal cual se han detallado en este
 348 escrito-, causados por el no pago de los dividendos que en estricta legalidad le
 349 corresponden a mi poderdante, desde el año 2010.

350

351 **PRETENSIÓN:**

352 Solicitamos a este Honorable Tribunal, previo al agotamiento de las fases procesales
 353 propias de los procesos ordinarios de mayor cuantía, que **VILLAMOREY, S.A.**,
 354 sociedad anónima, debidamente registrada en la Sección Mercantil del Registro
 355 Público de Panamá, al Folio 9146 (S), Tomo 814, Asiento 133501, Rollo 367, Imagen
 356 298, Ficha 9146, con domicilio en la Provincia de Panamá, República de Panamá, sea
 357 condenada al pago de **VEINTITRÉS MILLONES NOVECIENTOS CINCUENTA Y**
 358 **NUEVE MIL CIENTO CATORCE DÓLARES AMERICANOS EN MONEDA DE CURSO**

359 **LEGAL (USD\$23.959.114.00)**, más intereses, costas y gastos del proceso, en virtud
 360 de los daños y perjuicios, lucro cesante, daño emergente y daño moral que ha
 361 ocasionado con la retención y no pago de los dividendos correspondientes, desde el
 362 periodo 2010 hasta la fecha, a nuestra apoderada, **LISA, S.A.**, sociedad anónima,
 363 debidamente registrada en la Sección Mercantil del Registro Público de Panamá, al
 364 Folio 117512 (S), Ficha 117512, Imagen 186, Rollo 11750, con domicilio en la
 365 Provincia de Panamá, República de Panamá.

366

367

PRUEBAS:

368

369 Las presentadas con la demanda primigenia.

370 Se anuncia la aportación y práctica de otras pruebas dentro del periodo probatorio.

371

372

FUNDAMENTO DE DERECHO

373

Código Judicial artículos 1228 - 1280.

374

375 Panamá, a la fecha de su presentación.

376

377 DE LA HONORABLE JUEZ,

378

JAVIER ALEXIS QUIRÓZ MURILLO

JOAO QUIRÓZ GOVEA

Quiroz Govea & Asociados



2019 NOV 29 11:53AM

ANEXO 1

From: Harald Johannessen | L
Sent: Friday, January 31, 2020 1:50 PM
To: alvaro.almengor@hatstone.com
Subject: Appointment of new directors of Lisa, S.A. (the "Company") - Important - Ksvk-3002
Acuso recibo de su email. Lunes y martes tendré reunión con el equipo jurídico. Luego le respondo.
Saludos,

Harald Johannessen
Director - Presidente
Lisa, S.A.

De: Alvaro Almengor <alvaro.almengor@hatstone.com>
Fecha: 31 de enero de 2020, 12:01:13 GMT-6
Para: "harald.johannessen1951@gmail.com" <harald.johannessen1951@gmail.com>
Cc: Carl O'Shea <carl.oshea@hatstone.com>
Asunto: Re: Appointment of new directors of Lisa, S.A. (the "Company") - Important - Ksvk-3002

Dear Harald,

I hope this email finds you well.

This is a reminder of our previous email requesting you an appointment to hold a directors meeting of Lisa, S.A. and requesting you again the following company's documents:

1. Register of directors - updated
2. Register of shareholders;
3. Shareholder and board resolutions;
4. Any agreements to which the Company is party;
5. An update with regard to the current litigation in which the Company is involved in Panama and elsewhere;
6. The latest bank statements; and
7. The latest accounts.

Looking forward to hear from you soon.

Best regards,

Alvaro Almengor Group Partner
P +507 830 5300 M +507 6678 6126

The logo for HATSTONE, featuring the word "HATSTONE" in a bold, white, sans-serif font, centered within a solid blue rectangular background.

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From: Alvaro Almengor <alvaro.almengor@hatstone.com>

Date: Monday, 27 January 2020 at 18:32

To: "harald.johannessen1951@gmail.com" <harald.johannessen1951@gmail.com>

Cc: Carl O'Shea <carl.oshea@hatstone.com>

Subject: Appointment of new directors of Lisa, S.A. (the "Company") - Important - Ksvk-3002

Dear Harald,

I hope this email finds you well.

This is to notify you that the sole shareholder, by way of resolution, has added three new directors to the board of the Company, as follows:

- x Alvaro Almengor -Director x
- Manuel Carrasquilla -
- Director
- x Lidia Ramos -Director

This change has been submitted to Public Registry.

I have also notified the resident agent of this change.

In relation to the Company, could you please let us have copies of the following:

1. Register of directors - updated
2. Register of shareholders;
3. Shareholder and board resolutions;
4. Any agreements to which the Company is party;
5. An update with regard to the current litigation in which the Company is involved in Panama and elsewhere;

6. The latest bank statements; and
7. The latest accounts.

If you are not holding any of the above documents then please let us know who I am may contact, to obtain this information.

As a directors of the Company we expect to be involved in any decisions or changes relating to the Company. Please do not make any changes without liaising with all your fellows directors.

We would suggest that we hold a full board meeting during the course of next week. Please kindly let us know when you shall be available.

If you have any queries then please let me know.

Best regards,

Alvaro Almengor Group Partner

P +507 830 5300 M +507 6678 6126



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ANEXO

2

POWER OF ATTORNEY

TO: Carl O'Shea

AND TO: Alvaro Almengor

WHEREAS KSV Kofman Inc. ("**KSV**") was appointed by an order of the Ontario Superior Court of Justice made July 5, 2019 (the "**Appointment Order**") as the receiver and manager (in such capacity, the "**Receiver**") of Xela Enterprises Ltd. ("**Xela**").

AND WHEREAS Xela is the sole shareholder of Gabinvest S.A. ("**Gabinvest**") and Gabinvest is, in turn, the sole shareholder of Lisa S.A ("**Lisa**").

AND WHEREAS, pursuant to the Appointment Order, the Receiver has exclusive authority to exercise Xela's rights as shareholder of Gabinvest.

AND WHEREAS Hatstone Group ("**Hatstone**") is Panamanian counsel to the Receiver.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency is hereby acknowledged, the Receiver hereby appoints Hatstone partners Carl O'Shea and Alvaro Almengor to attend as representatives of the Receiver and Xela at a meeting with the present or former non-Hatstone directors of Gabinvest and/or Lisa to be held on February 21, 2020 in Bogota, Columbia, or at such other place and/or time as may be arranged, to discuss and negotiate settlement of disputes over the composition of the boards of Gabinvest and Lisa. This Power of Attorney does not extend to consummation of any resulting settlement.

This Power of Attorney is executed in accordance with the *Powers of Attorney Act* (Ontario) and shall be governed in all respects by the laws of the Province of Ontario and the federal laws of Canada applicable therein.

DATED as of the ____ day of February, 2020.

**KSV KOFMAN INC., in its capacity as
Courtappointed Receiver and Manager of Xela
Enterprises Ltd.**

By: _____

Name:

Title:

38893766.1

POWER OF ATTORNEY

TO: Carl O'Shea

AND TO: Alvaro Almengor

WHEREAS KSV Kofman Inc. ("KSV") was appointed by an order of the Ontario Superior Court of Justice made July 5, 2019 (the "**Appointment Order**") as the receiver and manager (in such capacity, the "**Receiver**") of Xela Enterprises Ltd. ("**Xela**").

AND WHEREAS Xela is the sole shareholder of Gabinvest S.A. ("**Gabinvest**") and Gabinvest is, in turn, the sole shareholder of Lisa S.A. ("**Lisa**").

AND WHEREAS, pursuant to the Appointment Order, the Receiver has exclusive authority to exercise Xela's rights as shareholder of Gabinvest.

AND WHEREAS Hatstone Group ("**Hatstone**") is Panamanian counsel to the Receiver.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency is hereby acknowledged, the Receiver hereby appoints Hatstone partners Carl O'Shea and Alvaro Almengor to attend as representatives of the Receiver and Xela at a meeting with the present or former non-Hatstone directors of Gabinvest and/or Lisa to be held on February 21, 2020 in Bogota, Columbia, or at such other place and/or time as may be arranged, to discuss and negotiate settlement of disputes over the composition of the boards of Gabinvest and Lisa. This Power of Attorney does not extend to consummation of any resulting settlement and any settlements require the prior approval of Robert Kofman or Noah Goldstein of KSV.

This Power of Attorney is executed in accordance with the *Powers of Attorney Act* (Ontario) and shall be governed in all respects by the laws of the Province of Ontario and the federal laws of Canada applicable therein.

DATED as of the 14th day of February 2020.

KSV KOFMAN INC., in its capacity as Court-appointed Receiver and Manager of Xela Enterprises Ltd.

By: _____

Name: Robert Kofman

Title: President

POWER OF ATTORNEY

TO: Carl O'Shea

AND TO: Alvaro Almengor

WHEREAS KSV Kofman Inc. ("KSV") was appointed by an order of the Ontario Superior Court of Justice made July 5, 2019 (the "Appointment Order") as the receiver and manager (in such capacity, the "Receiver") of Xela Enterprises Ltd. ("Xela").

AND WHEREAS Xela is the sole shareholder of Gabinvest S.A. ("Gabinvest") and Gabinvest is, in turn, the sole shareholder of Lisa S.A. ("Lisa").

AND WHEREAS, pursuant to the Appointment Order, the Receiver has exclusive authority to exercise Xela's rights as shareholder of Gabinvest.

AND WHEREAS Hatstone Group ("Hatstone") is a Panamanian counsel to the Receiver;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency is hereby acknowledged, the Receiver hereby appoints Hatstone partners Carl O'Shea and Alvaro Almengor to attend as representatives of the Receiver and Xela at a meeting with the present or former non-Hatstone directors of Gabinvest and/or Lisa to be held on February 28, 2020 in Panama, or at such other place and/or time as may be arranged, to discuss and negotiate settlement of disputes over the composition of the boards of Gabinvest and Lisa. This Power of Attorney does not extend to consummation of any resulting settlement and any settlements require the prior approval of Robert Kofman or Noah Goldstein of KSV.

This Power of Attorney is executed in accordance with the *Powers of Attorney Act* (Ontario) and shall be governed in all respects by the laws of the Province of Ontario and the federal laws of Canada applicable therein.

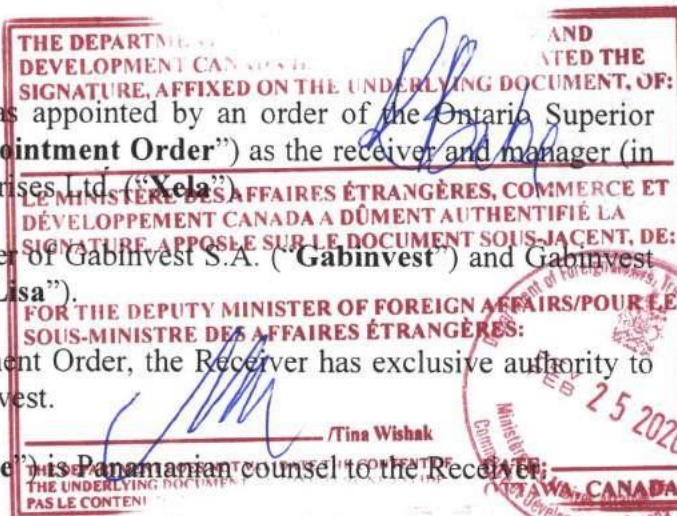
DATED the 24th day of February, 2020.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario, this 24th day of February, 2020.

Robert S.E. Babe, a Notary Public for taking Affidavits within Ontario

KSV KOFMAN INC., in its capacity as Court-appointed Receiver and Manager of Xela Enterprises Ltd.

Noah Goldstein





REPÚBLICA DE PANAMÁ
MINISTERIO DE RELACIONES EXTERIORES



Departamento Consular y
Legalizaciones

**CERTIFICADO DE
AUTENTICACIÓN
Nº 12015**

Recibo Oficial No. 1275545

Airancel No. 60

Derecho B/. 10.00

del mes de febrero del año 2020

Dado en la ciudad de Ottawa el día 25

que la firma que aparece en el documento adjunto que
dice: Tina Wishak
es **auténtica** y corresponde a la que acostumbra usar en los
documentos que autoriza en calidad de Oficial de
autenticaciones del Ministerio de
Relaciones Exteriores de Canada

El Suscrito Romy Vasquez Morales
NOMBRE DE FUNCIONARIO CONSULAR

Embajadora de Panama en Canada
TITULO Y LUGAR DE ACREDITACIÓN

CERTIFICA:



DIRECCIÓN DE ADMINISTRACIÓN Y FINANZAS

FIRMA DEL FUNCIONARIO CONSULAR



ANEXO



3

ACTA NOTARIAL DE DECLARACIÓN JURADA DE LOS HECHOS OCURRIDOS EN LA REUNIÓN CONCILIATORIA
CON EL INTERVENTOR NOMBRADO EN XELA ENTERPRISES LTD. -----

En el Distrito Capital, Ciudad Bogotá, de la República de Colombia, el veintiuno de febrero de dos mil veinte, siendo las diez horas en punto, Yo, Jeremías Lutín Castillo, Notario, me encuentro constituido en la Carrera trece, numero noventa guión diecisiete, (90-17), Edificio Emprendu del Distrito Capital, Ciudad Bogotá, de la República de Colombia, a requerimiento de: **Juan Guillermo Gutierrez Strauss**, persona de mi anterior conocimiento, quien no obstante se identifica con el Pasaporte Canadiense HM ciento setenta y ocho mil seiscientos trece, con fecha de vencimiento el doce de octubre de dos mil veintiséis, quien actúa en su calidad de (HM 178613) extendido por las autoridades migratorias de la República de Canadá, quien actúa en su calidad de Presidente de la entidad **Xela Enterprises Ltd**, calidad que acredita con el nombramiento de Junta Directiva debidamente apostillado; y **Harald Johannessen Hals**, persona de mi anterior conocimiento, no obstante se identifica con el Pasaporte número doscientos cuarenta y dos millones ochenta y seis mil cuatrocientos setenta (242086470); extendido en fecha veintisiete de octubre de dos mil diecisiete con fecha de vencimiento veintiséis de octubre de dos mil veintidós extendido por la República de Guatemala; quien actúa en su calidad de Presidente de la entidad **LISA,S.A**, calidad que acredita con su nombramiento contenido en Acta de Asamblea de Accionistas de la entidad LISA,S.A., celebrada el diez de diciembre de dieciocho, que se encuentra contenida en la escritura pública numero doscientos veintinueve (229) autorizada en la Ciudad Panamá por el Notario Hermes Ariel Ortega Benítez, el siete de enero de dos mil diecinueve, inscrito en el Registro Público de Panamá, a efecto que por la presente **ACTA NOTARIAL DE DECLARACIÓN JURADA**, se haga constar lo siguiente: **PRIMERO:** En la calidad con que actúan los comparecientes y advertidos de las penas relativas

al delito de perjurio, bajo juramento solemne prestado de conformidad con las leyes de la República de Guatemala, manifiestan lo siguiente **SEGUNDO:** Manifiesta el Señor Juan Guillermo Gutiérrez Strauss, en la calidad con que actúa, que el día de hoy en el lugar antes referido en la presente acta notarial se tenía programada una reunión con los señores Alvaro Almengor y Carl O'Shea del grupo Hatstone, consejeros legales de la firma KSV Kofman Inc. Estando convocados para dicha reunión los consejeros legales de la entidad LISA, S.A., así también el representante de la entidad de BDT Investments Inc. **TERCERA:** Al momento de dar inicio a la reunión programada, se solicitó al señor Alvaro Almengor, que se sirviera acreditar la representación con la cual comparecía a la reunión, sin embargo, al momento de dicho requerimiento manifestó que el documento de su representación no lo tenía en su poder indicando que había enviado únicamente copia simple vía correo electrónico, y que el mismo no contaba con las formalidades de un documento extendido en el extranjero y por lo tanto carente de validez, por lo cual la reunión programada para tal efecto no pudo llevarse a cabo. **CUARTO.** Continúa manifestando mi requirente JUAN GUILLERMO GUTIERREZ STRAUS, que con ánimo de mantener la buena fe del actuar del grupo que él representa, se acordó a los siguientes puntos: a) llevar a cabo una reunión en la Ciudad de Panamá el día veintiocho de febrero del año dos mil veinte, en la cual participara la señora Margarita Castillo, el interventor nombrado y debidamente representado, el Grupo Xela, sus subsidiarias y los representantes de sus subsidiarias, b) llegar a un acuerdo que ponga fin a las disputas legales que actualmente mantienen la señora Margarita Castillo y la entidad Xela Enterprises Ltd, de la mejor manera para ambas partes. **QUINTO:** No habiendo nada más que hacer constar se da por terminada la presente acta notarial en el mismo lugar y fecha, treinta minutos después de su inicio, la cual se encuentra contenida en tres hojas de papel simple, útil en su anverso, quienes previa lectura, la aceptan,

ratifican y firman ante el Infrascrito Notaria que de todo lo relacionado DOY FE.

(f)  (f) 

Ante mí:

ANEXO 4

From: Alvaro Almengor <alvaro.almengor@hatstone.com>
Sent: Wednesday, March 11, 2020 5:52 PM
To: Harald Johannessen | L
Subject: Re: Correo electrónico del 24 de Febrero del 2,020

Buenas tardes Lic. Harald,

Primeramente confirmamos que hemos remitido sus correos con sus adjuntos al Receiver como nos lo ha solicitado y a fin de minimizar cualquier mal entendido. El Receiver allá maneja sus traducciones.

Segundo, reiteramos la petición de reunión entre el Sr. Juan y el Receiver en Canadá y paso a copiarle en inglés textualmente la respuesta para evitar de igual forma cualquier error en la traducción:

I am not prepared to meet with Juan in the absence of their agreement to our Board changes. We will be asking for a contempt order. You can tell them that.

En resumen el Receiver reitera su solicitud de cambios en la Junta Directiva propuesta anteriormente.

Quedamos atentos.

Saludos

Alvaro Almengor Group Partner
P +507 830 5300 M +507 6678 6126



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From: Harald Johannessen | L <H_Johannessen@granadavalley.com>

Date: Wednesday, 11 March 2020 at 09:24

1

To: Alvaro Almengor <alvaro.almengor@hatstone.com>

Subject: Correo electrónico del 24 de Febrero del 2,020

Señores:

HATSTONE

Atn. Lic. Álvaro Almengor

Ref: Correo Electrónico de, febrero 24 de 2020

Respetados señores, en atención a su correo del día 10, hoy debo realizar las siguientes precisiones, como quiera que el informe que pretende presentar el reciever y los correos suyos demuestran desinformación:

No obstante haber solicitado por medio suyo una reunión del reciever con el señor Juan Guillermo Gutierrez, no hemos recibido respuesta a la misma. Situación que resulta bastante exótica por decir lo menos.

En la jurisdicción panameña cursan y/o cursaron varios procesos civiles a saber que son relevantes para los intereses de los acreedores de LISA S.A.:

1. Juzgado 11 LISA VS VILLAMOREY, resoluciones las cuales fueron aportadas en PDF, ayer a ustedes.
2. Juzgado 12 BDT VS LISA, con sentencia condenatoria a favor de BDT Y **AUN CON EL CONOCIMIENTO DE LA SENTENCIA LA CONTRAPARTE HA ACUSADO A LISA DE ACTOS FRAUDULENTOS.**
3. Juzgado 6 LISA VS VILLAMOREY, demanda de daños y perjuicios.
4. Demanda de Rendición de cuentas LISA VS VILLAMOREY en reparto.

Se hace necesario fijar fecha y hora para reunión donde aportaremos las copias autenticadas de todas y cada una de las actuaciones de los procesos relacionados en precedencia.

De no fijarse fecha para la celebración de dicha reunión, consideramos negligente la posición del reciever como de los abogados con poder y procederemos con las acciones judiciales, con el objetivo de proteger tanto a LISA como a los demás acreedores,

Harald Johannessen

Director - Presidente

Lisa, S.A.

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immediately delete it from your system. The Hatstone Group make no representation or warranty as to the absence of viruses in this e-mail or any attachment. Further information on The Hatstone Group may be found on our website. We may monitor e-mail communications in accordance with the law. Opinions or advice to clients in this e-mail are subject to both our engagement letter and the terms of business for legal services with the relevant client entity.

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ANEXO 5

From: Alvaro Almengor <alvaro.almengor@hatstone.com>
Sent: Thursday, February 6, 2020 4:48 PM
To: Harald Johannessen | L
Cc: Carl O'Shea
Subject: Re: Appointment of new directors of Lisa, S.A. (the "Company") - Important - Ksvk-3002
 Estimado Harald,

Ha sido un gusto poder conversar con usted y su equipo más temprano hoy.

Como se conversó estamos actuando por instrucciones del administrador designado por el tribunal Canadiense con respecto a Xela Enterprises Limited y sus activos subyacentes, que incluyen Gabinvest, S.A. y Lisa, S.A., entre otras entidades. Se nos ha pedido que trabajamos con usted en relación a Lisa, S.A.

Estamos de acuerdo en sostener una reunión en persona que se realice en Bogotá o Ciudad de Panamá lo antes posible. Esperamos tener noticias suyas con las fechas propuestas.

Antes de la reunión, acordemos porfavor no realizar más cambios en los documentos constitutivos de Lisa, S.A., suspender cualquier nuevo litigio con respecto a Lisa, S.A. y conducir pocos o ningún negocio con Lisa, S.A.

Saludos cordiales,

Alvaro Almengor Group Partner
 P +507 830 5300 M +507 6678 6126



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From: Harald Johannessen | L <H_Johannessen@granadavalley.com>
Date: Thursday, 6 February 2020 at 11:08
To: Alvaro Almengor <alvaro.almengor@hatstone.com>

Cc: Carl O'Shea <carl.oshea@hatstone.com>

Subject: Re: Appointment of new directors of Lisa, S.A. (the "Company") - Important - Ksvk-3002

Le he estado tratando de llamar ... me indica si le puedo llamar

Enviado desde mi iPhone

El 5/02/2020, a la(s) 08:23, Alvaro Almengor <alvaro.almengor@hatstone.com> escribió:

Buenas tardes,

Muchas gracias por su confirmación.

Preferiblemente a nuestra línea fija que es: +507 830 5300

Quedamos atentos.

Saludos

Alvaro Almengor Group Partner

P +507 830 5300 M +507 6678 6126

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From: Harald Johannessen | L <H_Johannessen@granadavalley.com>

Date: Tuesday, 4 February 2020 at 17:45

To: Alvaro Almengor <alvaro.almengor@hatstone.com>

Cc: Carl O'Shea <carl.oshea@hatstone.com>

Subject: Re: Appointment of new directors of Lisa, S.A. (the "Company") - Important - Ksvk-3002

Buenas tardes. El jueves por la tarde le estaré contactando a su teléfono.

Atentamente,

Harald Johannessen
Director - Presidente
Lisa, S.A.

Enviado desde mi iPhone

El 4/02/2020, a la(s) 17:32, Alvaro Almengor <alvaro.almengor@hatstone.com> escribió:

Estimado Sr. Harald,

Espero este correo le encuentre bien.

La presente es en seguimiento de nuestra comunicación de la semana pasada. Saber la respuesta de su equipo jurídico y poder conversar sobre este tema.

Saludos cordiales,

Alvaro Almengor Group Partner

P +507 830 5300 M +507 6678 6126

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From: Harald Johannessen | L <H_Johannessen@granadavalley.com>

Date: Friday, 31 January 2020 at 13:50

To: Alvaro Almengor <alvaro.almengor@hatstone.com>

Subject: Appointment of new directors of Lisa, S.A. (the "Company") - Important
- Ksvk-3002

Acuso recibo de su email. Lunes y martes tendré reunión con el equipo jurídico.
Luego le respondo.
Saludos,

Harald Johannessen
 Director - Presidente
 Lisa, S.A.

De: Alvaro Almengor <alvaro.almengor@hatstone.com>

Fecha: 31 de enero de 2020, 12:01:13 GMT-6

Para: "harald.johannessen1951@gmail.com"

<harald.johannessen1951@gmail.com>

Cc: Carl O'Shea <carl.oshea@hatstone.com>

Asunto: Re: Appointment of new directors of Lisa, S.A. (the "Company") - Important - Ksvk-3002

Dear Harald,

I hope this email finds you well.

This is a reminder of our previous email requesting you an appointment to hold a directors meeting of Lisa, S.A. and requesting you again the following company's documents:

1. Register of directors - updated
2. Register of shareholders;
3. Shareholder and board resolutions;
4. Any agreements to which the Company is party;
5. An update with regard to the current litigation in which the Company is involved in Panama and elsewhere;
6. The latest bank statements; and
7. The latest accounts.

Looking forward to hear from you soon.

Best regards,

Alvaro Almengor Group Partner

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From: Alvaro Almengor <alvaro.almengor@hatstone.com>
Date: Monday, 27 January 2020 at 18:32
To: "harald.johannessen1951@gmail.com"
 <harald.johannessen1951@gmail.com>
Cc: Carl O'Shea <carl.oshea@hatstone.com>
Subject: Appointment of new directors of Lisa, S.A. (the "Company") - Important - Ksvk-3002

Dear Harald,

I hope this email finds you well.

This is to notify you that the sole shareholder, by way of resolution, has added three new directors to the board of the Company, as follows:

- x Alvaro Almengor -Director x
- Manuel Carrasquilla -
- Director
- x Lidia Ramos -Director

This change has been submitted to Public Registry.

I have also notified the resident agent of this change.

In relation to the Company, could you please let us have copies of the following:

1. Register of directors - updated
2. Register of shareholders;
3. Shareholder and board resolutions;
4. Any agreements to which the Company is party;
5. An update with regard to the current litigation in which the Company is involved in Panama and elsewhere;
6. The latest bank statements; and
7. The latest accounts.

If you are not holding any of the above documents then please let us know who I am may contact, to obtain this information.

As a directors of the Company we expect to be involved in any decisions or changes relating to the Company. Please do not make any changes without liaising with all your fellows directors.

We would suggest that we hold a full board meeting during the course of next week. Please kindly let us know when you shall be available.

If you have any queries then please let me know.

Best regards,

Alvaro Almengor Group Partner

P +507 830 5300 M +507 6678 6126

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From: Alvaro Almengor <alvaro.almengor@hatstone.com>
Sent: Wednesday, February 12, 2020 5:51 PM
To: Harald Johannessen | L
Cc: Carl O'Shea
Subject: Re: Reunion Telefonica el dia de hoy martes 12
 Buenas tardes,

Por medio la presente confirmamos la recepción de su correo.

Agradecemos el tiempo dispensado en el día de hoy. Vamos a comunicar el resumen de la reunión a los administradores judiciales.

Deseamos concretar la reunión en Bogotá para el Viernes 21 de Febrero a las 9:00 a.m.

Quedamos atentos a su correo.

Saludos

Alvaro Almengor Group Partner
 P +507 830 5300 M +507 6678 6126



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From: Harald Johannessen | L <H_Johannessen@granadavalley.com>
Date: Wednesday, 12 February 2020 at 16:23

To: Alvaro Almengor <alvaro.almengor@hatstone.com> **Subject:**
Reunion Telefonica el dia de hoy martes 12

1

Estimado Licenciado Almengor,

En reunión telefónica sostenida con su persona el día hoy martes 12, se acordaron los siguiente puntos:

1. Congelar las actividades totalmente en el registro público de panamá por todas las partes intervinientes
2. Lisa, S.A. y Gabinvest, S.A. se comprometen cesar actividades civiles y penales en contra de Alvaro Almengor hasta tanto no se surta la reunión en Bogotá, Colombia el día viernes 21.

Cordialmente,

Harald Johannessen
Director Presidente
Lisa, S.A.

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From: Alvaro Almengor <alvaro.almengor@hatstone.com>
Sent: Tuesday, February 18, 2020 3:04 PM
To: Harald Johannessen | L
Cc: Carl O'Shea
Subject: Re: Reunion Telefonica el dia de hoy martes 12
Attachments: Power of Attorney[1].DOC
 Estimado Sr. Harald,

Tal como conversamos en la mañana de hoy adjunto el borrador de Poder que se está notariando en Canadá.

Nos gustaría tener en el día de mañana el borrador del acuerdo dado que hay que traducirlo y enviarlo a Canadá.

De igual forma informamos que nuestro vuelo sale de Bogotá alrededor de las 6:30p.m. por lo que debemos salir de la reunión alrededor de las 3:30p.m. dado que el Dr. Perez estima que la reunión puede tomar más tiempo, nos gustaría proponer iniciar la reunión un día antes si lo tienen a bien para efectos de ganar tiempo.

Quedamos atentos a su mensaje.

Saludos

Alvaro Almengor Group Partner
 P +507 830 5300 M +507 6678 6126



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From: Harald Johannessen | L <H_Johannessen@granadavalley.com> **Date:**
 Friday, 14 February 2020 at 10:17

To: Alvaro Almengor <alvaro.almengor@hatstone.com>

Subject: Reunion Telefonica el dia de hoy martes 12

Alvaro , estamos confirmados en la hora y fecha acordado! La reunión se adelantará en el edificio Emprendum en Bogotá.

Saludos,

Harald

El 14/02/2020, a la(s) 07:43, Alvaro Almengor <alvaro.almengor@hatstone.com> escribió:

Estimado Sr. Harald,

No pude atender su llamada anoche estuve en otros compromisos.

Estamos disponibles para su llamada entre las 11:00 a.m. y 1:00 p.m., hora de Panamá.

Saludos,

Alvaro Almengor Group Partner

P +507 830 5300 M +507 6678 6126

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Date: Wednesday, 12 February 2020 at 16:23

To: Alvaro Almengor <alvaro.almengor@hatstone.com>

Subject: Reunion Telefonica el dia de hoy martes 12

Estimado Licenciado Almengor,

En reunión telefónica sostenida con su persona el día hoy martes 12, se acordaron los siguiente puntos:

1. Congelar las actividades totalmente en el registro público de panamá por todas las partes intervinientes
2. Lisa, S.A. y Gabinvest, S.A. se comprometen cesar actividades civiles y penales en contra de Alvaro Almengor hasta tanto no se surta la reunión en Bogotá, Colombia el día viernes 21.

Cordialmente,

Harald Johannessen
Director Presidente Lisa,
S.A.

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From: Harald Johannessen | L
Sent: Wednesday, February 19, 2020 11:23 AM
To: Alvaro Almengor
Cc: Carl O'Shea
Subject: Re: Reunion Telefonica el dia de hoy martes 12
Sobre el tema del borrador es que le estamos llamando...puede ahorita, sino hablamos el viernes

Enviado desde mi iPhone

El 19/02/2020, a la(s) 10:57, Alvaro Almengor <alvaro.almengor@hatstone.com> escribió:

Buenas tardes,

Acusamos de recibido.

Nos vemos el Viernes.

Aprovechamos para solicitar el borrador de acuerdo para poder traducirlo y enviarlo al cliente.

Saludos

Alvaro Almengor Group Partner

P +507 830 5300 M +507 6678 6126

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From: Harald Johannessen | L <H_Johannessen@granadavalley.com>

Date: Wednesday, 19 February 2020 at 10:55

To: Alvaro Almengor <alvaro.almengor@hatstone.com>

Cc: Carl O'Shea <carl.oshea@hatstone.com>

Subject: Re: Reunion Telefonica el dia de hoy martes 12

Estimado Licenciado,

Consulte con todas las partes y es imposible cambiar la hora de reunión, ya que tenemos gente viajando.

Estamos para viernes a las 9:00 am como acordado.

Saludos,

Harald

Enviado desde mi iPhone

El 18/02/2020, a la(s) 15:04, Alvaro Almengor <alvaro.almengor@hatstone.com> escribió:

Estimado Sr. Harald,

Tal como conversamos en la mañana de hoy adjunto el borrador de Poder que se está notariando en Canadá.

Nos gustaría tener en el día de mañana el borrador del acuerdo dado que hay que traducirlo y enviarlo a Canadá.

De igual forma informamos que nuestro vuelo sale de Bogotá alrededor de las 6:30p.m. por lo que debemos salir de la reunión alrededor de las 3:30p.m. dado que el Dr. Perez estima que la reunión puede tomar más tiempo, nos gustaría proponer iniciar la reunión un día antes si lo tienen a bien para efectos de ganar tiempo.

Quedamos atentos a su mensaje.

Saludos

Alvaro Almengor Group Partner

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Date: Friday, 14 February 2020 at 10:17

To: Alvaro Almengor <alvaro.almengor@hatstone.com>

Subject: Reunion Telefonica el dia de hoy martes 12

Alvaro , estamos confirmados en la hora y fecha acordado! La reunión se adelantará en el edificio Emprendum en Bogotá.

Saludos,

Harald

El 14/02/2020, a la(s) 07:43, Alvaro Almengor <alvaro.almengor@hatstone.com> escribió:

Estimado Sr. Harald,

No pude atender su llamada anoche estuve en otros compromisos.

Estamos disponibles para su llamada entre las 11:00 a.m. y 1:00 p.m., hora de Panamá.

Saludos,

Alvaro Almengor Group Partner

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To: Alvaro Almengor <alvaro.almengor@hatstone.com>
Subject: Reunion Telefonica el dia de hoy martes 12

Estimado Licenciado Almengor,

En reunión telefónica sostenida con su persona el día hoy martes 12, se acordaron los siguiente puntos:

1. Congelar las actividades totalmente en el registro público de panamá por todas las partes intervinientes
2. Lisa, S.A. y Gabinvest, S.A. se comprometen cesar actividades civiles y penales en contra de Alvaro Almengor hasta tanto no se surta la reunión en Bogotá, Colombia el día viernes 21.

Cordialmente,

Harald Johannessen
 Director Presidente Lisa,
 S.A.

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From: Alvaro Almengor <alvaro.almengor@hatstone.com>
Sent: Friday, February 21, 2020 7:24 AM
To: Harald Johannessen | L
Cc: Carl O'Shea
Subject: Re: Reunion Telefonica el dia de hoy martes 12
Attachments: Scanned [2].pdf
 Estimado Sr. Harald,

Encuentre adjunto copia del poder.

El original me lo enviarán a mi oficina con sus sellos en los próximos días.

Saludos

Alvaro Almengor Group Partner
 P +507 830 5300 M +507 6678 6126



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From: Harald Johannessen | L

<H_Johannessen@granadavalley.com>

Date: Wednesday, 12 February 2020 at 16:23

To: Alvaro Almengor <alvaro.almengor@hatstone.com>

Subject: Reunion Telefonica el dia de hoy martes 12

Estimado Licenciado Almengor,

En reunión telefónica sostenida con su persona el día hoy martes 12, se acordaron los siguiente puntos:

1. Congelar las actividades totalmente en el registro público de panamá por todas las partes intervinientes
2. Lisa, S.A. y Gabinvest, S.A. se comprometen cesar actividades civiles y penales en contra de Alvaro Almengor hasta tanto no se surta la reunión en Bogotá, Colombia el día viernes 21.

Cordialmente,

Harald Johannessen
Director Presidente Lisa,
S.A.

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From: Harald Johannessen | L
Sent: Friday, February 21, 2020 7:49 AM
To: Alvaro Almengor
Subject: Re: Reunion Telefonica el dia de hoy martes 12
9:00 en punto en..

Emprendu
Carrera 13 # 90-13

Enviado desde mi iPhone

El 21/02/2020, a la(s) 07:24, Alvaro Almengor <alvaro.almengor@hatstone.com> escribió:

Estimado Sr. Harald,

Encuentre adjunto copia del poder.

El original me lo enviarán a mi oficina con sus sellos en los próximos días.

Saludos

Alvaro Almengor Group Partner

P +507 830 5300 M +507 6678 6126

<image001.png>

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From: Harald Johannessen | L <H_Johannessen@granadavalley.com>

Date: Wednesday, 19 February 2020 at 11:23

To: Alvaro Almengor <alvaro.almengor@hatstone.com>

Cc: Carl O'Shea <carl.oshea@hatstone.com>

Subject: Re: Reunion Telefonica el dia de hoy martes 12

Sobre el tema del borrador es que le estamos llamando...puede ahorita, sino hablamos el viernes

Enviado desde mi iPhone

El 19/02/2020, a la(s) 10:57, Alvaro Almengor <alvaro.almengor@hatstone.com> escribió:

Buenas tardes,

Acusamos de recibido.

Nos vemos el Viernes.

Aprovechamos para solicitar el borrador de acuerdo para poder traducirlo y enviarlo al cliente.

Saludos

Alvaro Almengor Group Partner

P +507 830 5300 M +507 6678 6126

<image001.png>

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From: Harald Johannessen | L <H_Johannessen@granadavalley.com>

Date: Wednesday, 19 February 2020 at 10:55

To: Alvaro Almengor <alvaro.almengor@hatstone.com>

Cc: Carl O'Shea <carl.oshea@hatstone.com>

Subject: Re: Reunion Telefonica el dia de hoy martes 12

Estimado Licenciado,
Consulte con todas las partes y es imposible cambiar la hora de reunión, ya que tenemos gente viajando.
Estamos para viernes a las 9:00 am como acordado.
Saludos,
Harald

Enviado desde mi iPhone

El 18/02/2020, a la(s) 15:04, Alvaro Almengor
<alvaro.almengor@hatstone.com> escribió:

Estimado Sr. Harald,

Tal como conversamos en la mañana de hoy adjunto el borrador de Poder que se está notariando en Canadá.

Nos gustaría tener en el día de mañana el borrador del acuerdo dado que hay que traducirlo y enviarlo a Canadá.

De igual forma informamos que nuestro vuelo sale de Bogotá alrededor de las 6:30p.m. por lo que debemos salir de la reunión alrededor de las 3:30p.m. dado que el Dr. Perez estima que la reunión puede tomar más tiempo, nos gustaría proponer iniciar la reunión un día antes si lo tienen a bien para efectos de ganar tiempo.

Quedamos atentos a su mensaje.

Saludos

Alvaro Almengor Group Partner

P +507 830 5300 M +507 6678 6126

<image001.png>

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From: Harald Johannessen | L
<H_Johannessen@granadavalley.com>
Date: Friday, 14 February 2020 at 10:17
To: Alvaro Almengor <alvaro.almengor@hatstone.com>
Subject: Reunion Telefonica el dia de hoy martes 12

Alvaro , estamos confirmados en la hora y fecha acordado! La reunión se adelantará en el edificio Emprendum en Bogotá.
Saludos,

Harald

El 14/02/2020, a la(s) 07:43, Alvaro Almengor
<alvaro.almengor@hatstone.com> escribió:

Estimado Sr. Harald,

No pude atender su llamada anoche estuve en otros compromisos.

Estamos disponibles para su llamada entre las 11:00 a.m. y 1:00 p.m., hora de Panamá.

Saludos,

Alvaro Almengor Group Partner
P +507 830 5300 M +507 6678 6126

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From: Harald Johannessen | L
 <H_Johannessen@granadavalley.com>
Date: Wednesday, 12 February 2020 at 16:23
To: Alvaro Almengor
 <alvaro.almengor@hatstone.com>
Subject: Reunion Telefonica el dia de hoy martes 12

Estimado Licenciado Almengor,

En reunión telefónica sostenida con su persona el día hoy martes 12, se acordaron los siguiente puntos:

1. Congelar las actividades totalmente en el registro público de panamá por todas las partes intervinientes
2. Lisa, S.A. y Gabinvest, S.A. se comprometen cesar actividades civiles y penales en contra de Alvaro Almengor hasta tanto no se surta la reunión en Bogotá, Colombia el día viernes 21.

Cordialmente,

Harald Johannessen
 Director Presidente Lisa,
 S.A.

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<Scanned [2].pdf>

Subject:

Estimado Sr. Harald,

Acusamos el
recibido.

Alvaro Almengor
<alvaro.almengor@hatstone.com>
Friday, February 21, 2020 12:14 PM
Harald Johannessen | L
Re: Acta

Lo enviaremos a los administradores judiciales y ya hemos dado información que deseamos reunirnos todas las partes el próx. Viernes en Panamá.

Nuestra sugerencia es que la reunión se realice en nuestras oficinas.

Saludos

Alvaro Almengor Group Partner
P +507 830 5300 M +507 6678 6126



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From: Harald Johannessen | L <H_Johannessen@granadavalley.com>

Date: Friday, 21 February 2020 at 12:01

To: Alvaro Almengor <alvaro.almengor@hatstone.com> **Subject:**

Acta

1

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2

Carl O'Shea <carl.oshea@hatstone.com>

Monday, February 24, 2020 9:02 AM

Harald Johannessen | L;Alvaro Almengor

Subject:

Xela - Settlement meetings

Dear Harald

Following on from the meeting on Friday 21 February in Bogota, I have now reported back to the Receiver and it is pleased to hear it was a constructive initial settlement meeting.

Could you please kindly forward this email to the other attendees including Juan and BDT.

At the meeting it was proposed to have a subsequent settlement meeting in Panama on Friday 28 February. I have passed on the request that the meeting be attended by Margarita and/or her representative. The parties are happy for Hatstone to attend the meeting being based in Panama. As mentioned any settlement offer will need to be considered by the Receiver and approved by the Canadian Court.

During the meeting we discussed the role and authority of the Receiver. As part of its role, the Receiver is responsible for understanding and securing the assets of Xela for the benefit of all of its stakeholders. The Receiver has been trying to do this, but has so far been prevented from doing so in relation to the two Panama companies, Gabinvest S.A and Lisa S.A.

The Receiver has advised me that prior to the 28 February meeting taking place, you accept the Receiver's changes to the boards of each of these companies: namely, the board of Gabinvest S.A is replaced entirely by the Receiver's representatives and three representatives are added to the board of Lisa S.A making it a mixed board.

Of course, should a full and final settlement be concluded, then the board can then be changed as you wish.

Consideration will need to be given to whom shall replace AFRA as resident agent of the two companies following its resignation. The Receiver would like Hatstone to provide this role. Again, the resident agent can be replaced with a party of your choosing when a settlement is concluded.

As we discussed and agreed at the meeting, for the purposes of trying to settle this matter, we need to focus on an amount which is acceptable to both sides and try as best as possible to put aside the history. The Receiver is willing to consider any reasonable amount you would like to put forward together with a clear deadline for payment. As noted, the Receiver is appointed over Xela for the benefit of all stakeholders, not just Margarita. If you would like to propose a figure prior to the Friday meeting then please kindly do so.

At the same time we held a meeting in Bogota a meeting was held at Chambers before Justice McEwen. I am sure the serious content of that meeting has been communicated to Juan and he is aware that a court date has been set for 24 March (or earlier, if necessary).

In order for the Friday meeting to take place there would appear to be two requirements: (1) the power of attorney executed by the Receiver in favour of Hatstone attending the settlement meetings is notarised and apostilled; and (2) the proposed changes to the two boards are accepted until settlement is reached or the matter is otherwise decided.

Without the above two requirements being satisfied then it would appear the next settlement meeting cannot take place and matters will need to be left to the Canadian Court on 24 March.

We are dealing with requirement number (1). Can you please confirm you will deal with requirement number (2). In relation to Gabinvest, requirement number (2) could be dealt with by Quiros withdrawing his resolution and for Lisa a new resolution could be agreed between the parties as soon as possible for submission.

If you have any queries then please do not hesitate to contact Alvaro or me.

1

All the best

Carl O'Shea Group Partner

Jersey T +44 1534 761 180

M +44 7700 326 852 Panama T +507 830 5300

M +507 6501 8530



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Harald Johannessen | L
Monday, February 24, 2020 2:42 PM
Alvaro Almengor
Cc: Carl O'Shea
Subject: Xela - Settlement meetings

Guatemala, febrero 24 de 2020

Señores:

HATSTONE

Atn. Lic. Álvaro Almengor

Ref: Correo Electrónico de, febrero 24 de 2020

Respetados señores, en atención a su correo del día de hoy debo realizar las siguientes precisiones:

El receiver debe de velar por los intereses de XELA y no exclusivamente por los intereses de la Señora Margarita Castillo, como ha sido el caso hasta la fecha.

En desarrollo de la reunión en mención la firma HATSTONE, quedo debidamente informado que el mayor acreedor de LISA S.A., es la sociedad BDT INVESTMENTS.

Que hoy en día se cuenta con la suficiente información para afirmar y probar que la señora Margarita ya fue pagada en su totalidad. Es obligación del receiver estudiar los documentos que así lo acreditan.

Respecto de las acciones arbitrariamente desplegadas por ustedes a fin de recomponer la directiva de LISA y GABINVEST, se cometieron actos arbitrarios e ilegales a saber:

El nombramiento realizado por la Corte de Ontario, establece claramente dos situaciones:

1.El Recevier Appointment fue otorgado a KSV Kofman Inc., es decir que ÚNICAMENTE, la entidad KSV Kofman Inc, puede en nombre del Deudor (Xela Enterprises, Ltd) actuar como Administrador Judicial (Receiver) de los bienes, activos, propiedades del Deudor.

Con lo anterior, encontramos una clara LIMITACIÓN de actuación del señor Álvaro Almengor, en representación de la firma forense HATSTONE ABOGADOS, para tomar disposición sobre los activos del Deudor en Panamá. Para que dicho escenario legal pudiese haber tenido las resultas buscadas, el Administrador Judicial nombrado, tuvo que haber cumplido con las normas de derecho internacional necesarias para que su nombramiento fuera válido en la República de Panamá. Ya que la firma HATSTONE ABOGADOS y sus representantes tienen una falta de legitimidad activa para actuar en nombre del Administrador Judicial, situación que a la fecha aún persiste.

2.El Receiver Appointment claramente establece, que dicho nombramiento se ejecuta de conformidad con la 101 de los Tribunales de Justicia, R.S.O. 1990, c.C.43 (section 101 of the Courts of Justice Act, R.S.O. 1990, c. C.43).

Es decir, que el nombramiento del Administrador Judicial, es ejecutado en cumplimiento con una norma legal aplicable únicamente en la República de Canadá, y para que la misma sea ejecutada fuera del ámbito territorial de dicha corte, el Administrador Judicial nuevamente, debe cumplir con las normas de derecho internacional aplicables al caso, y que una autoridad con facultad y jurisdicción dentro de la República de Panamá, emita la orden que permita al Administrador Judicial ejecutar sus atribuciones.

Sumado a lo manifestado en precedencia, los artículos de incorporación de las sociedades LISA y GABINVEST, son claros en los requerimientos que se deben dar para el cambio de directores, procedimiento que fue ignorado por la sociedad HATSTON, quien a su saber y entender consideró que bastaba con una orden del Receiver.

Ambas limitaciones las encontramos contenidas y sostenidas, bajo el amparo factico-jurídico, de que, aunque Xela Enterprises, sea la beneficiaria final de las entidades GABINVEST, S.A. y LISA, S.A., cada una de éstas son personas jurídicas distintas, con domicilios y regulaciones distintas, por lo que cumplir con las formalidades tanto intrínsecas como extrínsecas resulta eminentemente necesario para darle validez a los actos que el mismo Administrador Judicial contempla realizar.

No obstante, lo anterior todas las partes continúan con un ánimo conciliatorio, siempre y cuando la firma HATSTONE, cuente con un poder y/o mandato debidamente constituido bajo las leyes de la República de Panamá.

Sin otro particular

Harald Johannessen
Director - Presidente
Lisa, S.A.

El 24/02/2020, a la(s) 08:03, Carl O'Shea <carl.oshea@hatstone.com> escribió:

Dear Harald

Following on from the meeting on Friday 21 February in Bogota, I have now reported back to the Receiver and it is pleased to hear it was a constructive initial settlement meeting.

Could you please kindly forward this email to the other attendees including Juan and BDT.

At the meeting it was proposed to have a subsequent settlement meeting in Panama on Friday 28 February. I have passed on the request that the meeting be attended by Margarita and/or her representative. The parties are happy for Hatstone to attend the meeting being based in Panama. As mentioned any settlement offer will need to be considered by the Receiver and approved by the Canadian Court.

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The Receiver has advised me that prior to the 28 February meeting taking place, you accept the Receiver's changes to the boards of each of these companies: namely, the board of Gabinvest S.A is replaced entirely by the Receiver's representatives and three representatives are added to the board of Lisa S.A making it a mixed board.

Of course, should a full and final settlement be concluded, then the board can then be changed as you wish.

Consideration will need to be given to whom shall replace AFRA as resident agent of the two companies following its resignation. The Receiver would like Hatstone to provide this role. Again, the resident agent can be replaced with a party of your choosing when a settlement is concluded.

As we discussed and agreed at the meeting, for the purposes of trying to settle this matter, we need to focus on an amount which is acceptable to both sides and try as best as possible to put aside the history. The Receiver is willing to consider any reasonable amount you would like to put forward together with a clear deadline for payment. As noted, the Receiver is appointed over Xela for the benefit of all stakeholders, not just Margarita. If you would like to propose a figure prior to the Friday meeting then please kindly do so.

At the same time we held a meeting in Bogota a meeting was held at Chambers before Justice McEwen. I am sure the serious content of that meeting has been communicated to Juan and he is aware that a court date has been set for 24 March (or earlier, if necessary).

In order for the Friday meeting to take place there would appear to be two requirements: (1) the power of attorney executed by the Receiver in favour of Hatstone attending the settlement meetings is notarised and apostilled; and (2) the proposed changes to the two boards are accepted until settlement is reached or the matter is otherwise decided.

Without the above two requirements being satisfied then it would appear the next settlement meeting cannot take place and matters will need to be left to the Canadian Court on 24 March.

We are dealing with requirement number (1). Can you please confirm you will deal with requirement number (2). In relation to Gabinvest, requirement number (2) could be dealt with by Quiros withdrawing his resolution and for Lisa a new resolution could be agreed between the parties as soon as possible for submission.

If you have any queries then please do not hesitate to contact Alvaro or me.

All the best

Carl O'Shea

Group Partner

Jersey T +44 1534 761 180

M +44 7700 326 852 Panama T +507 830 5300

M +507 6501 8530

<image001.png>

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From: Carl O'Shea <carl.oshea@hatstone.com>
Sent: Wednesday, February 26, 2020 6:38 AM
To: Harald Johannessen | L;Alvaro Almengor
Subject: Re: Xela - Settlement meetings
Attachments: Power of Attorney, February 24, 2020 - Authenticated and Legalized.pdf

Hello Harald

Thank you for your email.

As promised, please find attached a pdf copy of the authenticate and legalized power of attorney. The original is being couriered to Hatstone's office in Panama.

We trust this is in order, but if you have any queries then please let Alvaro and I know.

As mentioned in the previous email, in order for the meeting to proceed on Friday, it is a requirement from the Receiver that its changes to the boards of both Gabinvest and Lisa are accepted. Again, should a full and final settlement be concluded, then the boards can then be changed as you wish.

Please kindly confirm by return that the changes are accepted so that we may work together to progress this matter on Friday.

I look forward to hearing from you by return.

Best

Carl O'Shea
Group Partner

Jersey T +44 1534 761 180 M +44 7700 326 852 Panama T +507 830 5300 M +507 6501 8530



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From: Harald Johannessen | L <H_Johannessen@granadavalley.com>
Date: Monday, 24 February 2020 at 14:41
To: Alvaro Almengor <alvaro.almengor@hatstone.com>

Cc: Carl O'Shea <carl.oshea@hatstone.com>

Subject: Xela - Settlement meetings

Guatemala, febrero 24 de 2020

Señores:

HATSTONE

Atn. Lic. Álvaro Almengor

Ref: Correo Electrónico de, febrero 24 de 2020

Respetados señores, en atención a su correo del día de hoy debo realizar las siguientes precisiones:

El receiver debe de velar por los intereses de XELA y no exclusivamente por los intereses de la Señora Margarita Castillo, como ha sido el caso hasta la fecha.

En desarrollo de la reunión en mención la firma HATSTONE, quedo debidamente informado que el mayor acreedor de LISA S.A., es la sociedad BDT INVESTMENTS.

Que hoy en día se cuenta con la suficiente información para afirmar y probar que la señora Margarita ya fue pagada en su totalidad. Es obligación del receiver estudiar los documentos que así lo acreditan.

Respecto de las acciones arbitrariamente desplegadas por ustedes a fin de recomponer la directiva de LISA y GABINVEST, se cometieron actos arbitrarios e ilegales a saber:

El nombramiento realizado por la Corte de Ontario, establece claramente dos situaciones:

1.El Recevier Appointment fue otorgado a KSV Kofman Inc., es decir que ÚNICAMENTE, la entidad KSV Kofman Inc, puede en nombre del Deudor (Xela Enterprises, Ltd) actuar como Administrador Judicial (Receiver) de los bienes, activos, propiedades del Deudor.

Con lo anterior, encontramos una clara LIMITACIÓN de actuación del señor Álvaro Almengor, en representación de la firma forense HATSTONE ABOGADOS, para tomar disposición sobre los activos del Deudor en Panamá. Para que dicho escenario legal pudiese haber tenido las resultas buscadas, el Administrador Judicial nombrado, tuvo que haber cumplido con las normas de derecho internacional necesarias para que su nombramiento fuera válido en la República de Panamá. Ya que la firma HATSTONE ABOGADOS y sus representantes tienen una falta de legitimidad activa para actuar en nombre del Administrador Judicial, situación que a la fecha aún persiste.

2.El Receiver Appointment claramente establece, que dicho nombramiento se ejecuta de conformidad con la 101 de los Tribunales de Justicia, R.S.O. 1990, c.C.43 (section 101 of the Courts of Justice Act, R.S.O. 1990, c. C.43).

Es decir, que el nombramiento del Administrador Judicial, es ejecutado en cumplimiento con una norma legal aplicable únicamente en la República de Canadá, y para que la misma sea ejecutada

fuera del ámbito territorial de dicha corte, el Administrador Judicial nuevamente, debe cumplir con las normas de derecho internacional aplicables al caso, y que una autoridad con facultad y jurisdicción dentro de la República de Panamá, emita la orden que permita al Administrador Judicial ejecutar sus atribuciones.

Sumado a lo manifestado en precedencia, los artículos de incorporación de las sociedades LISA y GABINVEST, son claros en los requerimientos que se deben dar para el cambio de directores, procedimiento que fue ignorado por la sociedad HATSTON, quien a su saber y entender consideró que bastaba con una orden del Receiver.

Ambas limitaciones las encontramos contenidas y sostenidas, bajo el amparo factico-jurídico, de que, aunque Xela Enterprises, sea la beneficiaria final de las entidades GABINVEST, S.A. y LISA, S.A., cada una de éstas son personas jurídicas distintas, con domicilios y regulaciones distintas, por lo que cumplir con las formalidades tanto intrínsecas como extrínsecas resulta eminentemente necesario para darle validez a los actos que el mismo Administrador Judicial contempla realizar.

No obstante, lo anterior todas las partes continúan con un ánimo conciliatorio, siempre y cuando la firma HATSTONE, cuente con un poder y/o mandato debidamente constituido bajo las leyes de la República de Panamá.

Sin otro particular

Harald Johannessen
Director - Presidente Lisa,
S.A.

El 24/02/2020, a la(s) 08:03, Carl O'Shea <carl.oshea@hatstone.com> escribió:

Dear Harald

Following on from the meeting on Friday 21 February in Bogota, I have now reported back to the Receiver and it is pleased to hear it was a constructive initial settlement meeting.

Could you please kindly forward this email to the other attendees including Juan and BDT.

At the meeting it was proposed to have a subsequent settlement meeting in Panama on Friday 28 February. I have passed on the request that the meeting be attended by Margarita and/or her representative. The parties are happy for Hatstone to attend the meeting being based in Panama. As mentioned any settlement offer will need to be considered by the Receiver and approved by the Canadian Court.

During the meeting we discussed the role and authority of the Receiver. As part of its role, the Receiver is responsible for understanding and securing the assets of Xela for the benefit of all of its stakeholders. The Receiver has been trying to do this, but has so far been prevented from doing so in relation to the two Panama companies, Gabinvest S.A and Lisa S.A.

The Receiver has advised me that prior to the 28 February meeting taking place, you accept the Receiver's changes to the boards of each of these companies: namely, the board of Gabinvest S.A is replaced entirely by the Receiver's representatives and three representatives are added to the board of Lisa S.A making it a mixed board.

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If you have any queries then please do not hesitate to contact Alvaro or me.

All the best

Carl O'Shea
Group Partner

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<image001.png>

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From: Alvaro Almengor <alvaro.almengor@hatstone.com>
Sent: Thursday, February 27, 2020 3:41 PM
To: Harald Johannessen | L
Cc: Carl O'Shea
Subject: Re: Xela - Settlement meetings

Estimado Sr. Harald,

Esperamos este correo le encuentre bien.

Con deseo de seguir adelante las conversaciones sostenidas, tenemos a bien consultar primeramente si aceptan o no la propuesta del Receiver de reconocer la Junta Directiva propuesta por ellos a efectos de continuar con las negociaciones.

En caso de ser aceptada dicha propuesta, el cambio o adición de Directores se efectuaría en concordancia con ustedes y como mencionó Carl en su correo, al final de las negociaciones los directores pueden ser removidos por ustedes.

Confirmamos nuestro deseo de seguir en la mesa de negociación, sin embargo debemos hacer eco de la solicitud del Receiver expuesta en líneas superiores, a la postre nuestro mandante, a efecto de seguir con las mismas.

En la medida que pueda favor enviarnos el correo del Dr. Roberto Pérez.

Quedamos atentos a su mensaje.

Saludos cordiales,

Alvaro Almengor Group Partner
 P +507 830 5300 M +507 6678 6126



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The Hatstone Group and the Folio Group are very pleased to share with you that, subject to regulatory consent, we are merging. Further details can be found [here](#).

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We have updated our privacy notice to take into account recent changes to European data protection legislation. If you would like to find out more about the personal data we hold and how we may use that data then please see our Hatstone Group [Privacy Notice](#).

From: Alvaro Almengor <alvaro.almengor@hatstone.com>
Date: Wednesday, 26 February 2020 at 11:50
To: Harald Johannessen | L <H_Johannessen@granadavalley.com>
Cc: Carl O'Shea <carl.oshea@hatstone.com>
Subject: FW: Xela - Settlement meetings

Dear Mr. Harald,

Mr. Roberto just informed me that you have not received Carl's response.

Please find bellow Carl's last email along with the POA certified by apostilled.

Mr. Roberto also informed us that the company's lawyers are willing to change the meeting for next Tuesday in Panamá, since they have hearing in Guatemala this coming Friday. Please confirm this information to us.

Best regards,

Alvaro Almengor
Group Partner
 P +507 830 5300 M +507 6678 6126



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From: Carl O'Shea <carl.oshea@hatstone.com>
Date: Wednesday, 26 February 2020 at 06:38
To: Harald Johannessen | L <H_Johannessen@granadavalley.com>, Alvaro Almengor

<alvaro.almengor@hatstone.com>

Subject: Re: Xela - Settlement meetings

Hello Harald

Thank you for your email.

As promised, please find attached a pdf copy of the authenticate and legalized power of attorney. The original is being couriered to Hatstone's office in Panama.

We trust this is in order, but if you have any queries then please let Alvaro and I know.

As mentioned in the previous email, in order for the meeting to proceed on Friday, it is a requirement from the Receiver that its changes to the boards of both Gabinvest and Lisa are accepted. Again, should a full and final settlement be concluded, then the boards can then be changed as you wish.

Please kindly confirm by return that the changes are accepted so that we may work together to progress this matter on Friday.

I look forward to hearing from you by return.

Best

Carl O'Shea Group Partner

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M +44 7700 326 852 Panama T +507 830 5300

M +507 6501 8530



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From: Harald Johannessen | L <H_Johannessen@granadavalley.com>

Date: Monday, 24 February 2020 at 14:41

To: Alvaro Almengor <alvaro.almengor@hatstone.com>

Cc: Carl O'Shea <carl.oshea@hatstone.com>

Subject: Xela - Settlement meetings

Guatemala, febrero 24 de 2020

Señores:

HATSTONE

Atn. Lic. Álvaro Almengor

Ref: Correo Electrónico de, febrero 24 de 2020

Respetados señores, en atención a su correo del día de hoy debo realizar las siguientes precisiones:

- El receiver debe de velar por los intereses de XELA y no exclusivamente por los intereses de la Señora Margarita Castillo, como ha sido el caso hasta la fecha.
- En desarrollo de la reunión en mención la firma HATSTONE, quedo debidamente informado que el mayor acreedor de LISA S.A., es la sociedad BDT INVESTMENTS.
- Que hoy en día se cuenta con la suficiente información para afirmar y probar que la señora Margarita ya fue pagada en su totalidad. Es obligación del receiver estudiar los documentos que así lo acreditan.
- Respecto de las acciones arbitrariamente desplegadas por ustedes a fin de recomponer la directiva de LISA y GABINVEST, se cometieron actos arbitrarios e ilegales a saber:

El nombramiento realizado por la Corte de Ontario, establece claramente dos situaciones:

1.El Recevier Appointment fue otorgado a KSV Kofman Inc., es decir que ÚNICAMENTE, la entidad KSV Kofman Inc, puede en nombre del Deudor (Xela Enterprises, Ltd) actuar como Administrador Judicial (Receiver) de los bienes, activos, propiedades del Deudor.

Con lo anterior, encontramos una clara LIMITACIÓN de actuación del señor Álvaro Almengor, en representación de la firma forense HATSTONE ABOGADOS, para tomar disposición sobre los activos del Deudor en Panamá. Para que dicho escenario legal pudiese haber tenido las resultas buscadas, el Administrador Judicial nombrado, tuvo que haber cumplido con las normas de derecho internacional necesarias para que su nombramiento fuera válido en la República de Panamá. Ya que la firma HATSTONE ABOGADOS y sus representantes tienen una falta de legitimidad activa para actuar en nombre del Administrador Judicial, situación que a la fecha aún persiste.

2.El Receiver Appointment claramente establece, que dicho nombramiento se ejecuta de conformidad con la 101 de los Tribunales de Justicia, R.S.O. 1990, c.C.43 (section 101 of the Courts of Justice Act, R.S.O. 1990, c. C.43).

Es decir, que el nombramiento del Administrador Judicial, es ejecutado en cumplimiento con una norma legal aplicable únicamente en la República de Canadá, y para que la misma sea ejecutada fuera del ámbito territorial de dicha corte, el Administrador Judicial nuevamente, debe cumplir con las normas de derecho internacional aplicables al caso, y que una autoridad con facultad y jurisdicción dentro de la República de Panamá, emita la orden que permita al Administrador Judicial ejecutar sus atribuciones.

Sumado a lo manifestado en precedencia, los artículos de incorporación de las sociedades LISA y GABINVEST, son claros en los requerimientos que se deben dar para el cambio de directores,

procedimiento que fue ignorado por la sociedad HATSTON, quien a su saber y entender consideró que bastaba con una orden del Receiver.

Ambas limitaciones las encontramos contenidas y sostenidas, bajo el amparo factico-jurídico, de que, aunque Xela Enterprises, sea la beneficiaria final de las entidades GABINVEST, S.A. y LISA, S.A., cada una de éstas son personas jurídicas distintas, con domicilios y regulaciones distintas, por lo que cumplir con las formalidades tanto intrínsecas como extrínsecas resulta eminentemente necesario para darle validez a los actos que el mismo Administrador Judicial contempla realizar.

No obstante, lo anterior todas las partes continúan con un ánimo conciliatorio, siempre y cuando la firma HATSTONE, cuente con un poder y/o mandato debidamente constituido bajo las leyes de la República de Panamá.

Sin otro particular

Harald Johannessen
Director - Presidente Lisa,
S.A.

El 24/02/2020, a la(s) 08:03, Carl O'Shea <carl.oshea@hatstone.com> escribió:

Dear Harald

Following on from the meeting on Friday 21 February in Bogota, I have now reported back to the Receiver and it is pleased to hear it was a constructive initial settlement meeting.

Could you please kindly forward this email to the other attendees including Juan and BDT.

At the meeting it was proposed to have a subsequent settlement meeting in Panama on Friday 28 February. I have passed on the request that the meeting be attended by Margarita and/or her representative. The parties are happy for Hatstone to attend the meeting being based in Panama. As mentioned any settlement offer will need to be considered by the Receiver and approved by the Canadian Court.

During the meeting we discussed the role and authority of the Receiver. As part of its role, the Receiver is responsible for understanding and securing the assets of Xela for the benefit of all of its stakeholders. The Receiver has been trying to do this, but has so far been prevented from doing so in relation to the two Panama companies, Gabinvest S.A and Lisa S.A.

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replaced entirely by the Receiver's representatives and three representatives are added to the board of Lisa S.A making it a mixed board.

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In order for the Friday meeting to take place there would appear to be two requirements: (1) the power of attorney executed by the Receiver in favour of Hatstone attending the settlement meetings is notarised and apostilled; and (2) the proposed changes to the two boards are accepted until settlement is reached or the matter is otherwise decided.

Without the above two requirements being satisfied then it would appear the next settlement meeting cannot take place and matters will need to be left to the Canadian Court on 24 March.

We are dealing with requirement number (1). Can you please confirm you will deal with requirement number (2). In relation to Gabinvest, requirement number (2) could be dealt with by Quiros withdrawing his resolution and for Lisa a new resolution could be agreed between the parties as soon as possible for submission.

If you have any queries then please do not hesitate to contact Alvaro or me.

All the best

Carl O'Shea Group Partner

Jersey T +44 1534 761 180

M +44 7700 326 852 Panama T +507 830 5300

M +507 6501 8530

<image001.png>

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From: Harald Johannessen | L
Sent: Monday, March 2, 2020 1:42 PM
To: alvaro.almengor@hatstone.com
Subject: Seguimiento a reunión propuesta
Attachments: _2. Protocolizacion de Acta de Reunion Extraordinaria de LISA,S.A..pdf; _2.1 Informe Complementario del Contador - LISA.pdf; _7. Nota Explicativa a los Informes Auditoría Villamorey.pdf; _8. Informe Auditoría Villamorey 2010-2009.pdf; _10. DJ - Asamblea Villamorey en Guatemala.pdf

Señores:

HATSTONE

Atn. Lic. Álvaro Almengor

Ref: Correo Electrónico de, febrero 24 de 2020

Respetados señores, en atención a sus correos recibidos, debo realizar las siguientes precisiones:

- Debemos fijar fecha para la segunda reunión, a realizarse en Panamá, en la semana comprendida entre el 2 de marzo y el 6 de marzo.
- Dentro de los distintos temas a tratar se debe evacuar como primer punto del día, el pago realizado a la señora Margarita Castillo, por parte de la Sociedad Villamorey con los dividendos de propiedad de Lisa S.A. (anexo documentación preliminar en relación al pago y en la reunión serán puestos a la vista el resto de documentación considerada confidencial)
- También es menester, de las partes y aun mayor del Receiver y/o sus representantes, discutir el tema de BDT Investments.
- Dando tramite a su solicitud, enviamos su mail con los comentarios realizados por el Receiver, respecto del señor Juan Guillermo Gutiérrez. En su respuesta el señor Gutiérrez, afirma haber dado respuesta a todas y cada una de las solicitudes elevadas por el receiver, de acuerdo a lo anterior, él mismo solicita lo siguiente:
 1. Una reunión previa con el Receiver en Canadá a la reunión de Panamá
 2. Un informe por escrito por parte de HASTON, de los supuestos requerimientos no atendidos de manera clara por parte del señor Gutiérrez
- Respecto de las modificaciones a las directivas de Lisa y Gabinvest, esto hará parte de los puntos a discutir en la reunión de Panamá.

Sin otro Particular

Harald Johannessen
Director – Presidente
Lisa, S.A.

From: Gracias por su correo.
Sent:
To: Alvaro Almengor <alvaro.almengor@hatstone.com>
Subject: Monday, March 2, 2020 1:54 PM
Harald Johannessen | L
Re: Seguimiento a reunión propuesta

Estimado Sr. Harald,

Vamos a compartir esta comunicación con Carl y el receiver.

Solo indicando que los pdfs adjuntos a su correo, ninguno me abrió. Parece que están dañados o algo parecido.

Mi persona o Carl estaremos dando respuesta prontamente. Para cuándo planean reunirse en Canadá? Comprendo que esta cita sería primero a la reunión en Panamá.

Saludos

Alvaro Almengor Group Partner
P +507 830 5300 M +507 6678 6126



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From: Harald Johannessen | L <H_Johannessen@granadavalley.com>
Date: Monday, 2 March 2020 at 13:42
To: Alvaro Almengor <alvaro.almengor@hatstone.com>

Subject: Seguimiento a reunión propuesta

1

Señores:

HATSTONE

Atn. Lic. Álvaro Almengor

Ref: Correo Electrónico de, febrero 24 de 2020

Respetados señores, en atención a sus correos recibidos, debo realizar las siguientes precisiones:

- Debemos fijar fecha para la segunda reunión, a realizarse en Panamá, en la semana comprendida entre el 2 de marzo y el 6 de marzo.
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(anexo documentación preliminar en relación al pago y en la reunión serán puestos a la vista el resto de documentación considerada confidencial)
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- Respecto de las modificaciones a las directivas de Lisa y Gabinvest, esto hará parte de los puntos a discutir en la reunión de Panamá.

Sin otro Particular

Harald Johannessen

Director – Presidente

Lisa, S.A.

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From: Harald Johannessen | L
Sent: Monday, March 2, 2020 1:57 PM
To: alvaro.almengor@hatstone.com
Subject: Seguimiento a reunion propuesta
Attachments: 2. Protocolizacion de Acta de Reunion Extraordinaria de LISA,S.A..pdf; 2.1 Informe Complementario del Contador - LISA.pdf; 7. Nota Explicativa a los Informes Auditoría Villamorey.pdf; 8. Informe Auditoría Villamorey 2010-2009.pdf; 10. DJ - Asamblea Villamorey en Guatemala.pdf

Señores:

HATSTONE

Atn. Lic. Álvaro Almengor

Ref: Correo Electrónico de, febrero 24 de 2020

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- Debemos fijar fecha para la segunda reunión, a realizarse en Panamá, en la semana comprendida entre el 2 de marzo y el 6 de marzo.
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- Respecto de las modificaciones a las directivas de Lisa y Gabinvest, esto hará parte de los puntos a discutir en la reunión de Panamá.

Sin otro Particular

Harald Johannessen
Director – Presidente Lisa,
S.A.

Subject:

Buenas
tardes,
Lic. Harald,

Alvaro Almengor
<alvaro.almengor@hatstone.com>
Monday, March 2, 2020 2:17 PM
Harald Johannessen | L
Re: Seguimiento a reunion propuesta

Acuso de recibido y en esta ocasión de forma correcta los pdfs adjuntos.

Le brindaré una traducción resumida a Carl y luego los documentos al Receiver. Ellos allá manejan sus traducciones de forma interna.

Abajo subrayo un punto que me parece que puede haber una mala interpretación. Hatstone no señala al Sr. Guitierrez de desatender instrucciones.

Nosotros somos portavoces de la petición de nuestro mandante (El receiver) que desea de forma temporal tener una junta directiva en ambas sociedades para llevar adelante las negociaciones, pero trabajando con ustedes. Luego las juntas directivas pueden ser restituidas a su forma original.

Comprendemos también que ese punto desean conversarlo el día de la reunión.

Estamos en pronto contacto.

Saludos

Alvaro Almengor Group Partner
P +507 830 5300 M +507 6678 6126



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From: Harald Johannessen | L <H_Johannessen@granadavalley.com>

Date: Monday, 2 March 2020 at 14:00

To: Alvaro Almengor <alvaro.almengor@hatstone.com>

Subject: Seguimiento a reunion propuesta

Señores:

HATSTONE

Atn. Lic. Álvaro Almengor

Ref: Correo Electrónico de, febrero 24 de 2020

Respetados señores, en atención a sus correos recibidos, debo realizar las siguientes precisiones:

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Sin otro Particular

Harald Johannessen
Director – Presidente Lisa,
S.A.

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2

Alvaro Almengor <alvaro.almengor@hatstone.com>

Wednesday, March 4, 2020 5:49 PM

Harald Johannessen | L

Andres Velez; Carl O'Shea

Re: Seguimiento a reunion propuesta

Cc:

Subject:

Estimado Sr. Harald y Dr. Pérez,

Esperemos esten bien.

Luego de las conversaciones sostenidas y de haber hecho las consultas al Receiver, debemos informar que el mismo no nos ha autorizado a sostener la reunión el día Viernes próximo en ciudad de Panamá, debido a no haber alcanzado un acuerdo para hacer los cambios de junta directiva de las sociedades Gabinvest y Lisa en la forma propuesta por el Receiver, previo a la reunión.

Cualquier consulta nos las pueden hacer por esta vía.

Dr. Perez mañana estará disponible a los teléfonos regulares a partir de las 11:30 a.m. debido a compromisos judiciales previos.

Saludos cordiales,

Alvaro Almengor Group Partner

P +507 830 5300 M +507 6678 6126



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From: Harald Johannessen | L <H_Johannessen@granadavalley.com>

Date: Monday, 2 March 2020 at 14:00

To: Alvaro Almengor <alvaro.almengor@hatstone.com>

Subject: Seguimiento a reunion propuesta

Señores:

HATSTONE

Atn. Lic. Álvaro Almengor

Ref: Correo Electrónico de, febrero 24 de 2020

Respetados señores, en atención a sus correos recibidos, debo realizar las siguientes precisiones:

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(anexo documentación preliminar en relación al pago y en la reunión serán puestos a la vista el resto de documentación considerada confidencial)
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Sin otro Particular

Harald Johannessen
 Director – Presidente Lisa,
 S.A.

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2

Harald Johannessen | L
 Monday, March 9, 2020 5:59 PM
 alvaro.almengor@hatstone.com

Subject: Correo electrónico de febrero 24, 2,020 **Attachments:** 2020 - 03 - 09
 - querella penal Margarita044.pdf

Señores:
 HATSTONE
 Atn. Lic. Álvaro Almengor

Respetados señores, como quiera que transcurrido el tiempo necesario y a la presente no se ha recibido respuesta sobre la solicitud de análisis de los pagos hechos por VILLAMOREY S.A. a la señora Margarita Castillo con dividendos de propiedad de LISA S.A., procedimos a presentar QUERELLA PENAL, con el objetivo de que sean las autoridades quien establezcan la veracidad del mismo. Adjunto a este correo copia de la misma.

He sido informado por el señor Juan Guillermo Gutiérrez, que usted manifiesta no tener conocimiento de las sentencias que en Panamá favorecen los intereses de LISA S.A., en los litigios en contra de la Sociedad VILLAMOREY S.A., he ordenado que dichas sentencias sean entregadas a usted de manera FORMAL el día de mañana.

Sin otro Particular,

Harald Johannessen
Director – Presidente
Lisa, S.A.

Alvaro Almengor <alvaro.almengor@hatstone.com>

Monday, March 9, 2020 6:06 PM

Harald Johannessen | L

Re: Correo electrónico de febrero 24, 2,020

Estimado Lic. Harald,

Gracias por su correo.

El documento anexo (Querella), es un documento privado que solo tienen acceso las partes en el proceso.

Si bien es cierto había oído del mismo, no tenía copia alguna hasta ahora que nos la prové. Las autoridades no me pueden brindar información de estos casos.

Tal como nos los solicita esperaré la documentación que me entregará mañana para hacer un solo reporte al Receiver.

Todo lo que de su parte nos presenta, nosotros lo reenviamos íntegro al Receiver.

Finalmente, si puede proveernos una copia de la Vista Fiscal o Resolución similar por parte de las autoridades panameñas, le agradezco de tal forma que podemos brindar una actualización completa del caso.

Saludos cordiales,

Alvaro Almengor

Group Partner

P +507 830 5300 M +507 6678 6126



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From: Harald Johannessen | L <H_Johannessen@granadavalley.com>

Date: Monday, 9 March 2020 at 17:00

To: Alvaro Almengor <alvaro.almengor@hatstone.com>

Subject: Correo electrónico de febrero 24, 2,020

Señores:

HATSTONE

Atn. Lic. Álvaro Almengor

Respetados señores, como quiera que transcurrido el tiempo necesario y a la presente no se ha recibido respuesta sobre la solicitud de análisis de los pagos hechos por VILLAMOREY S.A. a la señora Margarita Castillo con dividendos de propiedad de LISA S.A., procedimos a presentar QUERELLA PENAL, con el objetivo de que sean las autoridades quien establezcan la veracidad del mismo. Adjunto a este correo copia de la misma.

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Sin otro Particular,

Harald Johannessen
Director – Presidente
Lisa, S.A.

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2

Alvaro Almengor <alvaro.almengor@hatstone.com>

Tuesday, March 10, 2020 11:51 AM

Harald Johannessen | L

Re: Correo electrónico de febrero 24, 2,020

Estimado Lic. Harald,

Un saludo ante todo.

Olvidé ayer señalar que resolución de pago fue enviada al Receiver, la semana pasada.

Por el momento nos comenta que su posición no cambia. En un correo corto nos indicó esto.

Quedo en espera de cualquier otra documentación que deseen enviar.

Saludos cordiales,

Alvaro Almengor Group Partner

P +507 830 5300 M +507 6678 6126



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From: Harald Johannessen | L <H_Johannessen@granadavalley.com>

Date: Monday, 9 March 2020 at 17:00

To: Alvaro Almengor <alvaro.almengor@hatstone.com>

Subject: Correo electrónico de febrero 24, 2,020

Señores:

HATSTONE

Atn. Lic. Álvaro Almengor

Respetados señores, como quiera que transcurrido el tiempo necesario y a la presente no se ha recibido respuesta sobre la solicitud de análisis de los pagos hechos por VILLAMOREY S.A. a la señora Margarita Castillo con dividendos de propiedad de LISA S.A., procedimos a presentar QUERELLA PENAL, con el objetivo de que sean las autoridades quien establezcan la veracidad del mismo. Adjunto a este correo copia de la misma.

He sido informado por el señor Juan Guillermo Gutiérrez, que usted manifiesta no tener conocimiento de las sentencias que en Panamá favorecen los intereses de LISA S.A., en los litigios en contra de la Sociedad VILLAMOREY S.A., he ordenado que dichas sentencias sean entregadas a usted de manera FORMAL el día de mañana.

Sin otro Particular,

Harald Johannessen

Director – Presidente Lisa,
S.A.

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2

Harald Johannessen | L
Tuesday, March 10, 2020 12:18 PM
alvaro.almengor@hatstone.com
SENTENCIAS PANAMA
SENTENCIAS PANAMA.pdf

Attachments:

HATSTONE

Atn. Lic. Álvaro Almengor

Ref: Correo Electrónico de, febrero 24 de 2020

Respetados señores he sido informado por el señor Juan Guillermo Gutiérrez, que en su informe el Reciever, indica que la firma HASTON, muy a pesar, de haber solicitado a nosotros el status de los diferentes litigios que cursan en Panamá contra la sociedad VILLAMOREY S.A.; nosotros LISA S.A., no hemos dado cumplimiento a sus requerimientos.

Dicha afirmación merece mis siguientes comentarios:

1. Nunca he recibido solicitud de HATSTON en tal sentido.
2. ADJUNTO A ESTE CORREO ENCONTRARA VARIAS RESOLUCIONES, TODAS FAVORABLES A LISA S.A.
3. Nuevamente me pongo a sus órdenes para cualquier información y/o acción que redunde en una solución a tan lamentable conflicto entre Margarita y Juan Guillermo.

Sin otro Particular,

Harald Johannessen
Director – Presidente Lisa,
S.A.

From: Alvaro Almengor <alvaro.almengor@hatstone.com>
Sent: Tuesday, March 10, 2020 12:36 PM
To: Harald Johannessen | L
Subject: Re: SENTENCIAS PANAMA
Estimado Lic. Harald,

Vamos a reenviar esta información íntegramente al Receiver.

Deseamos aclarar que en cuanto a información judicial nosotros hemos enviado todo lo que hemos tenido en nuestras manos en incluso conversado con ustedes. Debe hacer falta alguna otra información empresarial que el Receiver está esperando.

Voy a revisar todos los correos de Carl, principalmente y vuelvo a usted para detallar cualquier documento de la sociedad que se esté requiriendo a efecto de evitar malos entendidos.

Saludos

Alvaro Almengor Group Partner

P +507 830 5300 M +507 6678 6126



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From: Harald Johannessen | L <H_Johannessen@granadavalley.com>

Date: Tuesday, 10 March 2020 at 11:29

To: Alvaro Almengor <alvaro.almengor@hatstone.com>

Subject: SENTENCIAS PANAMA

HATSTONE

Atn. Lic. Álvaro Almengor

Ref: Correo Electrónico de, febrero 24 de 2020

Respetados señores he sido informado por el señor Juan Guillermo Gutiérrez, que en su informe el Reciever, indica que la firma HASTON, muy a pesar, de haber solicitado a nosotros el status de los diferentes litigios que cursan en Panamá contra la sociedad VILLAMOREY S.A.; nosotros LISA S.A., no hemos dado cumplimiento a sus requerimientos.

Dicha afirmación merece mis siguientes comentarios:

1. Nunca he recibido solicitud de HATSTON en tal sentido.
2. ADJUNTO A ESTE CORREO ENCONTRARA VARIAS RESOLUCIONES, TODAS FAVORABLES A LISA S.A.
3. Nuevamente me pongo a sus órdenes para cualquier información y/o acción que redunde en una solución a tan lamentable conflicto entre Margarita y Juan Guillermo.

Sin otro Particular,

Harald Johannessen
Director – Presidente Lisa,
S.A.

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From: Harald Johannessen | L
Sent: Tuesday, March 10, 2020 1:04 PM
To: alvaro.almengor@hatstone.com
Subject: Correo electrónico del 10 de Marzo

Señores:
HATSTONE
Atn. Lic. Álvaro Almengor
Ref.: Correo Electrónico de, MARZO 10 de 2020

Respetados señores, acuso recibo de su escueto y lánguido correo donde me informa ..." Olvidé ayer señalar que resolución de pago fue enviada al Receiver, la semana pasada Por el momento nos comenta que su posición no cambia" ..., debo manifestarle que toda actuación al interior de un proceso judicial debe de contar con una motivación. De la manera más respetuosa solicito se me indique la motivación que tiene el receiver para tomar semejante posición sobre una decisión de fondo.

Atentamente,

Harald Johannessen
Director – Presidente
Lisa, S.A.

From: Alvaro Almengor <alvaro.almengor@hatstone.com>
Sent: Tuesday, March 10, 2020 1:05 PM
To: Harald Johannessen | L
Subject: Re: SENTENCIAS PANAMA

Buenas tardes,

Estoy leyendo el reporte.

El juicio de los casi USD25m es una referencia que hizo la firma Amsterdam, pienso que es un juicio nuevo que está en el juzgado 6 de Cto Civil, según información que nos facilitó el Dr. Pérez, en la reunión en Bogotá. Asumo que esta es la parte del reporte que está creando inconveniente:

*16. Lisa's counsel did not provide a copy of the Alleged Panamanian Judgement, despite the Receiver's request for it, and the Receiver's Panamanian counsel, Hatstone Group ("**Hatstone**"), has been unable to locate it in its searches of Panamanian court proceedings or any proceedings connected therewith;*

Sabemos que hay dos juicios, uno por alrededor de USD18m en el Juzgado 12 desde el 2012, eso está bien documentado incluso en el primer reporte del receiver del año pasado. Y existe un nuevo juicio donde la suma asciende a casi USD25m, acorde a reportes de Amsterdam y el Dr. Pérez. Resalto que el día de la reunión en Bogotá no conocíamos bien sobre el nuevo juicio del juzgado sexto. Fue el Dr. Perez el que me explica con claridad sobre este asunto.

De este nuevo juicio (radicado en el Juz. 6) no tengo documentación alguna, sin embargo luego de la reunión Bogotá y luego de nuestros días libres, hice el comentario al receiver sobre la existencia de un nuevo juicio de forma corta pero sin sustento alguno todavía.

Si usted me puede facilitar información de este nuevo juicio civil ubicado en el Juzgado Sexto e interpuesto de forma reciente, le agradezco de tal forma que puedo hacer las aclaraciones pertinentes y separarlo del juicio del 2012 para que no hayan confusiones.

Saludos cordiales,

Alvaro Almengor Group Partner
P +507 830 5300 M +507 6678 6126

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From: Harald Johannessen | L <H_Johannessen@granadavalley.com>

Date: Tuesday, 10 March 2020 at 11:29

To: Alvaro Almengor <alvaro.almengor@hatstone.com>

Subject: SENTENCIAS PANAMA

HATSTONE

Atn. Lic. Álvaro Almengor

Ref: Correo Electrónico de, febrero 24 de 2020

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Sin otro Particular,

Harald Johannessen
Director – Presidente Lisa,
S.A.

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From: Alvaro Almengor <alvaro.almengor@hatstone.com>
Sent: Tuesday, March 10, 2020 3:09 PM
To: Harald Johannessen | L
Subject: Re: Correo electrónico del 10 de Marzo
Estimado Lic. Harald,

Solo comunicaba la respuesta recibida.

Atendiendo a su correo vamos hacer transmitir la pregunta que nos hace.

En cuanto tengamos respuesta volvemos a usted.

Saludos

Alvaro Almengor Group Partner
P +507 830 5300 M +507 6678 6126



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From: Harald Johannessen | L <H_Johannessen@granadavalley.com>
Date: Tuesday, 10 March 2020 at 12:12
To: Alvaro Almengor <alvaro.almengor@hatstone.com>
Subject: Correo electrónico del 10 de Marzo

Señores:
HATSTONE

Atn. Lic. Álvaro Almengor

Ref.: Correo Electrónico de, MARZO 10 de 2020

Respetados señores, acuso recibo de su escueto y lánguido correo donde me informa ..." Olvidé ayer señalar que resolución de pago fue enviada al Receiver, la semana pasada Por el momento nos comenta que su posición no cambia" ..., debo manifestarle que toda actuación al interior de un proceso judicial debe de contar con una motivación. De la manera más respetuosa solicito se me indique la motivación que tiene el receiver para tomar semejante posición sobre una decisión de fondo.

Atentamente,

Harald Johannessen

Director – Presidente

Lisa, S.A.

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From: Harald Johannessen | L <H_Johannessen@granadavalley.com>
Sent: Wednesday, March 11, 2020 10:24 AM
To: Alvaro Almengor
Subject: Correo electrónico del 24 de Febrero del 2,020

Señores:

HATSTONE

Atn. Lic. Álvaro Almengor

Ref: Correo Electrónico de, febrero 24 de 2020

Respetados señores, en atención a su correo del día 10, hoy debo realizar las siguientes precisiones, como quiera que el informe que pretende presentar el reciever y los correos suyos demuestran desinformación:

No obstante haber solicitado por medio suyo una reunión del reciever con el señor Juan Guillermo Gutierrez, no hemos recibido respuesta a la misma. Situación que resulta bastante exótica por decir lo menos.

En la jurisdicción panameña cursan y/o cursaron varios procesos civiles a saber que son relevantes para los intereses de los acreedores de LISA S.A.:

1. Juzgado 11 LISA VS VILLAMOREY, resoluciones las cuales fueron aportadas en PDF, ayer a ustedes.
2. Juzgado 12 BDT VS LISA, con sentencia condenatoria a favor de BDT Y **AUN CON EL CONOCIMIENTO DE LA SENTENCIA LA CONTRAPARTE HA ACUSADO A LISA DE ACTOS FRAUDULENTOS.**
3. Juzgado 6 LISA VS VILLAMOREY, demanda de daños y perjuicios.
4. Demanda de Rendición de cuentas LISA VS VILLAMOREY en reparto.

Se hace necesario fijar fecha y hora para reunión donde aportaremos las copias autenticadas de todas y cada una de las actuaciones de los procesos relacionados en precedencia.

De no fijarse fecha para la celebración de dicha reunión, consideramos negligente la posición del reciever como de los abogados con poder y procederemos con las acciones judiciales, con el objetivo de proteger tano a LISA como a los demás acreedores,

Harald Johannessen
Director - Presidente
Lisa, S.A.

From: Alvaro Almengor <alvaro.almengor@hatstone.com>
Sent: Wednesday, March 11, 2020 11:03 AM
To: Harald Johannessen | L
Subject: Re: Correo electrónico del 24 de Febrero del 2,020

Estimado Lic. Harald,

Esperamos se encuentre bien.

Reiteramos que el receiver tiene información de los procesos en el Juzgado 11 y 12.

La demanda del Juzgado 6, recién hace pocas semanas tuvimos conocimiento de la misma por comentarios del Dr. Perez, sin embargo resaltamos que no tenemos documento alguno en nuestras manos. Sobre la existencia misma ya le informamos al Receiver.

Creemos también que la firma Amsterdam & Partners LLC mencionó este proceso (el del Juz. 6to) en una comunicación con Receiver (en carta fechada el 8 de Nov. de 2019). El Receiver le pidió documentación de la misma y creemos también que no fue aportada en su momento y de allí deviene el reporte del Receiver.

En el punto 4 nos menciona que hay una nueva demanda civil en reparto, resaltamos que es la primera vez que tenemos noticias de ella.

Enfatizo que no hemos desinformado al Receiver sobre ningún aspecto, todo lo que recibimos de su parte lo reenviamos puntualmente.

Considero también que toda la documentación que nos presenta y menciona debe ser entregada a sus abogados en Ontario para que ellos tomen las medidas respectivas en el proceso canadiense en ciernes. Nuestro apoderamiento era puntualmente para la reunión del pasado 28 de febrero y pocas comunicaciones estamos recibiendo el Receiver.

Nosotros vamos a reiterar la petición de sostener una reunión entre el Sr. Juan y el Receiver en Canadá.

Saludos

Alvaro Almengor Group Partner
P +507 830 5300 M +507 6678 6126

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From: Harald Johannessen | L <H_Johannessen@granadavalley.com>

Date: Wednesday, 11 March 2020 at 09:24

To: Alvaro Almengor <alvaro.almengor@hatstone.com>

Subject: Correo electrónico del 24 de Febrero del 2,020

Señores:

HATSTONE

Atn. Lic. Álvaro Almengor

Ref: Correo Electrónico de, febrero 24 de 2020

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Harald Johannessen
Director - Presidente
Lisa, S.A.

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From: Alvaro Almengor <alvaro.almengor@hatstone.com>
Sent: Wednesday, March 11, 2020 5:52 PM
To: Harald Johannessen | L
Subject: Re: Correo electrónico del 24 de Febrero del 2,020

Buenas tardes Lic. Harald,

Primeramente confirmamos que hemos remitido sus correos con sus adjuntos al Receiver como nos lo ha solicitado y a fin de minimizar cualquier mal entendido. El Receiver allá maneja sus traducciones.

Segundo, reiteramos la petición de reunión entre el Sr. Juan y el Receiver en Canadá y paso a copiarle en inglés textualmente la respuesta para evitar de igual forma cualquier error en la traducción:

I am not prepared to meet with Juan in the absence of their agreement to our Board changes. We will be asking for a contempt order. You can tell them that.

En resumen el Receiver reitera su solicitud de cambios en la Junta Directiva propuesta anteriormente.

Quedamos atentos.

Saludos

Alvaro Almengor Group Partner
P +507 830 5300
M +507 6678 6126



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From: Harald Johannessen | L <H_Johannessen@granadavalley.com>

Date: Wednesday, 11 March 2020 at 09:24

1

To: Alvaro Almengor <alvaro.almengor@hatstone.com>

Subject: Correo electrónico del 24 de Febrero del 2,020

Señores:

HATSTONE

Atn. Lic. Álvaro Almengor

Ref: Correo Electrónico de, febrero 24 de 2020

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Director - Presidente
Lisa, S.A.

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2

From: Harald Johannessen | L <H_Johannessen@granadavalley.com>
Sent: Thursday, March 12, 2020 9:18 AM
To: Alvaro Almengor
Subject: Respetuosa solicitud

Señores:
 HATSTONE
 Atn. Lic. Alvaro Almengor

Respetado Licenciado Almengor , acusó recibo de su más reciente correo, con altísima preocupación! Frente a lo manifestado por el receiver en el sentido de no “estar preparado para reunirse con Juan Guillermo Gutierrez “; me surgen las siguientes inquietudes:

1. No está preparado documentalmente? Situación. Objetiva subsanable con la reunión solicitada !
2. No está preparado emocionalmente? Situación subjetiva, inaceptable al interior de un proceso judicial !

Solicito que de la manera más expedita se sirva a resolver mis inquietudes.

Sin otro particular

Harald Johannessen
 Director - Presidente
 Lisa, S.A.

From: Buen día ante todo.
Sent:
To: Alvaro Almengor <alvaro.almengor@hatstone.com>
Subject: Thursday, March 12, 2020 9:32 AM
 Harald Johannessen | L
 Re: Respetuosa solicitud

Estimado Lic. Harald,

De las conversaciones sostenidas con el Receiver anteriormente puedo concluir que ellos desean participar directamente en las juntas directivas de ambas sociedades para sostener reuniones, en este caso la reunión en Canadá.

Con gusto puedo comunicar su respuesta a esta propuesta o su contrapropuesta.

Saludos,

Alvaro Almengor
 Group Partner
 P +507 830 5300
 M +507 6678 6126

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On 12/03/2020, 08:18, "Harald Johannessen | L" <H_Johannessen@granadavalley.com> wrote:

Señores:
 HATSTONE
 Atn. Lic. Alvaro Almengor

Respetado Licenciado Almengor , acusó recibo de su más reciente correo, con altísima preocupación! Frente a lo manifestado por el receiver en el sentido de no “estar preparado para reunirse con Juan Guillermo Gutierrez “; me surgen las siguientes inquietudes:

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1

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Sin otro particular

Harald Johannessen
Director - Presidente
Lisa, S.A.

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From: Harald Johannessen | L
Sent: Tuesday, March 17, 2020 3:52 PM
To: alvaro.almengor@hatstone.com
Subject: Correo electrónico de Febrero 24, 2020

Señores:
HATSTONE
Atn. Lic. Álvaro Almengor
Ref.: Correo Electrónico de, febrero 24 de 2020

Respetados señores, frente a la insistencia por parte de ustedes y con el torticero objetivo de pretender hacer ver, como un incumplimiento por parte nuestra, de la recomposición de la junta directiva de las sociedades LISA S.A. Y GABINVEST, es necesario hacer las siguientes aclaraciones:

1. La firma HATSTONE, en enero sostuvo una reunión (tal y como nos informó el Licenciado Almengor) con los apoderados de LISA S.A., QUIROZ GOVEA ABOGADOS, informando ser los apoderados del Receiver (sin poner de presente el poder judicial que así los acreditaba), solicitando información sobre los procesos judiciales que se adelantaban contra la sociedad VILLAMOREY y/o sus accionistas. Dicha información fue suministrada en detalle por los apoderados de LISA S.A.; jamás y nunca se solicitó cambio alguno sobre cambios en las directivas de la sociedad.
2. Días después, el Licenciado Almengor presento ante el registro público panameño, acta fraudulenta, donde se hacían cambios de directivos de LISA S.A., por los siguientes puntos a saber:
 - Para esta fecha no contaba con un poder judicial.
 - Un notario dio fe pública de una asamblea inexistente.
 - Obvio todos y cada uno de los requerimientos contractuales, necesarios para la realización de dichos cambios.
3. En la reunión sostenida en Bogotá se fijó hora y fecha para una reunión de conciliación y a posteriori nos informó que el Receiver había ordenado la cancelación de la misma.
4. A la fecha no hemos recibido respuesta alguna sobre los documentos que acreditan el pago a la señora Margarita Castillo.

Solicitamos se fije fecha para reunión de conciliación, de lo contrario procederemos a Denunciar los hechos desplegados por parte de la firma HATSTONE, en la República de Panamá.

Sin otro particular,

Harald Johannessen
Director – Presidente
Lisa, S.A.

From: Alvaro Almengor <alvaro.almengor@hatstone.com>
Sent: Tuesday, March 17, 2020 4:43 PM
To: Harald Johannessen | L
Subject: Re: Correo electrónico de Febrero 24, 2,020
 Estimado Lic. Harald,

Buenas tardes.

Un saludo ante todo.

Nosotros no le hemos acusado de incumplimiento. Estamos aún esperando su respuesta si acepta o no las modificaciones temporales de juntas directiva. Es una petición del Receiver para sostener la reunión-conciliación.

Las modificaciones de Junta Directivas es para trabajar en conjunto ambas partes y es una modificación temporal, nosotros no pretendemos quedarnos más tiempo de lo que dure esta negociación. Luego las Juntas pueden regresar a su posición inicial.

En cuanto a la reunión en Bogotá, la misma no prosiguió con un acuerdo por peticiones de su parte, dado que nos solicitaron el poder apostillado, trámite que estaba en curso en esos días y por la premura de tiempo no se pudo llevar a Bogotá.

Reiteramos la última comunicación del Receiver de sostener la reunión en Canadá bajo la premisa de que ellos desean hacer modificaciones a las juntas directivas de forma temporal.

Actualmente la reunión-conciliación es mejor hacerse en Canadá. Esto debido a la premura de tiempo y al hecho de que Panamá restringió la entrada de extranjeros por el Coronavirus.

Quedo atento a su respuesta.

Alvaro Almengor Group Partner
 P +507 830 5300 M +507 6678 6126



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From: Harald Johannessen | L <H_Johannessen@granadavalley.com>

Date: Tuesday, 17 March 2020 at 14:52

To: Alvaro Almengor <alvaro.almengor@hatstone.com>

Subject: Correo electrónico de Febrero 24, 2,020

Señores:

HATSTONE

Atn. Lic. Álvaro Almengor

Ref.: Correo Electrónico de, febrero 24 de 2020

Respetados señores, frente a la insistencia por parte de ustedes y con el torticero objetivo de pretender hacer ver, como un incumplimiento por parte nuestra, de la recomposición de la junta directiva de las sociedades LISA S.A. Y GABINVEST, es necesario hacer las siguientes aclaraciones:

1. La firma HATSTONE, en enero sostuvo una reunión (tal y como nos informó el Licenciado Almengor) con los apoderados de LISA S.A., QUIROZ GOVEA ABOGADOS, informando ser los apoderados del Receiver (sin poner de presente el poder judicial que así los acreditaba), solicitando información sobre los procesos judiciales que se adelantaban contra la sociedad VILLAMOREY y/o sus accionistas. Dicha información fue suministrada en detalle por los apoderados de LISA S.A.; jamás y nunca se solicitó cambio alguno sobre cambios en las directivas de la sociedad.
2. Días después, el Licenciado Almengor presento ante el registro público panameño, acta fraudulenta, donde se hacían cambios de directivos de LISA S.A., por los siguientes puntos a saber:
 - Para esta fecha no contaba con un poder judicial.
 - Un notario dio fe pública de una asamblea inexistente.
 - Obvio todos y cada uno de los requerimientos contractuales, necesarios para la realización de dichos cambios.
3. En la reunión sostenida en Bogotá se fijó hora y fecha para una reunión de conciliación y a posteriori nos informó que el Receiver había ordenado la cancelación de la misma.
4. A la fecha no hemos recibido respuesta alguna sobre los documentos que acreditan el pago a la señora Margarita Castillo.

Solicitamos se fije fecha para reunión de conciliación, de lo contrario procederemos a Denunciar los hechos desplegados por parte de la firma HATSTONE, en la República de Panamá.

Sin otro particular,

Harald Johannessen
 Director – Presidente
 Lisa, S.A.

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From: Harald Johannessen | L <H_Johannessen@granadavalley.com>
Sent: Tuesday, March 17, 2020 6:02 PM
To: Alvaro Almengor
Subject: Ref. Correo electrónico del día de hoy

Señores:
HATSTONE
Ate. Lic. Alvaro Almengor

Con el mismo respeto de siempre y habituado, como ya estoy después de tantos años de trasegar en este larguísimo, extenso y ridículo proceso judicial, debo acudir a usted, pues en uno de sus últimos correos entendí, que el señor receiver no se encontraba preparado para la reunión que usted sugiere en el día de hoy en la ciudad de Toronto, Canadá.

Procederé de manera inmediata a convocar a los señores Juan Gutierrez en representación de Xela y al señor Juan Andres Gutierrez en representación de BDT; pues debo aclararle que yo me encuentro dispuesto a participar de la misma sin ninguna dilación.

Atentamente,

Harald Johannessen
Director - Presidente
Lisa, S.A.

From: Alvaro Almengor <alvaro.almengor@hatstone.com>
Sent: Tuesday, March 17, 2020 6:17 PM
To: Harald Johannessen | L
Subject: Re: Ref. Correo electrónico del día de hoy
Estimado Lic. Harald,

Comprendo su desgaste en el proceso. Nosotros queremos apoyar en lo más que podamos.

Antes de hacer cualquier comunicación debe confirmarnos si desean hacer los cambios de las juntas directivas en las sociedades panameñas, que será de manera temporal.

Es la condición que solicita el receiver para realizar la reunión en Canadá.

Aguardo su respuesta para comunicar al receiver.

Saludos

Alvaro Almengor Group Partner
P +507 830 5300 M +507 6678 6126



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From: Harald Johannessen | L <H_Johannessen@granadavalley.com>
Date: Tuesday, 17 March 2020 at 17:03
To: Alvaro Almengor <alvaro.almengor@hatstone.com>

Subject: Ref. Correo electrónico del día de hoy

1

Señores:

HATSTONE

Ate. Lic. Alvaro Almengor

Con el mismo respeto de siempre y habituado, como ya estoy después de tantos años de trasegar en este larguísimo, extenso y ridículo proceso judicial, debo acudir a usted, pues en uno de sus últimos correos entendí, que el señor receiver no se encontraba preparado para la reunión que usted sugiere en el día de hoy en la ciudad de Toronto, Canadá.

Procederé de manera inmediata a convocar a los señores Juan Gutierrez en representación de Xela y al señor Juan Andres Gutierrez en representación de BDT; pues debo aclararle que yo me encuentro dispuesto a participar de la misma sin ninguna dilación.

Atentamente,

Harald Johannessen

Director - Presidente

Lisa, S.A.

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From: Harald Johannessen | L
Sent: Wednesday, March 18, 2020 1:07 PM
To: alvaro.almengor@hatstone.com
Subject: En respuesta a su correo del día 17 de Marzo

Señores:
HATSTONE
Atn. Lic. Álvaro Almengor

Respetados señores, tal y como se lo manifesté a ustedes de manera clara y contundente, en la reunión de Bogotá, estamos en la disposición de implementar todo lo que sea necesario para llegar a un acuerdo con Margarita.

Dicho lo anterior, sugiero el siguiente orden del día para la reunión a realizarse en Toronto Canadá:

1. Estudio de los documentos que acreditan el pago a Margarita.
2. Recomposición de los directores de GABINVEST y LISA S.A.
3. Informe de estado de cuenta de BDT y LISA, S.A.
4. Selección de agente residente y apoderados judiciales en los procesos que cursan en Panamá.

Sin otro particular,

Harald Johannessen
Director – Presidente
Lisa, S.A.

From:
Sent: Gracias por su correo.
To:
Subject: Alvaro Almengor <alvaro.almengor@hatstone.com>
Attachments: Wednesday, March 18, 2020 1:28 PM
 Harald Johannessen | L
 Re: En respuesta a su correo del día 17 de Marzo
 Appointment of new directors of Gabinvest, S.A. (the "Company") - Important -
 Ksvk-3002; Appointment of new directors of Lisa, S.A. (the "Company") - Important
 - Ksvk-3002

Estimado Lic. Harald,

Debo repetir lo que me ha comunicado el Receiver, la reunión en Canadá solo se va a sostener si las juntas directivas son aceptadas tal como ellos propusieron en Registro Público en el mes de enero. En tal sentido de forma provisional sugerimos se haga lo siguiente:

1. Que ustedes registren y restauren la junta directiva de Gabinvest, S.A. tal como lo hizo el Receiver en el mes de enero; y
2. Que ustedes registren y restauren la junta directiva combinada de Lisa, S.A., (con seis miembros), tal como lo hizo el Receiver en el mes de enero;

Los cambios de juntas directivas mencionados son temporales. De hacerse de esta forma el Receiver sostendría la reunión donde se pueden discutir los puntos propuestos por ustedes y los puntos que proponga el Receiver entre ellos los descritos en los correos adjuntos enviados en el mes de enero.

Confirmando que en dicha reunión ustedes pueden acordar perfectamente la recomposición de las juntas directivas a favor de ustedes y designación final del agente residente.

Saludos,

Alvaro Almengor Group Partner

P +507 830 5300 M +507 6678 6126



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From: Harald Johannessen | L <H_Johannessen@granadavalley.com>

Date: Wednesday, 18 March 2020 at 12:07

To: Alvaro Almengor <alvaro.almengor@hatstone.com>

Subject: En respuesta a su correo del día 17 de Marzo

Señores:

HATSTONE

Atn. Lic. Álvaro Almengor

Respetados señores, tal y como se lo manifesté a ustedes de manera clara y contundente, en la reunión de Bogotá, estamos en la disposición de implementar todo lo que sea necesario para llegar a un acuerdo con Margarita.

Dicho lo anterior, sugiero el siguiente orden del día para la reunión a realizarse en Toronto Canadá:

1. Estudio de los documentos que acreditan el pago a Margarita.
2. Recomposición de los directores de GABINVEST y LISA S.A.
3. Informe de estado de cuenta de BDT y LISA, S.A.
4. Selección de agente residente y apoderados judiciales en los procesos que cursan en Panamá.

Sin otro particular,

Harald Johannessen
Director – Presidente
Lisa, S.A.

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2

Harald Johannessen | L

De: Harald Johannessen | L
Enviado el: lunes, 30 de marzo de 2020 09:34
Para: 'alvaro.almengor@hatstone.com' **Asunto:** Solicitud de aclaración e información

Señores:
 HATSTONE
 Atn. Lic. Álvaro Almengor
 Ref.: SOLICITUD DE ACLARACION E INFORMACION

Respetados señores, después de un minucioso análisis por parte de nuestro equipo jurídico, hemos hecho algunos hallazgos documentales, en los que se evidencian algunas inconsistencias por parte de ustedes, razón por la cual solicitamos se nos aclaren.

HECHOS JURIDICAMENTE RELEVANTES.

1. En el mes de enero la firma HATSTONE, presenta un cambio de directores, en el registro público panameño, en las sociedades GABINVEST Y LISA S.A.
2. El día 18 de febrero, se acusa recibo de Poder Judicial, por parte de la firma HATSTONE, poder que no tenía ni firma ni fecha.
3. El día 21, a las 7:30 am, se recibe Poder firmado el día 14 de febrero por Robert Kofman, dicho documento carecía de los pases de ley.
4. El día 26 se recibe por parte de HATSTONE, esta vez Poder Judicial, suscrito por el señor Noah Goldstein.

ACLARACION SOLICITADA.

1. Si en el mes de enero no se contaba con un Poder para actuar, como se explica que la firma HATSTONE realizó todas y cada una de las maniobras para implementar cambios a las directivas de las sociedades antes mencionadas.
2. Como se explica el hecho de que se recibió un Poder el día 18 sin firma y fecha y luego el 21 se recibe el mismo Poder, esta vez con fecha del 14 de febrero y firmado.
3. Se sirva a aclarar cuantos poderes ha recibido HATSTONE y suscritos por quien.

Sin otro particular

Harald Johannessen
Director - Presidente

1

Harald Johannessen | L

De: Alvaro Almengor <alvaro.almengor@hatstone.com>
Enviado el: lunes, 30 de marzo de 2020 11:04
Para: Harald Johannessen | L
Asunto: Re: Solicitud de aclaración e información

Estimado Sr. Harald,

Espero se encuentre bien.

Como hemos informado en ocasiones anteriores, todas las gestiones se realizan bajo la puntual instrucción del Receiver de Xela en Canadá.

Los poderes para las reuniones se hicieron por solicitud de ustedes y el Receiver los confeccionó y nos los otorgó.

En resumen todas las acciones de Hatstone son bajo la dirección del Receiver y a su vez ellos se encargan de hacer los reportes correspondientes a la Corte bajo la ley de Ontario

Esperamos haber respondido a sus interrogantes.

Saludos

Alvaro Almengor Group Partner
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From: Harald Johannessen | L <H_Johannessen@granadavalley.com>

Date: Monday, 30 March 2020 at 10:34

To: Alvaro Almengor <alvaro.almengor@hatstone.com>

Subject: Solicitud de aclaración e información

Señores:

HATSTONE

Atn. Lic. Álvaro Almengor

Ref.: SOLICITUD DE ACLARACION E INFORMACION

Respetados señores, después de un minucioso análisis por parte de nuestro equipo jurídico, hemos hecho algunos hallazgos documentales, en los que se evidencian algunas inconsistencias por parte de ustedes, razón por la cual solicitamos se nos aclaren.

HECHOS JURIDICAMENTE RELEVANTES.

1. En el mes de enero la firma HATSTONE, presenta un cambio de directores, en el registro público panameño, en las sociedades GABINVEST Y LISA S.A.
2. El día 18 de febrero, se acusa recibo de Poder Judicial, por parte de la firma HATSTONE, poder que no tenía ni firma ni fecha.
3. El día 21, a las 7:30 am, se recibe Poder firmado el día 14 de febrero por Robert Kofman, dicho documento carecía de los pases de ley.
4. El día 26 se recibe por parte de HATSTONE, esta vez Poder Judicial, suscrito por el señor Noah Goldstein.

ACLARACION SOLICITADA.

1. Si en el mes de enero no se contaba con un Poder para actuar, como se explica que la firma HATSTONE realizo todas y cada una de las maniobras para implementar cambios a las directivas de las sociedades antes mencionadas.

2. Como se explica el hecho de que se recibió un Poder el día 18 sin firma y fecha y luego el 21 se recibe el mismo Poder, esta vez con fecha del 14 de febrero y firmado.
3. Se sirva a aclarar cuantos poderes ha recibido HATSTONE y suscritos por quien.

Sin otro particular

Harald Johannessen
Director - Presidente

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Guatemala, 28 abril de 2020.

SEÑOR
JUAN GUILLERMO GUTIERREZ
PRESIDENTE XELA ENTERPRISES LTD

Respetado señor Gutiérrez.

Yo, HARALD JOHANNESSEN HALS, ciudadano guatemalteco, como Presidente de la Junta Directiva de LISA, S.A., entidad constituida de conformidad con las leyes de la República de Panamá, acuso recibo de su solicitud del día 22 de abril del 2020 y de acuerdo con su solicitud procedo a dar trámite a la misma, dentro de los principios de celeridad y seguridad jurídica congruentes con el marco constitucional de la República de Panamá.

ANÁLISIS JURÍDICO I.

Si bien entendemos que existe una intervención ordenada por un juez de Toronto Canadá a la sociedad XELA, accionista principal de la sociedad LISA S.A, existen algunas limitaciones de carácter jurídico para hacer la misma extensiva a la sociedad LISA S.A. Limitaciones que entraremos a analizar a continuación

TERRITORIALIDAD En nuestro ordenamiento jurídico rige a la hora de realizar la aplicación de la ley, como regla general, el denominado principio de territorialidad de la ley, esto significa que la ley se va a aplicar a los hechos que se cometen dentro del territorio del Estado.

EXTRATERRITORIALIDAD Se llama extraterritorialidad a la ficción jurídica, admitida en el Derecho Internacional, por la cual un edificio o un terreno se considera en país extranjero, como una prolongación del país propietario, como en el caso de las embajadas, consulados, bases militares y, en ciertos aspectos, los buques. Tal como se entiende en el precepto en precedencia, el mismo no aplica a entidades de carácter empresarial.

MECANISMOS DE COOPERACIÓN JUDICIAL INTERNACIONAL Se entiende por Cooperación Judicial Internacional la colaboración o asistencia mutua entre Estados, para adelantar diligencias necesarias en el desarrollo de un proceso fuera del territorio del Estado requirente. Proceso que no ha sido agotado por la contraparte de la sociedad XELA y que en Panamá se encuentra representada por la firma de abogados HATSTONE quien con un mero

poder judicial ha desbordado con sus actuaciones el ordenamiento jurídico panameño de manera burda y grosera.

COOPERACION PRESTADA II.

No obstante lo anterior, LISA S.A. ha estado presta a colaborar dentro del marco de una salida negociada al tema que nos ocupa. A continuación, y de manera detallada, entraré a relacionar los hechos en los cuales LISA S.A. ha cooperado con las distintas solicitudes:

- El día 31 de enero 2020, vía correo electrónico fui contactado por el licenciado Alvaro Almengor en representación de la firma Hatstone, quien a su vez actuaba en representación de la firma KSV, contraparte de la sociedad Xela. Debo recalcar que para la fecha la firma Hatstone no contaba con un poder judicial que le permitiera adelantar ningún tipo de actuación. Sin embargo desbordando los alcances jurídicos intentó reconformar las directivas de la sociedad LISA SA, actuación a todas luces ilegal. (anexo 1)
- El 18 de febrero de 2020, vía correo electrónico la firma de abogados Hatstone me envió un borrador de poder judicial sin firma y sin fecha, el cual aparentemente sería suscrito por algún representante de la firma KSV. El día 21 de febrero de 2020 recibí un poder con fecha 14 de febrero de 2020 firmado por el señor Robert Koffman (situación que llama poderosamente la atención pues el día 18 de febrero habíamos recibido el mismo documento sin firma, situación que se puede enmarcar dentro del delito de fraude procesal y falsedad de documento público), dicho documento no contaba con los pases de ley de estricto cumplimiento para lo reglado en la ley en lo que se refiere a este tema. El día 26 de febrero de 2020, recibimos un nuevo poder judicial esta vez suscrito por el señor Noah Goldstein, el cual había sido notarizado el día 25 de febrero de 2020. (anexo 2)
- El día 21 de febrero de 2020 se celebró una reunión en la ciudad de Bogotá DC en la cual participaron en representación de Hatstone Carl O'Shea y Álvaro Almengor, en representación de Xela Juan Guillermo Gutiérrez, en representación de LISA S.A. el suscrito y en representación de BDT el señor Juan Andrés Gutiérrez; a continuación relaciono el desarrollo de dicha reunión: (anexo 3)
 1. Se solicitó por parte de los abogados de LISA S.A. a los señores de Hatstone que exhibieran el poder judicial que les permitiría participar dentro de las formalidades de ley en dicha reunión. Desafortunadamente no contaban con el mismo.
 2. Sin embargo, de manera informal se les permitió leer los documentos que serían discutidos en el marco de dicho encuentro:

- a. Acervo probatorio que daba cuenta del pago realizado por la entidad Villamorey S.A., a la señora Margarita Castillo, con fondos provenientes o derivados de dividendos pertenecientes a la entidad LISA S.A.
 - b. Transacción de pago por parte de LISA S.A. a la sociedad BDT Investments Ltd., situación que explica la comparecencia del señor Juan Andrés Gutiérrez a dicha reunión.
3. Las partes acordaron que una vez subsanada la ausencia de mandato judicial por parte Hatstone, se celebraría una reunión la semana siguiente, esta vez en la república Panamá. Dicha reunión nunca se llevó acabo por razones a mi juicio incomprensibles.
- El 11 de marzo de 2020 y después de varias comunicaciones telefónicas, con el objetivo de agendar la reunión a realizarse en Panamá, recibí un correo en el cual me informaban que los señores de KSV no se encontraban preparados para dicha reunión. (anexo 4)
- Posteriormente, he recibido todo tipo de correos los cuales encontrará anexados a este informe, con todo tipo de solicitudes, que por un lado no se encuentran ajustadas a la normativa jurídica que rige en estos casos a las sociedades panameñas y por otro lado, absolutamente imposibles de cumplir dentro de la pandemia que viene afectando al mundo entero. (anexo 5)
- Tal y como consta en los correos anexos, propuse integrar un equipo jurídico bilateral y **así dar cumplimiento al objetivo de la interventoría que no es otro que recuperar los fondos de los dividendos impagos por Villamorey S.A.**, sin embargo frente a dicha solicitud tampoco recibí respuesta alguna. Ahora en Guatemala existen dos sentencias que indican que los dividendos no están prescritos lo cual resulta altamente favorable al litigio que en esta jurisdicción se adelanta.
- Sumado a lo anterior hemos sido informados por parte de nuestros abogados, Quiroz-Govea Asociados, que fueron citados por Alvaro Almengor, abogado de Hatston, firma que representa a KSV en Panamá, con el objetivo de supuestamente realizar una consulta jurídica. Durante el desarrollo de esta reunión Almengor intentó sobornar a nuestros abogados. Almengor es ampliamente conocido en los corrillos jurídicos panameños por su vínculo laboral con la firma Mossac Fonseca, y él, de manera personal se encuentra vinculado a la operación de Lava Jato.

<https://www.laestrella.com.pa/nacional/170213/mf-do-firma-brasil-relacion>

Si usted analiza con estricta objetividad, LISA S.A. a pesar de estar clara en el hecho de que el juez canadiense no tiene jurisdicción en Panamá; de ninguna manera se puede predicar que no ha colaborado de manera eficaz hasta donde la ley y los deberes adquiridos corporativamente

me lo permiten. De manera respetuosa debo solicitar, que no me presione más, puesto que solo implementaré cambios a las directivas de LISA S.A. en el momento que un juez panameño así lo ordene. Respecto del cuestionario enviado por usted en su última comunicación, debo indicarle que el mismo no será resuelto por parte mía hasta tanto no medie orden judicial de autoridad panameña.

Debo informarle que no obstante lo anterior, LISA S.A. se encuentra en la disposición de implementar cualquier solución que conduzca indefectiblemente a la solución de este conflicto, eso sí, todas deben estar enmarcadas en los principios jurídicos, debido proceso e igualdad de armas. Sea esta la ocasión para que por medio suyo se solicite a los señores de KSV que den trámite al estudio de los documentos aportados por mi a los señores de Hatstone que acrediten el pago a la señora Margarita Castillo.



Harald Johannessen Hals
LISA SA

ANEXOS

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Guatemala, April 27, 2020.

MR.

**JUAN GUILLERMO GUTIERREZ
PRESIDENT
XELA ENTERPRISES LTD**

Respected Mr. Gutiérrez.

I, HARALD JOHANNESSEN HALS, a Guatemalan citizen, as President of the Board of Directors of LISA, SA, an entity established in accordance with the laws of the Republic of Panama, acknowledge receipt of your request on April 22nd, 2020 and in accordance with your request I proceed to process it, within the principles of speed and legal certainty consistent with the constitutional framework of the Republic of Panama.

LEGAL ANALYSIS I.

Although we understand that there is a receivership ordered by a judge from Toronto Canada on the company XELA, the main shareholder of LISA SA, there are some legal limitations to extend it to the company LISA SA limitations that we will analyze below.

TERRITORIALITY In our legal system, when applying the law, as a general rule, the so-called principle of territoriality of the law, this means that the law will be applied to the acts that are committed within the territory of the State.

EXTRATERRITORIALITY Extraterritoriality is the legal fiction, admitted in International Law, by which a building or land in a foreign country is considered as an extension of the owner country, as in the case of embassies, consulates, military bases and, in certain respects, ships. As understood in the precept in precedence, it does not apply to business entities.

MECHANISMS OF INTERNATIONAL JUDICIAL COOPERATION International Judicial Cooperation is understood as the collaboration or mutual assistance between States, to carry out necessary steps in the development of a process outside the territory of the requesting State. Process that has not been exhausted by the counterpart of the XELA and that in Panama is represented by the law firm HATSTONE, which with a mere judicial power has gone beyond the Panamanian legal system in a crude and rude manner.

PROVIDED COOPERATION II.

Notwithstanding the foregoing, LISA SA has been willing to collaborate within the framework of a negotiated solution to the subject at hand. Below and in detail I will enter into the facts in which LISA SA has cooperated with the different requests:

- On January 31, 2020, via email I was contacted by Mr. Alvaro Almengor representing Hatstone, who was acting on behalf of the firm KSV, a counterpart of the Xela. I must emphasize that to that date Hatstone did not have a power of attorney that would allow it to carry out any type of action. However, going beyond the legal scope, he tried to reform the board of directors of the LISA SA, an action that was clearly illegal. (Annex 1)
- On February 18, 2020, via email Hatstone sent me a draft of the power of attorney unsigned and undated, which would apparently be signed by a representative of KSV. On February 21, 2020 I received a power of attorney dated February 14, 2020 signed by Mr. Robert Koffman (a situation that powerfully draws attention because on February 18 we had received the same document without a signature, a situation that can be framed within of the crime of procedural fraud and falsification of a public document), said document did not have the passes of law of strict compliance with the provisions of the law regarding this topic. On February 26, 2020, we received a new power of attorney this time signed by Mr. Noah Goldstein, which had been notarized on February 25, 2020. (Annex 2)
- On February 21, 2020, a meeting was held in the city of Bogotá DC in which Hatstone was represented by Carl O'Shea and Álvaro Almengor, on behalf of Xela Juan Guillermo Gutiérrez, on behalf of LISA SA, the undersigned and on behalf of BDT, Mr. Juan Andrés Gutiérrez; Below I describe the development of said meeting: (Annex 3)
 1. LISA SA's lawyers asked the gentlemen from Hatstone to present their power of attorney so they would be able to participate within the formalities of law in said meeting. Unfortunately they did not have it.
 2. However, informally they were allowed to read the documents that would have been discussed in the framework of said meeting:
 - a. Evidence collection that accounted for the payment made by the entity Villamorey SA, to Mrs. Margarita Castillo, with funds from or derived from dividends belonging to LISA SA
 - b. Payment transaction by LISA SA to BDT Investments Ltd., a situation that explains the presence of Mr. Juan Andrés Gutiérrez at said meeting.
 3. The parties agreed that once Hatstone's absence of a power of attorney was remedied, a meeting would be held the following week, this time in the Republic of Panama. This meeting was never held for reasons that I can not comprehend.
- On March 11, 2020, and after several telephone communications, in order to schedule the meeting to be held in Panama, I received an email informing me that KSV was not

prepared for that meeting. (Annex 4)

- Subsequently, I have received all kinds of emails which you will find attached to this report, with all kinds of requests, which on the one hand are not in accordance with the legal regulations governing Panamanian companies in these cases and on the other, it is absolutely impossible to fulfill them within the pandemic that has been affecting the entire world. (Annex 5)
- As stated in the attached emails, I proposed to integrate a bilateral legal team and **thus fulfill the objective of the receivership, which is none other than to recover the funds from the unpaid dividends by Villamorey SA**, however in the face of said request I also received no response. Now in Guatemala there are two Court resolutions that ruled that dividends are not prescribed, which is highly favorable to the litigation that is being carried out in this jurisdiction.
- In addition to the above, we have been informed by our lawyers, Quiroz-Govea Asociados, who were summoned by Alvaro Almengor, a lawyer from Hatston, a firm that represents KSV in Panama, with the objective of allegedly conducting a legal consultation. During the course of this meeting, Almengor tried to bribe our lawyers. Almengor is widely known in the Panamanian legal circles for his employment relationship with the law firm Mossac Fonseca, and he is personally linked to the Lava Jato operation.

<https://www.laestrella.com.pa/nacional/170213/mf-do-firma-brasil-relacion>

If you analyze with strict objectivity, LISA SA, despite being clear on the fact that the Canadian judge does not have jurisdiction in Panama; in no way can it be argued that I have not collaborated effectively as far as the law and corporate duties allow me. In the most respectful manner I must request that you do not pressure me anymore, since I will only implement changes to the board of directors of LISA SA at the time that a Panamanian judge so orders. Regarding the questionnaire sent by you in your last communication, I must indicate that it will not be resolved by me until there is a court order from the Panamanian authority.

I must inform you that notwithstanding the foregoing, LISA SA is in a position to implement any solution that will inevitably lead to the resolution of this conflict, however, all must be framed in legal principles, due process and equality of arms. Be this the occasion for you to request the gentlemen from KSV to study the documents provided by me to Hatstone that prove the payment to Mrs. Margarita Castillo.

Harald Johannessen Hals
LISA SA

ANNEXES

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MARGARITA CASTILLO
Applicant

-and- XELA ENTERPRISES LTD. et al.
Respondent

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

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

PROCEEDING COMMENCED AT
TORONTO

AFFIDAVIT OF JUAN GUILLERMO GUTIERREZ

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Lawyers for the Respondent,
Juan Guillermo Gutierrez

TAB 2

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

AFFIDAVIT OF JUAN GUILLERMO GUTIERREZ

(Sworn March 22, 2020)

I, Juan Guillermo Gutierrez, resident of Toronto, Ontario, Canada, **MAKE OATH AND SAY:**

1. I am the President of Xela Enterprises Ltd., ("**Xela**"). I swear this Affidavit in support of the Debtor's Opposition to the Motion of the Receiver (returnable March 24, 2020) (the "**Motion**"), seeking approval of the Receiver's second report dated February 18, 2020 (the "**Second Report**").

2. The Second Report is erroneous and/or inaccurate in various material respects. Further, it omits relevant information that should properly be taken into consideration as the Court evaluates and guides the ongoing activities of the Receiver.
3. Significant questions remain concerning Xela's counterclaims against Applicant Margarita Castillo ("**Margarita**") – which are pending in the Court in Toronto – that have not yet been adjudicated. These pending claims, if sustained, would more than offset Margarita's judgment against Xela (the "**Castillo Judgment**"). Xela has emphasized these claims to the Receiver and their likely offset of the Castillo Judgment, but the Receiver has taken no discernible steps to pursue them.
4. Specifically, Xela has alleged that Margarita received an illegal US\$4.35 million loan in 2010 from G&T Continental Bank ("**G&T**") in Guatemala (the "**Loan**"), funded by dividends improperly diverted from LISA, S.A. ("**LISA**"), an indirect subsidiary of Xela. The Loan was illegal because it was secured – without Xela's knowledge or consent – by a Certificate of Deposit in the sum of US\$4,166,250, purchased with some of the improperly withheld dividends owed to one of Xela's subsidiaries. Xela asserts that Margarita was never required to repay the Loan, and that mere weeks after the Loan funded, the bank foreclosed the collateral, making itself whole and effectively laundering the misappropriated dividends by transferring them to Margarita. Xela further maintains that Margarita used some of the tainted Loan proceeds to fund the oppression action against Xela that eventually led to the Castillo Judgment.
5. Those allegations, which are supported below by specific references to evidence, have been asserted in separate counterclaims in a civil conspiracy lawsuit against Margarita that predate entry of the Castillo Judgment. If proved to be true, Xela would be entitled to a judgment of its own against Margarita that could more than offset the Castillo Judgment and the expenses of the receivership. Xela's claims against Margarita are both substantial and viable, and fairness suggests that any unresolved claims that might offset the Castillo Judgment should be resolved judiciously as part of the receivership process.

The Avicola Group

6. Arturo Gutierrez ("**Arturo**") laid the corporate foundation in 1965 for what is now a lucrative poultry conglomerate of 29 companies in Guatemala (collectively the "**Avicola Group**"). He gave a one-third ownership to each of his two siblings, keeping a 1/3 stake for himself. In 1974, his brother and brother-in-law were tragically killed in a small aircraft accident, and their interests passed to their respective heirs (referred to collectively here as the "**Nephews.**") Arturo remained President of the company and the single largest shareholder.
7. Beginning in 1982, Arturo began a transition to relocate his immediate family to Toronto. He resigned as President of the Avicola Group, leaving operations in the hands of the Nephews. He also formed LISA, S.A. ("**LISA**"), a Panama company, to which he transferred all of his shares in the Avicola Group. (LISA is wholly owned by Gabinvest, S.A., a Panama company ("**Gabinvest**"), which is in turn wholly owned by Xela.) By 1984, the transition was complete.

Initial Fraud by the Nephews

8. After the Nephews assumed operational control of the Avicola Group, Arturo and I gradually began to notice a decline in the growth rate of the business. We were unable to establish any definitive wrongdoing until the Nephews inadvertently gave Arturo a copy of an accurate Avicola Group financial statement in August 1997 containing information inconsistent with what had previously been reported. Eventually, the parties entered into a series of discussions over a potential acquisition by the Nephews. As a condition of the discussions, Arturo demanded an explanation about the apparent discrepancies in financial reporting. In response to that inquiry, at two separate meetings convened in Toronto in 1998 to discuss the value of Arturo's stake, two high-level corporate executives of the Avicola Group disclosed the details of the alleged fraudulent scheme to me. I lawfully videotaped the second meeting with the assistance of the Royal Canadian Mounted Police but without the knowledge of the executives.

9. The Avicola Group executives confessed on videotape that the Nephews had implemented a scheme to defraud the Guatemala tax authorities – as well as Arturo – by concealing the cash sales of up to 40% of the Avicola Group’s chicken output. They explained that the scheme included under-reporting the revenues by concealing cash sales of live chickens, illegally laundering the unreported profits, and maintaining false accounting records to conceal the fraud. They told me that the Nephews had concealed the entire scheme from Arturo and the government by maintaining two sets of accounting records and two sets of financial statements, all of which resulted in the significant underpayment of Avicola Group dividends to LISA – which had been ranging between US\$2 million and US\$4 million per year – during the period 1985 through 2000.

Ongoing Theft of Dividends and Laundering of Illicit Proceeds

10. In 1999, the buy-out discussions having failed, Arturo began efforts to recover his unpaid dividends by commencing legal action in Florida and Bermuda, followed by a lawsuit in Panama against a company in which he held a 1/3 stake, Villamorey, S.A. (“**Villamorey**”) – which owns 25% of the Avicola Group shares – and multiple lawsuits in Guatemala. In response, the Nephews suspended all Avicola Group dividend payments to LISA, while continuing to declare and pay dividends to themselves. Although the full amount has never been documented owing to the Nephews’ failure to share financial reporting or data with LISA, LISA estimates the total sum of unpaid dividends from 1999 to the present to approach \$400 million with interest (the “**Unpaid Dividends**”).
11. Although the Nephews have successfully stalled legal proceedings and evaded judgment in most jurisdictions, the fraudulent scheme documented on videotape eventually became the subject of a three-week trial in Bermuda in 2008. There, the Court found that the Nephews had misappropriated LISA’s dividends and converted them to their own use, laundering illicit cash receipts through the sale of bogus insurance policies at an inflated premium by a Bermuda-based reinsurance company that they owned. Judgment was entered in favor of LISA on September 5, 2008 (the “**Leamington Judgment**”), from

which the Nephews did not appeal. A true and correct copy of the Leamington Judgment is attached hereto as Exhibit A. Among other things, the Leamington Judgment establishes the following irrefutable facts:

- a. That LISA was a victim of a conspiracy to defraud by the Nephews;¹
- b. That the Avicola Group used accounting records that recorded only a portion of its true income;²
- c. That a substantial portion of the income generated by the Avicola Group was kept off the books and used to fund distributions to the Nephews but not to LISA;³
- d. That the re-insurance policies at issue were not genuine;⁴
- e. That some of the "black" money was being "whitened" by paying the insurance premiums that were then distributed as purportedly legitimate corporate profits, and that the Nephews intended to deprive LISA of its rightful share of the profits generated by the Avicola Group;⁵
- f. That the Nephews used cash-only operations to conceal the Avicola Group's true earning from the Guatemalan tax authorities;⁶
- g. That the Nephews intended to injure LISA through a fraudulent conspiracy;⁷
- h. That LISA had been excluded from participating in the distributions made to the Nephews;⁸and
- i. That the members, officers and directors of the various Avicola Group companies

¹ Leamington Judgment, at ¶91.

² Leamington Judgment, at ¶55.

³ Leamington Judgment, at ¶57.

⁴ Leamington Judgment, at ¶63.

⁵ Leamington Judgment, at ¶82.

⁶ Leamington Judgment, at ¶62.

⁷ Leamington Judgment, at ¶106.

⁸ Leamington Judgment, at ¶109.

had “actual knowledge of all of the facts which made the conspiracy unlawful.”⁹

12. Thus, the Nephews have systematically stolen LISA’s dividends and laundered them through a series of false transactions benefitting the Nephews. In the Leamington case, those transactions were fake insurance contracts sold for excessive premiums by a company the Nephews owned.

Margarita’s Breach of Fiduciary Duty and Theft of Xela Assets

13. After the Leamington case was decided, beginning in February 2009, the parties met through representatives more than a dozen times to discuss potential settlement of the dispute. The negotiations were tense and complex, owing to the extreme animosity and distrust that had developed between the branches of the family. It was during this extended period of negotiations that Margarita secretly joined forces with the Nephews, and conspired with them and others to attack Xela and its subsidiaries, in breach of her fiduciary duties as a Director of Xela.
14. Although Margarita’s ensuing misconduct had multiple facets, perhaps her single most egregious act – and the transaction that is particularly relevant to this receivership – was her acceptance of what appears to be a tainted bank loan for US\$4.35 million, funded by the Nephews through G&T Continental Bank in Guatemala (“**G&T Bank**”) using LISA’s unpaid 2010 Villamorey dividends as collateral (the “**Castillo Loan**”). As detailed below, the Castillo Loan appears to have been transacted through Margarita’s nephew, Roberto Barillas (“**Roberto**”) – who acted as her legal representative – and repaid through foreclosure of the collateral.
15. Specifically, G&T Bank and other records indicate the following:
 - a. Villamorey declared in LISA’s favor (but did not pay) dividends of US\$4,166,250 in 2010. A true and correct copy of Villamorey’s audited financial statements for 2009/2010 is attached hereto as Exhibit B.

⁹ Leamington Judgment, at ¶115.

- b. On May 6, 2010, Juan Luis Bosch, one of the Nephews, used those dividends, without LISA's knowledge or consent, to open an account in Villamorey's name with G&T Bank. A true and correct copy of the opening statement for G&T Bank account No. 900051264, showing the initial deposit of US\$4,166,250, is attached hereto as Exhibit C; and
 - c. On May 25, 2010, the initial deposit to Account No. 900051264 (*i.e.* LISA's dividends) was used to purchase Certificate of Deposit #010152676 in the amount of \$4,166,250 (the "CD"). A true and correct copy of the CD is attached hereto as Exhibit D; see also Exhibit B, referencing CD #010152676.
16. Further, during meetings in September 2012 and November 2012, Mr. Jorge Porras – at the time an attorney for one of Xela's subsidiaries – provided information to Xela, of which he had personal knowledge, regarding an ongoing conspiracy between the Nephews and Margarita to injure Xela. During those meetings, Mr. Porras told Xela, among other things, that:
- a. Roberto had executed the Castillo Loan documents on Margarita's behalf, under a power of attorney signed and delivered to Roberto by Margarita in Miami in March 2010;
 - b. The Castillo Loan was for a total of \$4.35 million;
 - c. A portion of the Castillo Loan was to finance Margarita's oppression application in Toronto against Xela, our father and me; and
 - d. He (Mr. Porras) had attended meetings in Toronto with Margarita and her lawyers, Jeffery Leon and Jason Woycheshyn (Bennet Jones). Katherine Kay (Stikeman Elliot), who represents the Nephews in various legal matters, was also present during at least one of those meetings. The subject of the meetings was Margarita's oppression action against Xela, during which Margarita disclosed to her lawyers that the action would be financed through the Nephews.

17. Under cross-examination on April 17, 2012 in Toronto, Margarita admitted receiving the Castillo Loan and testified that G&T Bank had given her the Castillo Loan solely on the basis of her "net worth," as she had no assets in Guatemala and had not lived there in decades. A true and correct copy of an excerpt from Margarita's cross-examination is attached hereto as Exhibit E. However, in an affidavit dated September 9, 2011, Margarita testified that she had been struggling financially, and that she had asked the Nephews for "help" securing the Castillo Loan. A true and correct copy of that Affidavit is attached hereto as Exhibit F. In any case, Margarita confirmed in cross-examination that she used at least some of the Castillo Loan proceeds to pursue her oppression claims in Toronto against Xela, Arturo and Juan. (See Exhibit E hereto.)
18. In 2016, I participated in at least four meetings in Guatemala with high-level representatives of G&T Bank about the Castillo Loan. Initially, I spoke with Mr. Estuardo Cuestas, a member of the Board of Directors of G&T Bank and a close advisor to the President. I told him that I believed G&T Bank had given a loan to Margarita that was collateralized with LISA's Villamorey 2010 dividends, which she had used to fund litigation against me in Canada. Mr. Cuestas promised to look into the situation. During our second meeting, Mr. Cuestas confirmed that the Castillo Loan had indeed been collateralized with CD #010152676, and he seemed to recognize the seriousness of the situation. He arranged a meeting for me with Mr. Mario Granai, the President of G&T Bank. I shared my concerns with Mr. Granai, who provided no substantive commitment, although he seemed genuinely concerned about the bank's exposure.
19. Some weeks passed, after which Mr. Cuestas contacted me by telephone and informed me that G&T Bank would not be able to assist me, and that the Castillo Loan was "no longer an issue" for the Bank, as it had been "collapsed." I understood Mr. Cuestas' comments to signify that G&T Bank had satisfied the Castillo Loan by foreclosing the collateral (*i.e.*, using the CD purchased with LISA's 2010 Villamorey dividends), without Margarita being required to repay any part of the Castillo Loan.

20. At the time of the Loan, Margarita was sitting on the Board of Directors of Xela. Further, Margarita's oppression case was only one facet of a broader attack strategy, which included false criminal complaints against me in Guatemala. Those have all been dismissed with prejudice, but only at great expense and after significant damage to my reputation as well as to Xela's banking relationships.
21. This coordinated attack has benefitted the Nephews by depleting LISA's resources to pursue Unpaid Dividends. Further, I understand that lawyers for the Nephews have attended recent hearings in this receivership, obviously looking for an opportunity to close the loop on the conspiracy by purchasing LISA's claims for Unpaid Dividends at fire sale prices in exchange for satisfying the Castillo Judgment.
22. Although these facts should yield a judgment in Xela's favor that would likely more than offset the Castillo Judgment, they have yet to be adjudicated. I believe that in these circumstances, it would be unfair and inequitable to bar Xela from pursuing these outstanding questions to resolution. Indeed, the issue of Margarita's alleged wrongdoing should be addressed in a fair and equitable manner, under the Court's supervision, and within the confines of this receivership.

BDT Investments Ltd.

23. Beginning in 2005, LISA's efforts to collect the Unpaid Dividends, including litigating the Leamington action, were funded by BDT Investments Ltd., a Barbados corporation ("BDT"), which at the time was wholly owned by Xela. On January 5, 2009, LISA and BDT documented LISA's then-cumulative debt to BDT with a promissory note for US\$16,910,000, secured by LISA's 1/3 stake in Villamorey. BDT eventually sued LISA in Panama on the promissory note, and in December 2012, it obtained a judgment against LISA in the amount of US\$19,184,680, together with a lien against all of LISA's assets (collectively the "BDT Judgment").

24. In April 2016, as part of his estate planning, Arturo formed The ArtCarm Trust, a Barbados Trust (the “Trust”), to which he irrevocably transferred various assets, including BDT, for the benefit of certain family members, but excluding me. Meanwhile, BDT continued to fund LISA’s claims to recover Unpaid Dividends, and LISA’s debt to BDT grew to approximately US\$50 million (the “**BDT Claim**”). Thus, at the time the Receiver was appointed, BDT was LISA’s single largest creditor, with a claim approximately ten times the size of Margarita’s Judgment. Still, BDT has consistently said that if LISA were to collect Unpaid Dividends, BDT would consider subordinating its rights under the BDT Judgment to the reasonable requirements of the receivership.
25. After the Receiver was appointed, I understand that LISA began to inquire into potential third-party loans sufficient to satisfy, among other things, the Judgment and the expenses of the Receivership. In December 2019, I was told that LISA had received a verbal commitment for such a third-party loan on terms acceptable to LISA (the “**Loan**”). All of the Loan details were managed and approved by LISA without my instigation, involvement or approval. I was told only the basic terms of the Loan, including that it was sufficient to satisfy the Castillo Judgment and the expenses of the receivership.
26. Upon learning of the lender’s commitment to make the Loan, I understand that LISA informed the Receiver, stating specifically that the Loan was adequate to satisfy the Castillo Judgment and all reasonable expenses of the Receivership. The Receiver asked me for more details about the Loan, but I was unable to provide more information because I had not been told.
27. I understand that the Receiver has taken action in Panama to try to alter the composition of LISA’s board of directors. I also understand that the Receiver’s lawyers in Panama did not follow the required steps to make those changes, nor did they notify me of their plans. I also understand that when LISA’s counsel in Panama observed that an unidentified person was trying to alter LISA’s corporate structure, LISA quickly contested the

- changes, which were officially rejected by the Corporate Registrar for failure to comply with applicable procedures.
28. I have offered multiple times to meet face-to-face with the Receiver to discuss the focus of his collection efforts as well as Xela's own counterclaims against Margarita. Most recently, those offers have been conveyed to the Receiver through LISA's lawyers in Panama. The Receiver initially implied that he would attend a meeting in Panama, but he later placed a precondition on any meeting with me, namely that LISA consent to the changes requested by the Receiver to LISA's Board of Directors.
 29. Meanwhile, the Loan has not funded, for reasons that are unclear to me. What I understand, however, is that the failure to fund is related to the Receiver's attempts to intervene in the transaction.
 30. I further understand that BDT has extinguished its debt to LISA in exchange for LISA's full 1/3 stake in the Avicola Group, including its claims for Unpaid Dividends. That proposal was not given to Xela or to me in advance, and neither Xela nor I consented to or approved of it. As I understand it, the decision to assign its remaining assets to BDT in exchange for cancellation of the debt was made solely and entirely by LISA.
 31. Contrary to what the Second Report suggests, Xela has not withheld any information from the Receiver. Indeed, the only documents the Receiver claims Xela has not provided are records evidencing BDT's funding of LISA's litigation efforts. Although I believe that Xela's counsel has supplied records of this type to the Receiver, the request is moot in light of the U.S. District Court's finding that the BDT Judgment does not represent a fraud. Otherwise, to the best of Xela's knowledge, it has supplied all information in its possession requested by the Receiver.
 32. From the outset of the receivership, I have repeatedly asked for face-to-face meetings with the Receiver to discuss how best to collect Unpaid Dividends from Villamorey and/or the Avicola Group companies, and to discuss the validity of Xela's own civil

conspiracy claims against Margarita. Aside from one introductory meeting and one working meeting, the Receiver has rejected my requests, which I made directly to the Receiver during two separate teleconferences and also through Tory's, Xela's previous counsel. Lately, my requests have gone through LISA's President in Guatemala to the Receiver's counsel in Panama, during which LISA's counsel provided documentation to the Receiver's counsel concerning the fraudulent nature of the Nephews' Loan to Margarita, Xela's entitlement to a judgment that would probably more than offset the Castillo Judgment and the expenses of the receivership, along the Receiver's request to modify LISA's Board of Directors. Despite the evidence, the Receiver has consistently refused to meet. Recently, the Receiver has suggested through his

Panama lawyer that a meeting might be possible, but only on the condition that LISA first voluntarily consent to the Receiver's proposed changes to its Board of Directors.

SWORN BEFORE ME at the City of
Toronto, in the Province of Ontario on
March 22, 2020.



Commissioner for Taking Affidavits
(or as may be)

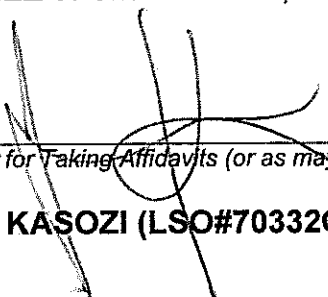
N. Joan Kasozi
(LSO# 70332Q)



JUAN GUILLERMO GUTIERREZ

EXHIBIT A

This is Exhibit "A" referred to in the Affidavit of JUAN GUILLERMO GUTIERREZ sworn March 22, 2020.



Commissioner for Taking Affidavits (or as may be)

N. JOAN KASOZI (LSO#70332Q)



In The Supreme Court of Bermuda

CIVIL JURISDICTION COMMERCIAL COURT

1999: No. 108/ 2001 No. 79

B E T W E E N:

LISA S.A.

Plaintiff

- and -

LEAMINGTON REINSURANCE COMPANY LTD.

First Defendant

- and -

AVICOLA VILLALOBOS S.A.

Second Defendant

JUDGMENT

Dates of Trial: June 23-July 4, July 8-July 10, 2008

Date of Judgment: September 5, 2008

Mr. Narinder Hargun and Mr. Paul Smith,
Conyers Dill & Pearman, for the Plaintiff
Mr. John Riihiluoma, Appleby, for the First Defendant
Mr. Jan Woloniecki and Ms. Shade Subair,
Attride-Stirling & Woloniecki, for the Second Defendant

Introductory

1. *"Strong parents have strong children and strong children have strong opinions, and that usually leads to conflicts that they have difficulty in reconciling"*, Atlanta Mayor Andrew Young recently observed in relation to a litigious dispute between

members of his city's most famous family. This observation might well explain the emotional underpinning of the present dispute. The trial of the present action, which commenced almost a decade ago, arises out of a commercial family falling-out amongst members of a prominent Guatemalan family, a dispute which has also spawned litigation in at least three other forums.

2. In my Ruling of February 10, 2006¹, I described the history of the present actions as follows:

"1. On March 26, 1999, the Plaintiff issued a Generally Indorsed Writ of Summons in Civil Jurisdiction 1999: 108 against the Defendants herein. The claim was a derivative proprietary claim against the First Defendant on behalf of the Second Defendant, who was joined to meet the procedural requirements under Bermuda law in relation to derivative claims brought by a shareholder on behalf of the company whose shares the Plaintiff holds.

2. On the day the Writ was issued, Mitchell J granted a Mareva injunction. The First Defendant ("Leamington") provided discovery on April 28, 1999. The Plaintiff ("Lisa") applied ex parte for leave to serve the Second Defendant ("Avicola") out of the jurisdiction on May 14, 1999, but did not obtain such leave until Simmons J's Order was granted on December 23, 1999. In the meantime, Leamington had both applied to set aside the Mareva injunction on October 15, 1999, and obtained directions in relation to its application from Wade-Miller J on November 4, 1999.

¹ On the trial of a preliminary issue and the Plaintiff's application for leave to re-amend its Statement of Claim.

3. On January 26, 2000, Leamington applied to strike-out the action, with directions being ordered by Storr AJ on February 10, 2000. On March 22, 2000, Lisa filed its Statement of Claim, and on July 31, 2000 applied *ex parte* to renew its Writ. The renewal order was granted that day by Simmons J, but Avicola applied to set aside that Order on July 31, 2001. Directions were given by Meerabux J on February 1, 2001. Lisa sought to sidestep a potentially fatal attack on action 1999: 108 by issuing a similar Generally Indorsed Writ in Civil Jurisdiction 2001: 79 on March 2, 2001, in which fresh action both Defendants in due course entered appearances. On March 26, 2001, Lisa applied for leave to serve Avicola outside the jurisdiction, which application was granted by Mitchell J on April 5, 2001. On April 9, 2001, Lisa applied to consolidate both actions.

4. This fancy legal footwork bore fruit when on June 7, 2001, Mitchell J set aside the *ex parte* writ renewal order on Leamington's application, but also granted Lisa's consolidation application. On November 8, 2001, Ward CJ granted Lisa's June 25, 2001 application for leave to amend its Statement of Claim. On February 15, 2002, Leamington filed its Amended Defence and Avicola its Defence. One year and nine months later, after filing a Notice of Intention to Proceed on October 3, 2003, Lisa applied on November 20, 2003 for Further and Better Particulars of Leamington's Amended Defence. I granted this application on December 4, 2003, and the relevant particulars were given on January 2, 2004. It was only after these numerous initial interlocutory skirmishes, that battle was joined on the issues which presently fall for determination.

5. On September 3, 2004, the Defendants applied for the trial of two preliminary issues, and after ordering directions on September 23, 2004, Ground CJ granted the application on December 2, 2004. On February 17, 2005, Lisa applied for leave to re-amend its Statement of Claim, again with a view to fending off a potentially lethal attack on its claim by the Defendants. And on April 6, 2005, Wade-Miller J ordered, *inter alia*, that both applications should be heard together.

6. The three parties, musketeer-like, have moved their legal sword-play from one battleground to the next, with various interlocutory applications being heard over nearly seven years by eight different first instance judges. None of the interlocutory applications to date appear to have given rise to either a considered judgment or any appeal. The above summary does not include related proceedings which have taken place in the British Virgin Islands, Florida and (it seems²) Guatemala as well. The Defendants assert that they have been more proactive than the Plaintiff in this litigation, and invite the Court, in addition to other arguments, to have regard to the law of limitation and the doctrine of laches, or delay.”

3. On March 10, 2006, I resolved a preliminary issue in favour of the Defendants, but granted leave to amend to the Plaintiff in the following terms :

“137. The Plaintiff is granted leave to re-amend to assert those claims which I have found to be arguable, but not in the form of the draft RASC presently before the Court. The theory of direct liability on which the Plaintiff now relies should be

² The Defendants’ Counsel suggested that Lisa had filed over 100 suits against Avicola and related entities in Guatemala; proceedings in the other two jurisdictions were directly referred to in evidence.

incorporated into a further draft RASC to meet the concerns which I have sought to clearly identify above..."

4. The Defendants appealed against this Ruling, and the Plaintiff cross-appealed against my decision that it had no standing to pursue a personal claim against the First Defendant, having heard extensive evidence on Guatemalan law. On November 22, 2006, the Court of Appeal dismissed the Defendants' appeal against my decision to permit the Plaintiff to amend its Statement of Claim, and allowed the Plaintiff's cross-appeal against my resolution of the preliminary issue in favour of the 1st Defendant based on the Amended Statement of Claim. The Court of Appeal apparently took the view that since various claims against the 2nd Defendant were going to be tried, it was undesirable to decide the overlapping issue of the 1st Defendant's liability in isolation from the totality of the evidence to be adduced at trial against the 2nd Defendant, although they expressed doubt as to whether the preliminary issue had any further relevance. To my mind my February 10, 2006 Ruling on the standing of Lisa to advance a personal claim against Leamington based on the pleadings as they were prior to the RASC has no present significance whatsoever. The merits of the claims against Leamington fall to be determined on their merits based on the case advanced in the RASC.

5. The 2nd Defendant did not contend before me in March 2006, nor (seemingly) the Court of Appeal in November, 2006, that the amendments should be refused because the averments were liable to be struck-out on the grounds asserted in the strike-out applications it filed on June 14, 2007. The attempt to strike-out the Re-Amended Statement of Claim altogether was, save for one pleading complaint which could not have been previously raised, difficult to comprehend. The Re-Amended Statement of Claim ("RASC") was filed on March 15, 2006, so the 2nd Defendant had an adequate opportunity to contend before the Court of Appeal last November, that the amendments ought to have been refused because the proposed re-amended pleading was itself liable to be struck-out on abuse of process or other grounds. These points were not taken. It may have been reasonable for the 2nd

Defendant to simply focus on dismissing the subsequently abandoned derivative claim, but these strike-out points, if serious, could have been advanced by the 1st Defendant at an early stage of the action. And if these issues only became relevant to Avicola when the personal claim was first asserted, it was first asserted in February 2005, when the application to re-amend was filed.

6. The second limb of the total strike-out application was, however, based on an averment only made in the Plaintiff's Reply to the Re-Amended Defence of the 1st Defence filed on February 22, 2007. But the Plaintiff voluntarily gave further and better particulars of this aspect of its case, with a view to meeting the 1st Defendant's complaints.
7. The partial strike-out application was, delaying tactics apart, no easier to comprehend. The complaint that three "background" frauds were not relevant to the Plaintiff's claim sought to strike-out portions of the RASC which had been pleaded from the outset in 1999. This point was not taken before me or the Court of Appeal in 2006, let alone in the previous six years of the litigation. The paragraphs of the RASC attacked, 8-11 and 15(i),(iii), were pleaded in the original Statement of Claim served in 2000. At the very latest, this point ought to have been taken, assuming it to be serious, as part of the 2nd Defendant's opposition to the Plaintiff's application for leave to re-amend.
8. Although the 2nd Defendant consented to pre-trial directions on March 13, 2007, it was less surprising that its new separate attorneys, who came on the record on April 26, 2007, should raise a point which had not previously been taken by the Defendants' joint attorneys, less than two months after the point could first have been taken. The original case, from 1999 until February 2007, was that the operating companies in the Avicola group were subsidiaries of the 1st Defendant, and that the Plaintiff was defrauded because they diverted funds which ought to have been "up-streamed" to the Plaintiff as dividends through the 2nd Defendant. The Plaintiff belatedly conceded that the operating companies, which are said to

have obtained fraudulent policies from the 1st Defendant, are not in fact subsidiaries of the 2nd Defendant. The 2nd Defendant was clearly entitled to know how the Plaintiff now put its case, on these materially different facts.

9. The third issue I was required to decide was whether the Plaintiff was entitled to obtain full disclosure in relation to the business operations of various companies in support of its case on the three "background" frauds. The 2nd Defendant complained, by way of alternative to its partial strike-out application, that the discovery requested was oppressive. The Plaintiff eventually agreed to adjourn its application in this regard, conceding that the request as formulated was oppressive.
10. The fourth issue I was required to decide was the 1st Defendant's application for further and better particulars of its case that the reinsurance policies issued by the 1st Defendant to operating affiliates of the 2nd Defendant. It was essentially agreed that the Plaintiff had not yet received and/or considered full discovery from the Defendants, and the Plaintiff undertook to advise the 2nd Defendant of whether it can supply the requested particulars without the need for a formal order, within 28 days.
11. On June 26, 2007, I resolved these issues as follows: (a) I dismissed the 2nd Defendant's total strike-out application, (b) I dismissed the 2nd Defendant's partial strike-out application, (c) I granted the Plaintiff's application for discovery in part, and reserved the position on the need to give effect to a narrower version of the oppressive discovery request, and (d) I reserved the issue of whether the Plaintiff should be ordered to give further particulars in relation to the reinsurance policies, because the scope of any potential order was presently unclear. I handed down Reasons on July 3, 2007. I refused leave to appeal against the strike-out rulings, and the Court of Appeal likewise refused leave.

12. At the pre-trial review, the scope of the trial fell to be considered. On June 9, 2008, I agreed with the 1st Defendant ("Leamington") that the Plaintiff's ("Lisa's") damages fell to be determined by reference to its pleaded claim to loss suffered by it as a shareholder of the 2nd Defendant ("AVSA") (i.e. the Avicola Group of Companies). Lisa had previously abandoned any independent claim as an indirect shareholder of Leamington through Villamorey. I also indicated that it was improbable that I would make positive findings that any criminal offences had been committed under Guatemalan law. However, I left open the possibility of deciding whether Lisa's indirect interest in Leamington had been sold to the extent that the parties had prepared to argue this point and had addressed it in their evidence.
13. In the event, the trial required the Court to consider whether Lisa was able to prove one or more causes of action under Bermuda and/or Guatemala law, having regard to not only ordinary factual evidence, but also considering expert evidence accounting evidence, expert evidence as to insurance practice and expert evidence as to foreign law.

Pleadings: Lisa's case

14. Lisa's case is essentially pleaded in the Re-amended Statement of Claim ("RASC") as read with the Further and Better Particulars of the Plaintiff's Re-Amended Statement of Claim and Replies ("FBPs"). Lisa's original RASC claim was based on the premise that AVSA was the parent of a group of 19 companies, including AVSA ("the Avicola Group"). Its ultimate claim was that AVSA is the *de facto* parent of a group which has always been regarded as a single economic unit. As a result, the RASC may for all economic or compensatory purposes be read as if references to "Avicola" are references to the Avicola Group.
15. Paragraph 5 of the RASC provides in material part as follows:

“...From inception, Avicola has been owned by the Gutierrez family comprised of Lisa representing the 25% shareholder interests of Don Arturo and his family. Trucha, S.A., a company incorporated in Panama, represents the 25% interest of Jean Luis Bosch Gutierrez (“Jean Luis”) and his family. San Cristobal, S.A., a company incorporated in Panama, represents the 25% interest of Dionisio Gutierrez Mayorga (“Dionisio”) and his family. Villamorey owns the remaining 25% shares in Avicola and Villamorey itself is owned equally by Lisa, Trucha, S.A. with the result that Lisa is a 1/3 owner of Avicola...”

16. Paragraph 7 of the RASC avers that in 1982 Don Arturo (who established the Avicola Group) and his family emigrated from Guatemala to Canada. Day to day control was assumed by Dionisio, Juan Jose Gutierrez, Juan Luis, Konrad Losen (“Losen”), Fernando Rojas (“Rojas”), Mauricio Bonifasi (“Bonifasi”) and Roderico Rossell (“Rossell”) who are described as the “Controllers”. All of the foregoing individuals, Rossell apart, are also defined as the “administrators” of Avicola. Paragraph 8 alleges that soon after they assumed control of various family businesses, *“the Controllers embarked on a systematic scheme to defraud the Plaintiff of its share of the corporate profits of Avicola...”*
17. Various “background” or “feeder” frauds are then alleged by way of setting the scene for the substantive claims. The Pollos Vivos (Live Chickens) Fraud is said to have been admitted in a videotaped meeting by Rojas and Rossell in August 1998 (RASC paragraph 9). It involved not reporting live chicken sales and distributing the resultant Avicola profits to all shareholders save Lisa. The Los Cedros Fraud operated in a similar manner in relation to the sale proceeds of chicken manure and oranges (RASC paragraph 10). The Ancona Fraud is alleged to have involved the laundering of the proceeds of the two other background frauds and to have been admitted in the same manner (RASC paragraph 11).

18. It is then alleged, uncontroversially, that Leamington was incorporated in Bermuda on July 23, 1997 and that Rossell was at all material times its director and secretary³. The averment that Leamington is 100% owned by Villamorey is disputed, however (RASC paragraph 12). Leamington is a captive insurance company only reinsuring the risks of the Avicola and Multi Inversiones group of companies which were issued policies by fronting companies including El Roble Seguros Y Fianza ("El Roble"), a Guatemalan insurance company (RASC paragraphs 13-14). Paragraph 15 (excluding the Particulars of Fraud) provides as follows:

"15. The Plaintiff accepts that part of the risks reinsured by Leamington represent bona fide risks in respect of which Leamington has levied premiums at commercial rates. However, the Plaintiff contends that a substantial part of the reinsurance risks underwritten by Leamington are in respect of (i) non-existent risks; or (ii) risks which bear no relationship to the reinsurance premiums charges by Leamington. The Plaintiff contends that the primary object of Leamington has been used in this fraudulent scheme was to use Leamington as a vehicle to make distributions to the shareholders of Avicola so as to (i) launder the proceeds of the illegal sales of live chickens; (ii) reduce the profits of Avicola; and (iii) reduce the dividends which would otherwise be payable to the Plaintiff. The fraudulent payments made to Leamington were intended by the Controllers and Avicola to be distributions of profits to the shareholders of Avicola. However, in making these distributions to the shareholders, the Controllers and Avicola have deliberately and unlawfully excluded Lisa from receiving its appropriate share of these profits of Avicola. Leamington received the fraudulent payments from Avicola with the knowledge that they

³ Rossell himself admitted to being Treasurer and Secretary, and this was not apparently challenged by Lisa.

were intended by Avicola to be distributions to Avicola's shareholders. Further, the The Controllers have ensured that any dividends paid by Leamington to Villamorey are not further distributed to Lisa as a shareholder of Villamorey by increasing the expenses of Villamorey which bear no relationship to the activities of Villamorey. During 1992 to 1998, Avicola used the fraudulent payments to Leamington as a means of making distributions to the shareholders of Avicola in the amount of US\$1,964,691.92 in 1993, US \$2,713,888.32 in 1994 US\$6,184,486.88 in 1995, US\$6,075,000.90 in 1996, US\$6,324,431.00 in 1997 and US\$6,594,894.00 in 1998. The controllers and Leamington have deprived Lisa of its share of these distributions made by Avicola to its shareholders. ”

19. The dollar amounts were, Mr. Hargun clarified in his closing submissions, intended to be read in Quetzales. The consequences of the fraud alleged in paragraph 15 are pleaded in paragraph 16 as follows:

“16. As a matter of Guatemalan law, Avicola is obliged to declare, by way of dividends, all its profits on an annual basis. Further or in the alternative, as a matter of Guatemalan law, Avicola is obliged by Article 134 of the Guatemalan Commercial Code to hold an annual general meeting each year, at which true and accurate financial information about the condition of the company (including its profit/loss statement and balance sheet) is provided to the shareholders and at which (in the light of such financial information) the shareholders take appropriate decisions about the distribution of profits. Avicola has held no annual general meeting since 1982 and true and accurate financial information has not been provided to the shareholders. The shareholders have thereby been prevented from exercising their rights under Guatemalan law to take appropriate decisions to distribute the profits of the company to themselves. The Controller and/or Avicola failed to hold annual general

meetings as required by Guatemalan law in order to cover up the frauds set out above and/ or as part of their fraudulent scheme and conspiracy to defraud Lisa of its true entitlement as a share holders of share of the distributions made by Avicola. The effect of the fraudulent activities set out in ¶15 above is that profits which would have been distributed to Lisa SA were retained in Avicola and partly transferred to Leamington in Bermuda Lisa was deprived of its share of the distributions made by Avicola though the device of Leamington. Leamington knowingly participated in this fraudulent scheme. As a matter of Bermuda and/or Guatemalan law, Lisa has a personal and proprietary claim to the funds which Avicola Lisa should have declared by way of dividends received as its share of the distributions made by Avicola to its shareholders but has failed to do so. Lisa is entitled to maintain those personal and proprietary claims against Leamington.”

20. The following additional and alternative causes of action are pleaded in paragraphs 17-19 of the RASC:

“17. Further, and in the alternative, the matters complained of in paragraph 15 and 16 hereof were committed by Leamington pursuant to a conspiracy between the Controllors (and in particular Rossell) and Leamington and (by reason of the matters set out in paragraph 17C and 17F below) Avicola to defraud Lisa of its true entitlement as a shareholder of Avicola of the distributions made by Avicola. The parties to the conspiracy included Losen, Rojas, Bonifasi, Rossell, Avicola and Leamington. Leamington joined the conspiracy after its incorporation on 23 July 1997.

17A. Further, and in the alternative, the Controllors and/or Leamington and/or Avicola are obliged under Guatemalan law to compensate or infemnify Lisa for the damage causes to Lisa by the said frauds and

conspiracy, which amount to intentional wrongdoing within the meaning of Articles 1646 and/or 1653 of the Guatemalan Civil Code.

17B. Further, and in the alternative, the Controllers and/or Leamington have been wrongly enriched, without legitimate reason, by reason of the said frauds and/or conspiracy and are obliged under Article 1616 of the Guatemalan Civil Code and/ or Bermuda law to indemnify Lisa in respect of that wrongful enrichment.

17C. Further, and in the alternative, Leamington and/or Avicola are liable for the acts of the Controllers in committing the said frauds and/or conspiracy, under Article 1664 of the Guatemalan Civil Code and/or by reason of the Guatemalan doctrine of simulation and Article 1284 of the Guatemalan Civil Code.

17D. Further, and in the alternative, the said frauds and/or conspiracy amount to wrongful abuse of corporate personality by Leamington and/or Avicola and/or the Controllers, which under Guatemalan law are tortious acts and for which Leamington and/or Avicola are liable to Lisa in damages.

17E. Further and in the alternative, Leamington and/or Avicola and/or the Controllers are in liable to Lisa for the said frauds and/ or conspricy under Articles 171, 172 and/or 176 of the Guatemalan Civil Code.

17F. Further and in the alternative, Leamington and/ or Avicola are liable for the said frauds and conspiracy as the alter ego of the Controllers.

18. Lisa SA asserts that the knowledge of Rossell, as president, director and secretary of Leamington, is to be attributable to Leamington

and/or Rossell has been at all material times the controlling mind of Leamington.

19. *In the premises, all monies received by the fronting companies as premiums and transferred to Leamington as reinsurance premiums on account of non-existent risks or on account of grossly inflated premiums were and are held, up to the amount of Lisa's share of the distributions made by Avicola, by ~~the First Defendant~~ Leamington as a trustee for Lisa Avicola and as a consequence of the fraud committed by the Controllers, Avicola has suffered loss and damages. The Plaintiff is unable to give full particulars of loss and damage until the completion of discovery.*”

21. In Lisa's Closing Submissions, the causes of action relied upon were summarised as follows:

“81.1 Against both Leamington and Avicola, conspiracy by unlawful means, with the intention of injuring Lisa (Bermuda common law and/or Article 1645 of the Guatemalan Civil Code);

81.2 Against both Leamington and Avicola for simulation (Article 1284 of the Guatemalan Civil Code (§17C of RASC));

81.3 Against Leamington only for equitable fraud in that Leamington has participated in a fraudulent scheme to defraud Lisa of its share of the corporate profits of, inter alia, Avicola (§s 8 & 15 of RASC);

81.4 Against Leamington only as a constructive trustee as a result of its dishonest assistance in Avicola's breach of trust or fiduciary duty to Lisa (§s 16 & 19 of RASC). Furthermore, Leamington is liable as a constructive trustee as a result of its knowing receipt of monies from the Avicola group of companies, which should properly have been paid to Lisa (§s 16 & 19 of RASC);

81.5 Against Avicola only under Article 176 of the Commercial Code (§17E of RASC)".

Pleadings: Leamington's Defence/AVSA's Defence

22. Leamington, in its Re-Amended Defence ("RAD"), denies each of Lisa's claims against the reinsurer, denies liability for the acts of the Controllers and in any event does not admit that Leamington is liable by virtue of the doctrine of simulation.

23. AVSA in its Amended Defence ("AD") also denies liability for each cause of action asserted against it and does not admit that it is liable by virtue of the doctrine of simulation.

Factual Evidence: Overview

24. Lisa's live factual witnesses were its principal, Mr. Juan Guillermo Gutierrez Strauss ("Juan Guillermo"), an accountant Mr. Lawrence Rosen and a translator, Esther Cecilia Crespo. A hearsay notice was served in respect of the now deceased Mr. Mario del Aguila Cancinos ("del Aguila") and in respect of the transcript of the August 20, 1998 Toronto meeting ("the Toronto Transcript").

25. Leamington called no live factual (i.e. non-expert) witnesses save, belatedly, Hector Rene Lopez Sandoval, who also gave expert evidence as to Guatemalan notarial practice. It served hearsay notices in respect of five witnesses who were

"*beyond the seas*", Lionel E. Asencio ("Asencio"), Hector Rene Tercero Soto ("Tercero"), Roderico Rossell Anzueto ("Rossell"), Jesus Briz Barillas ("Briz"), and Luis Fernando Villaverde ("Fernando").

26. AVSA called no live fact witnesses at all, serving hearsay notices prior to trial in respect of the following five persons who were also "*beyond the seas*": Silvia Maria Rossbasch Rheinbolt ("Rossbasch"), Luis Arturo Gutierrez Strauss ("Luis Arturo"), Jose Fernando Ramon Rojas Camacho ("Rojas"), Rene H. Perez Ordonez ("Perez") and Alberto Antonio Morales Velasco ("Morales"). At the trial, further affidavits by Mario Rene Archila Cruz ("Archila") and Ana Lucrecia Palomo ("Lucrecia") were served to deal with an issue which arose in the course of the trial.

27. Juan Guillermo as the partisan *de facto* representative of Lisa's side of this family dispute was obviously a witness whose evidence needed to be treated with considerable care. In general terms, he was a credible witness whose evidence provided background to Lisa's central case rather than supporting it directly. Despite skilful and vigorous cross-examination by Mr. Woloniecki, I found his contention that he had not personally seen the "dividend" cheques before trial (and merely knew of their existence) to be credible. The Toronto Transcript supported his contention that this was the position when the August meeting took place. Although he initially is recorded as having said that he "saw" cheques were being made payable to the bearer, later in the Transcript he clarified what he meant by this stating: "*Fine, but I don't see the checks...That is, I see Carlos Vasquez'...report.*"⁴ On the other hand, under withering cross-examination by Mr. Riihiluoma, Juan Guillermo was simply not credible when he testified that at the recorded Toronto meeting, he did not admit having seen minutes related to a Villamorey sale of shares and made reference to this transaction by way of fishing for information:

"24 Q Can we now start from the premise that at

⁴ Vol. E, page 369.

25 this point in time in the meeting you were having a
540

1 discussion with Mr. Rossell and Mr. Rojas about
2 minute books?

3 A We were discussing the minute books, yes.

4 Q And I will pick it up MV1 in the middle of
5 the page. "So on what date is the stockholder
6 meeting held?"

7 It has to be held, by law it has to be
8 prior to October. But those, um, they're going to
9 be available, right, um. Unless once again, you
10 want to ask for as many photocopies as there may
11 be."

12 The next voice, MV1, is you. "In any
13 event, we expected to receive at least the minutes
14 of the stockholders meetings, because we have never
15 seen the minutes for the stockholders meeting for, I
16 don't know, 15 years." Do you accept that that is
17 what you said?

18 A Yes. We haven't seen any minutes for --
19 in those days probably 15 years. Now it will be 20
20 years.

21 Q And you accept that MV1 is you; you are
22 the speaker?

23 A Yes.

24 Q "I don't know, 15 years, well, um, I saw a
25 couple there, that were related to, um, transaction
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1 of what was done in February on Villamorey. I think
2 when the shares were transferred, when the sale in
3 '95 was made, right." You saw the minutes of

4 Villamorey.

5 A I didn't see the minutes of Villamorey.

6 If you read a little later in the next -- after that

7 paragraph you just read -- I believe it is MV3,

8 Mr. Rossell, probably he says, "no, I don't know.

9 Juan Guillermo, but if you want they can be made for

10 you."

11 Q Sir --

12 A That means the minutes were not made.

13 Q Sir, you said -- "I saw a couple there

14 that were related to the transaction that was done

15 in February, Villamorey, I think when the shares

16 were transferred, when the sale -- when the sale in

17 '95 was made." That is what you said.

18 A Remember that I was questioning them, and

19 I asked -- I made that comment to see what the

20 reaction was. In the next paragraph they say that

21 the minutes didn't exist. So I actually didn't see

22 my minutes. I was simply fishing for information.

23 Q Sir, that is a shameful answer, if I may

24 so say so. That is exactly what you said. You saw

25 the minutes of Villamorey, when, in February 1995

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I when the transfer was made.

2 A You can call my answer shameful, but that

3 is the truth. I was just fishing for information,

4 sir."⁵

28. Mr Rosen's evidence must also be treated with some caution, for the straightforward reason that having been employed as a forensic accountant by Lisa,

⁵ Day 4, pages 539-542.

he has the entirely understandable emotional interest in Lisa's success that any professional person in his position might be expected to have. That said, he was a generally credible witness. One narrow aspect of his evidence, under cross-examination by Mr. Woloniecki, was unsatisfactory, however. This was the detailed description of a conversation Rosen said he had with del Aguila in Guatemala in late 1998 about banking arrangements for the proceeds of live chicken sales contained in his witness statement prepared almost ten years later but not recorded in any of his contemporaneous notes:

"25 Q So you say that that sentence "he told me

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1 that these cash sales were never reported to Lisa

2 S.A, that Lisa didn't receive any shares of the

3 sales proceeds, "was written by you?

4 A Yes. Was signed by me.

5 Q Signed by you. Are you saying that you

6 put that in of your own initiative without any

7 discussion with anyone else?

8 A I certainly don't recall being pressured

9 to put it in, if that is what you are asking.

10 Q I am not asking you whether you were

11 pressured. I am asking whether you had a discussion

12 with anyone about that sentence.

13 A I would say, like I have signed hundreds

14 of affidavits, there is all back and forth between

15 lawyers and myself. And do I have perfect

16 recollection of those? The answer is no.

17 Q And, yet, you say you have perfect

18 recollection of Mr. del Aguila telling you this at

19 some meeting ten years ago, and it does not appear

20 in any of your notes?

21 A If you look at the notes, there are all

22 sorts of things that could have been there that were
 23 not, because you're not doing a fraud investigation
 24 at this point. I am trying to do a business
 25 valuation."

29. Ms. Crespo the interpreter was cross-examined about some very narrow aspects of her translation of the Transcript. Her astonishing attempt to tell Mr. Woloniecki how to conduct his cross-examination appeared to me to be consistent with the fact that she was an experienced and extremely fastidious translator who was unaccustomed to having her work questioned or challenged and was genuinely offended by the suggestion that she might have made a mistake. I found her to be entirely credible and reject any suggestion that she was influenced in her work by having been employed from time to time by Lisa.
30. As far as those witnesses who could have been called by the Defendants but were not, the fact that their written evidence was not subjected to cross-examination obviously diminishes the weight to be attached to their evidence, on matters which are not supported by any other evidence. However, I bear in mind that it is for the Plaintiff to prove its case. And while in certain circumstances the Court may be entitled to draw adverse inferences from the failure to call a witness, the Defendants are not obliged to assist Lisa to bolster its case through cross-examination.

Expert evidence: overview

31. The Plaintiff and the Defendants called expert evidence as to forensic accounting matters (Joseph Gardemal and Maria Yip, respectively), insurance matters (Daniel Spragg and William Bailie, respectively), Guatemala law (Professor Michael Wallace Gordon and Marcos Jose Alfredo Ibarguen Segovia, respectively) and Guatemala notarial practice (Ida Rebecca Permuth Ostrowiak and Hector Rene

Lopez Sandoval, respectively). Mr. Lopez also gave factual evidence about the 1995 Villamorey shareholders meeting which he notarized.

32. In general terms I found all of the experts credible and not unreasonably reluctant to depart from the crucial opinions set out in their respective reports.

Legal and factual findings: was Lisa's indirect interest in Leamington through Villamorey sold in 1995?

33. This issue was addressed in argument and by way of evidence and is a discrete issue which may conveniently be dealt with at the outset. The following points arise for consideration: (a) did the Villamorey shareholders resolve on February 14, 1995 to sell that company's shares in Leamington to La Brana; (b) was an agreement for the sale of Lisa's Leamington stake consummated in or about 1995; and assuming the answers to both (a) and (b) are affirmative, (c) are there any Bermuda law impediments to this Court affirming such conclusions?

34. I find that Mr. Lopez did notarize a Villamorey shareholders meeting which approved the sale of the Leamington shares to La Brana in 1995, doubts about the precise accuracy of the recorded length of this related meeting notwithstanding. Bearing in mind that Villamorey is a Panamanian company and no expert evidence was adduced as to Panamanian law, I decline to hold that that resolution had no legal effect under Panamanian law. Applying Bermudian/English conflict of law rules, whether or not a company has validly passed a resolution is an internal corporate management question which falls to be governed by the law of the place of incorporation of the relevant company: Lawrence Collins (ed.), Dicey & Morris, *'The Conflict of Laws'*, Rule 156⁶. No basis for departing from this principle was advanced in argument. I am bound to assume that Panamanian law is the same as Bermudian law and Bermuda law would not nullify the Villamorey resolution in question because of notarial irregularities under Guatemala law. The fact that, as Ms. Permuth's evidence strongly suggests, the notarization of the

⁶ 12th edition (Sweet & Maxwell: London, 1993), Volume 2 page 1111.

Villamorey meeting may well be invalid under Guatemala law is not determinative in this regard. The same applies to her opinion that under Guatemala law foreign currency transactions were prohibited, especially since the Minutes only purport to approve the sale of shares in a Bermuda company, not to effectuate the sale itself.

35. Not only did I believe Mr. Lopez as a factual witness. Juan Guillermo's admission during the August 1998 Toronto Meeting that he may have seen Villamorey Minutes when the February 1995 sale occurred makes it impossible to believe that the Villamorey meeting did not take place at all. However, it is far from clear that the sale did take place for the nominal consideration of US\$1 stated in the Minutes. Other share sales notarized by Mr. Lopez on the same day were either "*at the price and under the agreed conditions with the buyer*" (Inversiones Nuevas SA, Hornbill Investment Limited), or were supported by sale agreements dated February 15, 1995 for substantial sums (US\$12 million, Lomax Investment Corporation, and US\$13 million Crystal del Pacifico). The nominal consideration referred to in the Villamorey Minutes is not plausibly explained (in terms consistent with the sale having been consummated), although the letter of intent which contemplated the sale of various entities by Lisa provided for a total consideration of \$23 million. It is true that Juan Guillermo swore an affidavit on February 15, 1999 admitting that Lisa had sold various companies including its interest in Leamington, and that Lisa has seemingly commenced no proceedings to set aside this sale⁷.

36. The proper law of a contract for the sale of shares in Leamington, a Bermuda company, seems obviously to be the place of incorporation of the company: *Banco Atlantico SA-v- The British Bank of the Middle East* [1990] 2 Lloyd's Rep 504. In my judgment the public policy importance to Bermuda's international insurance regulatory regime of clarity as to who ultimately owns Bermuda insurance and reinsurance companies impacts on the way this issue ought to be

⁷ First Defendant's Skeleton Argument, paragraph 59.

addressed. Where, as is clearly the case here, Leamington has represented in its audited financial statements and its insurance returns that Lisa post-1995 was one of its ultimate beneficial owners, clear evidence is required to establish that these representations are incorrect. It also seems curious that lawyers in civil law jurisdictions such as Guatemala and Panama would be content to consummate a sale of shares without executing a written sale agreement. The suggestion that the failure to report the change in ultimate beneficial ownership of Leamington which purportedly occurred in 1995 cannot be explained by reference to extreme confidentiality concerns. The purported change merely involved Lisa's principals dropping out of the picture, with the "new" ultimate beneficial owners being otherwise the same as the "old" owners.

37. Bearing in mind how sensitive Lisa was about getting fair (or, according to the Defendants, unfair) value for all of its interests, it seems extraordinary to suggest that Lisa with full knowledge and consent agreed to finally dispose of its interest in Leamington for only nominal consideration. Bills of sale exist for the sale of other interests which total the \$23 million referred to in the earlier letter of intent, which leaves no consideration for the sale of Leamington at all. No obvious or straightforward explanation has been proffered as to why this should have happened. More significantly still, the recorded August 1998 Toronto meeting reveals discussions about Leamington which make no sense whatsoever if Lisa's indirect Leamington interest had already been sold three years previously. Rossell is recorded in the Transcript as saying at this juncture:

*"You are going to start to receive all the profits... because we had left Levington [phonetic] a little over time... in order to strengthen the company and we hadn't distributed dividends..."*⁸

38. In my judgment there is no sufficient evidence before this Court to displace the statutory presumption which arises under section 68 of the Companies Act that

⁸ Volume J1, page 154.

the registered shareholder, Villamorey, is the shareholder of Leamington. I find that Juan Guillermo was simply mistaken when he swore in 1999 that Lisa's Leamington interest had been sold by Villamorey. Such a mistake is consistent with the propensity Juan Guillermo has demonstrated in these proceedings for being wrong when he has testified on matters of detail outside of his own direct knowledge. And the evidence of Mr. Lopez, Leamington's own witness, supports the view that Juan Guillermo's father was the one who conducted the 1995 negotiations rather than Juan Guillermo himself:

*"17 Q. Yes. And was Mr. Juan Arturo Gutierrez
18 present at these meetings?
19 A. Look, he was in the negotiations, he was
20 present for most of the negotiations. He was there, 10:17
21 he did participate in the negotiations. We would all
22 see him come in with his bodyguard. All of the
23 employees were aware of the fact that he was arriving
24 and that he would be negotiating with his nephews."*⁹

39. On balance it appears that the sale of Lisa's indirect interest in Leamington was contemplated by way of an agreement in principle but was never consummated as Lisa contends. This view is further, and most cogently, supported by a December 7, 1995 letter from Asensio to Mr. Baker of the Managers indicating that "*Mr. Juan Arturo Gutierrez has decided to sell his equal part of Leamington's shares*" and indicating that La Brana has been formed to hold all of the shares on behalf of the other two family members. While the English words used by a Spanish speaker might carry less weight than the same words used by someone for whom English is their native tongue, the terms of the December 7, 1995 letter as a whole give the distinct impression of an incomplete transaction. The suggestion that Mr. Baker proceed to the BMA was seemingly never pursued¹⁰. Briz, the President of

⁹ Day 9, page 1445.

¹⁰ Volume K8, page 410.

Leamington from incorporation in 1987 until 2000, long after the purported 1995 sale, in his Witness Statement signed on October 24, 2007 and filed on behalf of Leamington, concludes by stating:

“11. During the time that I was president of Leamington....Leamington paid dividends exclusively to Villamorey as the sole shareholder of Leamington.”

40. I find (to the extent that this may be relevant for the purposes of the present proceedings and Lisa’s claims for loss attributable to its shareholding in the Avicola companies) that Lisa’s indirect shareholding in Leamington was not sold in 1995.

Legal and factual findings: is AVSA the de facto parent of the Avicola Group (Lisa’s claim against Leamington)?

41. Another discrete issue which it is convenient to dispose of at the outset is whether AVSA has been proven to be the *de facto* parent of the Avicola Group. It is necessary to distinguish two questions in this regard. Firstly there is the pleading issue of whether Lisa’s pleaded case embraces a claim for loss suffered by Lisa solely as a shareholder of AVSA, which must be proven to be either an actual or *de facto* parent of the Group, on the one hand. Or, alternatively, does Lisa’s claim embrace loss suffered by the Plaintiff in respect of the Avicola Group as a whole irrespective of whether or not AVSA is shown to be the *de facto* Group parent. Secondly, there is the separate issue as to whether or not AVSA is jointly liable with the non-party Avicola operating companies who were in fact the primary insureds on the grounds that AVSA was at all material times the controlling *de facto* parent company. This narrower issue will be addressed separately below.
42. As far as the scope of loss claimed is concerned, the issue was argued on the basis that Lisa’s claim pivotally depended on proof of the averments set out in the FBPs served to avoid a strike-out application once it was appreciated that AVSA was

not in fact the parent company of the Avicola Group. By the end of the trial it seemed to me that this was ultimately a very technical argument as far as the quantum of loss was concerned, because Lisa's case from the outset was and remained that it was defrauded of its share of the profits of the Avicola Group being monies which were unlawfully paid to Leamington under bogus reinsurance policies in relation to which AVSA itself was not a primary insured. As between Lisa and Leamington, it seemed to me by the end of the trial, the status of AVSA in relation to the primary insureds was largely irrelevant it being common ground that Lisa's shareholding in the primary insured operating Avicola companies was the same percentage as its shareholding in AVSA (25%). The quantum and recoverability of Lisa's loss from Leamington did not appear to be affected by the *de facto* parent issue at all.

43. My Ruling at the pre-trial review to the effect that Lisa's claim was limited to loss suffered by it as a shareholder of AVSA was in substance merely confirming that Lisa's claim as pleaded had always been based on the premise that it had suffered losses attributable to profits generated by the Avicola Group, not profits generated by Leamington/Villamorey, claims which Lisa explicitly abandoned years ago. The position with respect to the status of AVSA within the Avicola Group is primarily of concern to Lisa's claim against AVSA even though both Leamington and AVSA averred (paragraph 6 of the RAD and AD, respectively) that AVSA was not the parent company of the Avicola Group. Lisa's Reply to the RAD of the First Defendant (and AD of the Second Defendant) was as follows:

"2. ...Lisa accepts that the operating companies are not strictly speaking subsidiaries of Avicola Villabos S.A. under Guatemalan law. However, for purposes of reporting and the payment of distribution to shareholders of Avicola, the income of all the operating companies is consolidated and is treated and distributed as group income. Furthermore, at the videotaped meeting on 20 August 1998 the controllers represented to Juan Guillermo that they would be

providing to him all the relevant financial information of all the operating companies.”

44. The Reply was dated February 22, 2007. By Summons dated May 16, 2007, Leamington applied for Further and Better Particulars but not in relation to paragraph 2 of Lisa’s Reply. On June 14, 2007, however, AVSA issued its partial and total strike-out applications. It sought to strike-out the entirety of Lisa’s claim on the grounds that the above-quoted plea could not be understood. When the *de facto* parent argument was set out in the FBPs, the particulars were for all practical purposes provided to explain Lisa’s case against AVSA, not Leamington at all¹¹. It is true that in formal terms the original plea as well as the particulars were advanced against both Defendants, but prior to the trial it was not obvious that any or any serious issues were joined between Lisa and Leamington on the *de facto* parent argument at all. The FBPs themselves contain three main paragraphs, all three of which explicitly refer to AVSA alone and not Leamington. Paragraph 1 opens by stating: “*Avicola Villabos S.A. (‘Avicola’) is the de facto parent company of and/or the de facto principal of and/or the de facto controller of a group of numerous operating companies.*” These matters are in reality all advanced to explain the nature of the case against AVSA, not the loss recoverable from Leamington.
45. Mr. Riihiluoma was unable to advance a coherent case in closing as to why this issue was relevant to Leamington’s case. Leamington’s only proper concern was to know what quantum of loss formed the basis of Lisa’s claim. The profits generated by the relevant insured members of the Avicola Group remain the same irrespective of the corporate hierarchy of Group members. I find that Lisa’s pleaded case against Leamington, sensibly read, embraces the profits of the Avicola Group as a whole, and no need in this context to determine whether or not AVSA was the *de facto* parent arises.

¹¹ See paragraphs 22-25 of this Court’s Reasons for Decision dated July 3, 2007.

Legal and factual findings: is AVSA the de facto parent of the Avicola Group (Lisa's claim against AVSA)?

46. Mr. Woloniecki opened AVSA's closing submissions by asking the following rhetorical question: "*Why are we here?*" Lisa's Closing Submissions relied upon the following portions in Juan Guillermo's Witness Statement:

"20. Even though these companies are legally distinct entities, in practice they form separate divisions of a larger consolidated chicken production operation. Some of the operating companies run fattening farms, some slaughter houses and one provides the IT services to the entire Group..."

21. The operating companies are certainly not separate and distinct entities as a matter of fact. I believe that as a matter of fact and as a matter of practice, Avicola is the company that, by itself and Multi Inversiones SA, directs and controls the actions of all 19 companies, which are all treated as one single Avicola Group. All the financial reporting and accounting for the entire Group is consolidated. The information provided to shareholders has always been consolidated for the entire Group (emphasis added).

...

24(b) All 19 companies are managed by the same Group executives. This appears to be confirmed by the fact that Jose Fernando Ramon Rojas Camacho himself admits, at ¶3 of his own Affidavit of 18 June 2007, that he was, until 2002, 'the CFO of 19 Guatemalan companies... which, together, are known as the Avicola companies'.

24(g) I do not believe that the fraud could have operated without the companies in the Avicola Group operating as one enterprise. As I understand it, the fraud required records to be falsified throughout the production chain (emphasis added)."

47. This is some evidence supportive of the Plaintiff's case. I accept that, as a matter of Bermuda and/or Guatemala law, it is legally possible for a controlling corporate entity to be vicariously liable for the torts of the companies it controls¹². But this testimony as to AVSA's control is based in large part on Juan Guillermo's recollection of how AVSA operated prior to 1982. There is no cogent support for this proposition in the voluminous documentary record relating to the Leamington insurance programme. These assertions support Lisa's case in a largely abstract way, without any tangible support for them when one closely analyzes the relevant transactions. It is not enough for AVSA and the relevant Avicola operating companies to have common officers and/or accounting practices. It must be demonstrated that the relevant officers were acting on behalf of AVSA when they were directing the operating companies in making the allegedly fraudulent insurance and reinsurance arrangements. The estoppel case (i.e. the submission that AVSA is estopped by its conduct from denying that it is a de facto parent) is also not sufficiently proved.
48. Bearing in mind the high standard of proof required for allegations of fraud, I am not satisfied that AVSA was either the *de facto* parent or controller of the operating Avicola companies so as to render AVSA liable for any frauds which such companies and/or Leamington may have committed. Even if AVSA alone could declare dividends and the operating companies were just cost centres, it does not follow that AVSA was the controlling corporate entity. It seems more plausible that a company wholly owned by the other two branches of the Gutierrez family such as Multi Inversiones was in reality the controlling corporate

¹² The submissions set out at paragraphs 108-112 of Lisa's Closing Submissions are accepted.

entity, if there was one. For example, in notes recording negotiations between the parties in Toronto on February 21, 1998, Juan Guillermo himself described the two sides as "*Lisa's side*" and "*Multi-Inversiones' side*". And paragraph 3 of these notes record Rossell indicating that "*Multi-Inversiones provides strategic planning, legal advise [sic], fiscal strategy and high level administration services to the Avicola Companies.*"¹³ This is admittedly far from conclusive in terms of ascertaining which corporate entity played a controlling role before Lisa sold its interest in Multi-Inversiones, however. This is because Juan Guillermo suggests that this sale happened as late as 1997.

49. The del Aguila Affidavit suggests that AVSA had some prominence in the Poultry Group, and he left AVSA in 1996 before Lisa's interests in various companies (including Multi-Inversiones) were sold. He worked for AVSA for many years and was ideally placed to explain precisely what role AVSA played in relation to the Avicola Group of companies between 1978 and 1996 as Chief Internal Auditor of AVSA "*and its affiliates and subsidiaries*"¹⁴. Although he defined AVSA as "*a conglomerate of horizontally and vertically integrated corporations*", del Aguila did not explicitly aver that AVSA itself was the dominant corporation. I accept that this may be inferred. His February 3, 1999 Affidavit is mainly concerned with how off-the-books sales occurred. In the penultimate paragraph of his Affidavit, del Aguila describes false invoices being presented to AVSA to divert money to the Panamanian Ancona Finance, SA as part of a general scheme of diverting AVSA monies to offshore entities. Del Aguila deposed: "*These invoices would be prepared by Multi-Inversiones, the holding company of the Bosch-Gutierrez and Gutierrez-Mayorga interests...*" This supports, in a very general way, the assertion made by Rossell to Juan Guillermo in 1998, that Multi-Inversiones played a high level consultative role in relation to the Avicola Group as a whole, including AVSA itself.

¹³ Vol. D1, page 136A.

¹⁴ Vol. D1, page 172.

50. I therefore find that AVSA may only properly be held to be liable for breach of any legal duties to Lisa to the extent that it is proved to have directly participated in the conduct complained of. Lisa's case based on the vicarious liability of AVSA for the acts of its officers and/or its corporate agents is dismissed. It follows that since AVSA was not itself an insured and there is no or no sufficient evidence tying AVSA to the Leamington programme, claims against AVSA and Leamington (conspiracy, simulation) in relation to the Leamington programme must be dismissed as against AVSA. These claims are clearly based on the unsubstantiated premise that AVSA is jointly liable with the operating poultry companies and/or vicariously liable for the acts of their common principals or for the acts of the poultry companies themselves.

51. A claim under Article 176 of the Guatemalan Commercial Code was asserted against AVSA alone. This was what Mr. Hargun's own Closing Submissions stated in this regard:

"Article 176 is not an independent cause of action but allows other causes of actions to be asserted, for example, claim for simulation and for intentional wrongdoing (conspiracy). Given that claims for simulation and conspiracy to defraud are otherwise asserted, Article 176, in the context of these proceedings, adds little to causes of action already pleaded."

52. It follows that this claim against AVSA stands or falls with substantive claims asserted against both Leamington and AVSA, namely the tort of conspiracy (Bermuda law) and simulation (Guatemala law). For the reasons set out above, these claims have not been proved as against AVSA and must accordingly be dismissed.

The "background" or "feeder" frauds

53. I indicated in my June 9, 2008 Ruling following the pre-trial review that I considered it improbable that any positive findings as to breaches of Guatemalan tax law would be made at trial. It remains to consider whether this Court should accept Lisa's submission that the Leamington reinsurance fraud was motivated by a desire to launder monies which were the fruits of a large-scale tax fraud.
54. In the absence of expert evidence as to Guatemalan tax law it is not possible to properly make any findings that specific tax offences were committed by AVSA and/or the Avicola operating companies. It is possible, however, to determine whether Lisa has established by way of background a plausible motive for Leamington being used as an instrument of fraud. The most cogent evidence that those controlling Avicola and Leamington had a motive to funnel false premiums through an offshore reinsurance programme may be summarised as follows.
55. It seems clear beyond serious argument that the Avicola companies conducted business on a regular basis using official accounting records which recorded only a portion of the Group's true income. Lisa's Opening Submissions cite the following extracts from the Transcript in which Rojas made the following admissions:
- "And live chickens was something that didn't get too... too much attention before Juan Guillermo [phonetic], but you can see that starting in '94-'95 and, in particular, this last '96-'97, you can see that it went...well it... it went up rather significantly."*¹⁵
- "Then, it started to... to... to... gain importance and there... we... we also ran into a problem, which... which also partially gave rise to what happened with... uhm... with Campero [phonetic] during the last two years, and it's that nobody works with... with... with... with invoices!"*

¹⁵ Vol. E, pages 70-71.

*With invoices. That's why... that's something I was going to mention to you. That's why the black area you see [here] is sixty-three million quetzales in '97-'98 generated through the sales of live chickens is black. There's no way to invoice that. Those to whom you sell the live chickens don't give you any type of receipt or anything and...that's why, in fact, part of this... and that was part of the confusion we had the last time... we had to pass it on to Avicola [phonetic] as white money, in order to maintain the sales history and tax payments plan... because if you fail to pay taxes at any time...at the level you are in... the Treasury gets on your case and, we... we'd have found ourselves in trouble. We're going to address that later on."*¹⁶

56. The term "black money" has been defined to mean as follows: "*Income, as from illegal activities, which is not reported to the government for tax purposes.*"¹⁷ It seems obvious that the terms "black" and "white" used extensively in their context in the Transcript in relation to money, accounts and/or transactions, were intended to refer to off-books and on-books money respectively. There was clearly a less than enthusiastic attitude towards paying taxes, as Rojas went on to explain: "*We already had a ...a scare once....This thing with fiscal terrorism is ever present, right?*"¹⁸ There was also a willingness to take extensive steps to minimize the tax exposure. As Rossell went on to explain:

"The idea for all this within our tax planning, which is something that we handle with Multi [phonetic], is to increase sales, turn this around, try to catch it right here instead of sales dropping here to...return this in order for sales to hold their trend and also for the tax level to stay on the same trend. Thus, avoiding having any unusual problems in the eyes of the

¹⁶ Idem.

¹⁷ <http://www.thefreedictionary.com/black+money>.

¹⁸ Vol. E, page 85.

Treasury which would subject us to an audit. That's why this whole thing is so complex."¹⁹

57. Rojas and Rossell clearly admitted in a meeting which was secretly recorded that a substantial portion of the income generated by the Avicola Group, in particular cash generated from the sale of live chickens, chicken manure and oranges was kept off the books and used to fund distributions to shareholders. It was effectively admitted at trial that after Lisa revealed the existence of the Transcript, revised tax filings were submitted and further taxes paid by the Avicola companies²⁰. They did not expressly admit defrauding Lisa of its share of these distributions however; and alleged admission of the Ancona fraud is far less clear. Lisa also relies on the following admission made in paragraph 9 of the Lozada expert accounting report filed on behalf of the Defendants in respect of the first two feeder frauds:

"The Xela Operation consisted of an "off-book accounting system to account for the cash flows from the sale of live chickens (Pollos Vivos), oranges and chicken manure (Los Cedros) and a subsequent net distribution of profits (Utilidades) to all shareholders including Lisa."

58. The reliance placed on the feeder frauds is explained in paragraph 24 of Lisa's Closing Submissions as follows:

"The existence of the Pollos Vivos fraud and the Los Cedros fraud is relevant and probative because when considered with the Leamington fraud, it renders it more likely that the Leamington fraud took place. If it assists in this regard, the evidence is admissible on the ground of similar fact evidence. See JP Morgan Chase Bank and others v Springwell Navigation Corporation [2005] EWCA Civ. 1602:-

¹⁹ *Ibid*, page 94.

²⁰ Volume D 2, pages 194-196.

'71. That puts the test for the relevance of any evidence, and conspicuously for the relevance of similar fact evidence, far too high. Cross & Tapper, Evidence (9th edition), p55, suggest that as a definition of relevance is it not possible to improve on article 1 of Stephen's Digest:

"any two facts to which [the term] is applied are so related to each other that according to the common course of events one either taken by itself or in connection with other facts proves or renders probable the past, present or future existence or non-existence of the other [emphasis supplied]"

72. A fact may therefore be probative either on its own or because it renders a conclusion more likely when taken in conjunction with other facts. The latter is essentially the role of similar fact evidence. The relationship of Chase with the other Greek families, taken on its own, clearly cannot prove anything about the relationship between Springwell and Chase. But it might explain, illuminate or put in context evidence about that latter relationship that would otherwise be ambiguous or difficult to understand.'"

59. I accept the evidence of Juan Guillermo and Mr. Rosen that the disclosures about the off-books profits were made by the Controllers in the context of attempts being made by Lisa to value the Avicola Group for the purpose of sale of Lisa's interest in it. I find that they were genuinely surprised by the disclosures initially made at the April Toronto meeting even if they had previously received copies of statements which in fact represented the so-called "Special Results". This prompted Juan Guillermo to arrange for a secret filmed recording of the meeting at which further disclosures about the off-books business were made. The extensive explanations which were made by Rojas and Rossell as to how Avicola operated are inconsistent with any rational suggestion that Juan Guillermo was fully aware of the "black money" all along. The Transcript suggests that the Controllers were explaining what the "real world" was like in the "old country" to

a naïve émigré who was living in a far more comfortable developed world. It seems highly improbable that Juan Guillermo wrote the following letter to them in December, 1998 referring to his father in disingenuous terms:

*"I'm not even going to start listing the series of activities and facts I've come to know about recently here, which have had a significant impact on me and dishonour my Dad's memory. I can't conceive that the companies that you presently manage can be involved in activities of this nature. The interests and net worth of Lisa, SA have been damaged by your inadequate conduct, as was admitted by your representatives."*²¹

60. Rossell in his first Witness Statement does not explicitly refute the admissions relied on in relation to the off-the books business. In his Second Witness Statement, he avers that Lisa was well aware of the live chicken business and that he personally travelled to Toronto in 1994 to discuss the various operations. At this stage Lisa expressed no objections to the operations. In essence, it is implied that Lisa was aware of the off-books aspects of the Avicola business. This is not made explicit by Rossell who (a) does not expressly admit that off-business occurred at all, though he admits a tax rectification was made in 1999, and (b) does not even explicitly assert that Lisa's principals were aware that the live chicken business was off-books at all (as opposed to simply being aware of the existence of the income stream). Rojas in his first Witness Statement does not deal with the "feeder frauds" at all. In his Second Witness Statement, Rojas does not deny the off-the books business at all, and essentially refutes any suggestion that Lisa had been defrauded and denies that he admitted Lisa was defrauded.

61. Luis Arturo Gutierrez Strauss's November 14, 2007 Witness Statement exhibits his June 2, 2000 Affidavit. He admits that he is estranged from his siblings as a result of a disagreement in particular with Juan Guillermo. He strongly supports the honesty and efficacy of the dealings of the Controllers as far as the

²¹ Volume J3, page 164.

commercial interests of all shareholders and profitability are concerned and denies that Lisa has been defrauded. He worked within the Group until 1994 and was Lisa's representative. He does not admit being aware of the off-the books nature of any part of the Group's business; nor does he contend that Juan Guillermo was aware of this either.

62. In my judgment there is no or no sufficient evidence that any admissions were made by either Defendant to the effect that the "feeder frauds" constituted a fraud on Lisa as opposed to being designed to conceal from the revenue authorities in Guatemala what the Poultry Group's true earnings were. The Transcript supports the untested evidence of the Defendants in this regard. I am not satisfied having regard to all of the evidence in any event that Lisa was defrauded as alleged in relation to the Pollos Vivos and Los Cedros frauds.

63. I reject Lisa's submission that these background "frauds" are admissible as similar fact evidence on the grounds that they make it more probable that the Leamington fraud occurred. They are, however, admissible as potentially making it more probable that the Transport Policies issued by Leamington were not genuine reinsurance, but for this limited purpose alone.

Factual and legal findings: were the Leamington reinsurance policies genuine reinsurance?

64. A commercial court sitting in the world's leading captive domicile is bound to approach a claim that a local captive insurer has issued non-existent policies with a degree of caution that might not be required elsewhere. Bermuda public policy clearly requires a delicate balance to be struck between avoiding unwarranted attacks on an important segment of the national economy and granting appropriate relief where captive arrangements are proven to have been used as an instrument of fraud. While Leamington is not entitled to any "home court" advantage, Lisa cannot expect a Bermudian Court to lightly conclude that captive insurance or

reinsurance contracts are of no legal effect based on generic criteria which could apply to countless existing contracts issued by other Bermudian captives.

65. While it is legally permissible for this Court to determine the validity of the Transport Policies based on expert opinion evidence, it is in my view preferable to use the expert opinions as a lens through which the factual evidence is viewed. In that way any formal conclusions reached will be fact specific and should not undermine the stability of contractual relationships beyond the scope of the present case. Moreover, the unique fact pattern of the present case is such that the crucial judgments turn not just on the formal structure of the reinsurance arrangements, but on the underlying intent of the Controllers and Leamington. As far as the evidence of Mr. Gardemal, whose expert financial evidence goes primarily to support Lisa's compensatory claim, is concerned, I have placed no reliance on his generic "*indicia of fraud*". He fairly conceded that he is not an insurance expert, and I found this aspect of his evidence too general to be of assistance in the specialist area of captive insurance arrangements.
66. The general weight of Lisa's expert's insurance evidence is obviously diminished by the fact that Mr. Spragg's captive insurance experience is substantially US-based. Most of the analysis in his main report was based on criteria used for US tax purposes for the purposes of determining whether premiums ceded to a captive may be deducted for tax purposes. Under cross-examination, Mr. Spragg creditably admitted that he had no real familiarity with the Latin American view of such matters generally, let alone Guatemala in particular. It is unclear whether Lisa was unable to retain a local captive manager expert because none was willing to proffer the desired opinions or because none was willing to break ranks with local professional colleagues. I draw no inferences one way or another in this regard and assess Mr. Spragg's evidence on its merits.
67. Mr. Bailie's extensive experience of Bermuda captive insurance for over 20 years made his evidence generally particularly cogent. But I accept Mr. Spragg's

observation that Bailie too had no reliable basis for expressing opinions as to Guatemalan premium rates for transport policies. And it seems obvious that greater weight should be attached to his opinions as to captive management practice generally than to his opinions as to the underlying facts. Of course in many cases the primary findings made by a court may be based substantially on expert opinion evidence. Where issues of fraud and deliberate breach of duty are alleged, the crucial findings will typically relate to the state of mind of the primary actors at the material time. I accept the following opinions expressed by Mr. Bailie: (a) the level of involvement of captive managers in their clients' underwriting programmes was lower in the 1980's and 1990's than it is today, (b) outside of US tax requirements, there is no general insurance requirement for captive/parent relations to be at arms length, (c) numerous factors influence premium levels for captives, making the process quite distinct from ordinary commercial insurance where the insurer determines the premium level, (c) it is normal for captives to maximise premium income and the tax benefit for their shareholders who may also be policyholders, (d) loss reserves are often kept by insurers instead of retained earnings because in some jurisdictions (but not Bermuda), the latter are taxable but the former are not. In the Bermudian context the tax-driven incentives for keeping loss reserves do not exist, (e) retroactive approval of dividends which have been previously paid is not good practice but nor is it an indication of fraud, (f) the absence of underwriting files is not unprecedented for the period of time in issue, (g) the direct payment of premiums to Leamington is not necessarily an indicator of fraud as Gardemal suggests as there is no evidence that the fronting companies did not receive their commissions, (h) lending to related parties is not uncommon for captives, (i) the use of fronting companies is a normal practice and not an indicator of fraud as Gardemal seems to suggest, (j) the fact that no claims were made on the Transport Policies over several years is unusual but not unprecedented, and, finally, I note (k) that Bailie's view that the reinsurance was genuine was necessarily based on a

detached review of the relevant transactions rather than based on direct knowledge of the underlying facts²².

68. Under cross-examination by Mr. Riihiluoma, Mr. Spragg fairly conceded that there was no specific basis for believing that the primary policies issued by El Roble did not transfer any risk in the sense that if claims had been submitted they would not have been paid. Juan Guillermo also agreed that if a valid claim had been submitted to El Roble it probably would have been paid. Nor is there any dispute as to whether or not the purportedly insured risks might potentially exist and warrant insurance cover. But this questioning was extremely hypothetical as it was common ground at trial that over a 13-year period, no claims were actually made or paid under the primary transportation policies. It is open to this Court to conclude, looking at the insurance and reinsurance arrangements as a whole in light of all the evidence, that the risks at both levels (although the reinsurance level is most directly relevant) were non-existent in the sense that the Avicola companies had a fixed intention from the outset which they never diverted from not to make any claims even if losses occurred. Mr. Spragg further opined that "*Leamington was a sham captive that happened to write some legitimate policies later in life*"²³. And under re-examination by Mr. Hargun he opined that no risk transfer occurred under the reinsurance Transport Policies²⁴.

69. I agree with Mr. Spragg's view that the Transport Policies were not genuine reinsurance but that the later Property Policies were genuine. I find that the reinsurance policies did not involve the transfer of any genuine risk. In reaching this finding, I do not rely on all of Mr. Spragg's supportive technical reasoning and instead concur with his conclusion primarily based on my own assessment of the underlying facts. And these findings are reached in circumstances where (a) the crucial question turns on the view the Court takes of the genuineness of contracts the formal validity of which has not been in question and (b)

²² Day 10, pages 1627-1628.

²³ Day 5, pages 751-754.

²⁴ Day 5, page 854.

Leamington, a Bermuda company, called no live factual witness to support the proposition that there was a transfer of risk under the Transport Policies.

70. In his closing oral argument, Mr. Riihiluoma forcefully argued that Lisa's pleaded case of "non-existent" risks was not proved because it was clear that genuine risks of chicken losses did factually "exist". The no transfer of risk argument was a wholly distinct and un-pleaded new allegation. In my judgment the term "non-existent risks" read in a commonsense manner in the light of the RASC as a whole encompasses both (a) risks which do not really exist because they are wholly fictitious, and (b) risks which do not really exist because no real or genuine risk was transferred under the impugned insurance and/or reinsurance contracts.

71. In the context of a secretly recorded meeting at which extensive admissions were made about elaborate attempts to conceal off-books income from the Guatemalan tax authorities (including moving documents to avoid detection in an anticipated audit), the following statements²⁵ cannot easily be explained away as describing legitimate reinsurance in colourful terms:

"MV2 (Rojas)

Rather, then, let's go on to what we expect to, uhm... what's it called? ... to distribute this year...

MV1 (Juan
Guillermo
("JGG"))

Uh-huh

MV2 (Rojas)

Profits, dividends, Levington [phonetic], Ancona [phonetic]... Ancona [phonetic], Multi [phonetic] and Abejemol [phonetic], right?

MV1 (JGG)

Okay. So, what you mean is that here's where... then, let's see... that is, what says 'profits'... comes from live chickens.

²⁵ Lisa's Outline Submissions, pages 13-14; Volume E page [].

- MV2 (Rojas) Uh-huh.
- MV3 (Rossell) Exactly. The dividends come from the fiscal portion.
- MV1 (JGG) This is fiscal.
- MV3 (Rossell) Levington [phonetic] comes from a... a... figure that perhaps we hadn't told you... they're insurance [policies] that... don't exist... see? They're just false premiums that are paid and then Levington returns them and they're distributed...
- (Interrupts. Voices overlap.)
- MV1 (JGG) Okay.
- MV3 (Rossell) That is... let's say...
- MV1 (JGG) Let's say Levington [phonetic] distributes...
- MV3 (Rossell) We insure everything nobody else in the world insures... but it's not an actual policy, right?
- MV1 (JGG) Oh, okay.
- MV3 (Rossell) Then, uhm... we charge a premium to Avicola [phonetic], it passes it on to us and we distribute it.
- MV2 (Rojas) And Levington [phonetic] is that company that... uhm...
- MV3 (Rossell) Yeah.... That's where it's going to start to you... because we have started its liquidation... it's going... we're going to be sending you about... three hundred thousand dollars, perhaps... a little more.
- MV2 (Rojas) It... It... has a small cost... There are some... there are some shelters that involve costs... other don't involve costs. This one has a cost on the part of the insurance company because you have to contract a fronting, as... as that's called. And a commission that Levington also charges, right?

MV1 (JGG)

Okay.

MV3 (Rossell)

What's important is that from these ninety-... this is what will... reach the stockholders' hands."

72. It is difficult to comprehend why Rossell would have referred to policies that "don't exist" and "false premiums that are paid and then Levington returns them and they're distributed..." [emphasis added] if risks were genuinely transferred under the Transportation Policies as well as under the later Property Policies. It is true that Mr. Bailie supported Rossell in his attempt (via his written evidence) to sanitise these words as simply trying to explain complex concepts in simple terms by indicating that such explanations are not unheard of in the captive world outside of professional captive management circles. It is also true that the admissions relied upon by Lisa can only be construed as such in relation to one portion of the reinsurance programme, and that, to that extent at least, Rossell's explanation as to why he used this language carries some weight. Such words coming from the mouth of a captive owner or officer in the context of a corporate group the activities of which were otherwise beyond reproach would be one thing. But when the officer has admitted to institutionalised practices designed to deceive his local tax authorities on the part of the primary insureds, the relevant policies ran for some 13 years with not a single claim, the officer is unwilling to have his exculpatory account tested by cross-examination, and an executive incentive plan rewards the managers of the primary insureds by giving them a share of the captive's profits based on the amount of premiums ceded, one is dealing with an entirely different scenario. It is also significant that the financial record indicates that Leamington, after an initial period during which no dividends were paid, was effectively used as a "cash cow" with premiums frequently flowing in and distributions flowing out in rapid succession. In addition, even though transport risks were supposedly known to be low, it seems a curious coincidence that Leamington itself sought no reinsurance protection of its own.

73. Asensio and Briz (in their written evidence) give stock explanations for the creation of the Leamington programme while the broker Tercero gives a more detailed account of how the programme worked. Briz significantly notes, however, that no income tax was payable on dividends distributed by Leamington under Guatemalan law. Briz's assertion that some claims were made on the Transport Policies was not substantiated at trial. Donald Baker's Witness Statement in relation to Jardine Pinehurst Management Company Limited and its management of Leamington from 1994 until he left Jardine in 1996 adds little of substance. Rojas, CFO of AVSA, dealt with the executive incentive programme and it is unclear what basis he had for his understanding that genuine risks were transferred by the primary insureds. None of these witnesses were available for cross-examination. Briz and Asensio, nearly 20 years earlier, had visited Bermuda and in their trip report recorded the following approach to the reinsurance programme:

*"It was decided to submit claims to Leamington sporadically in order to maintain an appropriate image for the authorities. With such claims, the equity of some of the members of the Poultry Farming division can be redeemed."*²⁶

74. At this stage, December 4-7 1989, only the Transport Policies existed and no claims were ever submitted. But the report does suggest that these policies were not genuine risk-transferring instruments where either (a) claims would or (b) would not arise, and the "authorities" would assess the programme on its merits. It is consistent with the concerns expressed in the 1989 trip report that genuine Property Policies were issued in the mid-1990's under which claims were "sporadically" submitted. At the primary insurance level it is possibly theoretically correct to say that El Roble was on risk even if the primary insureds unilaterally decided not to submit claims. At the reinsurance level where those

²⁶ Volume G 4, page 136.

paying the premiums (the Avicola companies notionally on behalf of El Roble) and Leamington receiving them had an implicit understanding that no claims would be made, the position at first blush seems markedly different in practical terms. But on closer analysis, there is in the context of a 100% reinsurance of a fronting company's risk no practical distinction at all between the liability of the reinsured and the liability of the reinsurer. Because if a claim was improbably made at the primary level, one would reasonably expect that the claim would be passed on to the captive reinsurer.

75. No claims were in fact submitted by the time the programme was terminated after the commencement of the present litigation, even though the trip report suggests that submitting claims was considered in 1989. It would be highly artificial in the unique circumstances of the present case to hold that genuine risks were transferred merely because it was theoretically possible at one time for the Avicola insureds to make claims which would have triggered claims on Leamington by El Roble under the Transport Policies. What is unique about the present case is that the decision on whether or not to make claims does not appear, in light of the Transcript, to have been made on *bona fide* commercial grounds for reasons which I will come to. Mr. Bailie, when cross-examined about the trip note compiled only two years after Leamington's incorporation, made the following pertinent observations:

"Q. Isn't this an indication that they are suggesting that they would be making false claims in order to give the right appearance?"

A. Well, I don't know, he hasn't said they were deciding to submit false claims, he was deciding [to] submit claims. They may have. They may have been having claims all this time. I expect they probably were, give the nature of the risks.

Q. So you think they had claims but simply hadn't bothered to submit them and this is an indication that it's about time we submitted some?

A. That's a theory, it's possible. You know there might be claims and that they may not be submitted because it's more tax efficient not to."²⁷

76. These answers I find to be very insightful. I accept the judgment of Mr. Bailie that the trip note is probably not evidence of consideration being given to filing false claims. People planning to submit false claims do not ordinarily discuss doing so with their captive managers and keep a written record of their fraudulent intent. Rather, I infer the following from Mr. Bailie's judgment that the nature of the risks were such that he would have expected claims and his educated guess that claims were perhaps not made for tax purposes. It is more likely than not a feature of captive insurance practice for the claims submission process to be affected by judgments as to tax efficiencies. How far one manipulates the claims submission process is a matter of judgment raising potential questions of adverse tax treatment in the parent's domicile and adverse regulatory comment in the captive's domicile. A simple form of such claims submission 'manipulation' occurs daily in the motor insurance market when drivers decide whether or not to file a claim based on a judgment as to the comparative commercial disadvantages of (a) claiming and losing their no-claims bonus, and (b) bearing the cost of the relevant loss. Mr. Bailie conceded that various attributes of the Leamington programme during the period in question represented the use of such companies in an "aggressive" manner for tax purposes. It is therefore not implausible that a corporate group that regarded tax collectors as "terrorists" would set up reinsurance policies that in practical terms involved no risk transfer, because a decision was made at the outset, and adhered to subsequently, not to submit any claims whatsoever.

²⁷ Day 9, page 1568.

77. Alternatively, even if the decision not to submit claims was not fixed and irrevocable so there was some hypothetical or minimal risk transfer, and notwithstanding the fact that Lisa has not proved in commercial terms that the premiums received bore no relationship to the risks assumed, I would find that this alternative limb of its attack on the Transportation Policies was made out. Accepting that captive insurance has unique characteristics and cannot be expected to mirror precisely ordinary insurance and reinsurance contractual relations, under section 1(1) of the Insurance Act 1978 "*insurer*" means a person carrying on insurance business". The same section also provides:

"insurance business" means the business of effecting and carrying out contracts —

(a) protecting persons against loss or liability to loss in respect of risks to which such persons may be exposed; or

(b) to pay a sum of money or render money's worth upon the happening of an event, and includes re-insurance business.."

78. As a licensed Bermuda insurer, the legitimacy of Leamington contracts which purport to be insurance contracts fall to be tested against that statutory standard. Where the predominant function of what purports to be a reinsurance contract entails neither (a) protecting (in the captive context at least) the underlying insureds against potential losses, nor (b) paying a sum to the actual insured on the occurrence of a contingency, it must be open to this Court to find that the relevant contractual arrangements are not genuine reinsurance.

79. In concluding that the Transport Policies were not genuine reinsurance policies as contended by Lisa, I also have regard to the "*working hypothesis*" of the elements

of reinsurance set out by the learned authors of O'Neill and Woloniecki. *'The Law of Reinsurance in England and Bermuda'*, 2nd edition, at pages 34-35²⁸.

- "(1) A reinsurance contract is a transaction involving the transfer of risk acquired through providing insurance to another or others which is governed by the legal principle of uberrima fides.*
- (2)The transferor (the reinsured) transfers risk to one or more transferees (the reinsurer/s) in consideration for the payment of money (the reinsurance premium).*
- (3)The risk which the reinsured transfers may arise either (a) under a contract or contracts of insurance, or a contract or contracts of reinsurance, which contracts the reinsured has entered into before the making of the reinsurance contract; or (b) following the making of the reinsurance contract, under future contracts of insurance or reinsurance, which are in the contemplation of the parties at the time the reinsurance contract is made.*
- (4)The reinsurance contract under which the risk is transferred is separate and distinct from the insurance or reinsurance contract or contracts under which the reinsured has assumed the risk.*
- (5)The reinsurer may assume 100 per cent of the risk which the reinsured has assumed, or will in the future assume, under a contract or contracts of insurance or reinsurance.*
- (6)The nature and extent of the obligation of the reinsurer to pay money to the reinsured is defined solely by the terms of the particular insurance contract.*
- (7)There will frequently be elements of reinsurance which do not constitute an acceptance of the reinsured's "insurable interest" in the underlying subject-matter.*

²⁸ (Sweet & Maxwell: London, 2004). The highlighted portion of the quoted passage was put to Mr. Baillie in cross-examination.

We submit that it is preferable to avoid inquiries into what is the 'subject matter' of the original insurance, and to focus on the commercial purpose of reinsurance. The search for a comprehensive definition of reinsurance is not merely elusive, but may also prove illusory. It is unnecessary to postulate whether reinsurance is a form of insurance, or a particular form of liability insurance. The essential elements, common to insurance and reinsurance, are the transfer of risk and the principle of uberrima fides or utmost good faith."[emphasis added]

80. If the reinsurance contracts are legally separate and distinct from the underlying contracts with El Roble, the validity of the Transport Policies between El Roble and Leamington does not stand or fall with the underlying contracts. The mere fact that genuine risks were transferred at the primary level does not automatically mean that genuine risks were transferred at the reinsurance level, even in the case of a 100% reinsurer such as Leamington. Such an analysis would be highly technical and factually inappropriate in the present case. In the present case the most realistic view of the entire insurance and reinsurance arrangements in relation to the transportation policies is that risks were non-existent at both primary and reinsurance levels because the individuals controlling the primary insureds never intended to submit any claims, even though it seems probable that the fronting El Roble had no knowledge of this fact.
81. And if there were some very ethereal risk which was transferred, as the trip note relied upon by Lisa in fact suggests (i.e. the making of claims was contemplated but never pursued), the premiums paid clearly bore no relationship to the *de minimis* risk transferred. Mr. Spragg's conclusion as to the premium levels being wholly unrelated to the risks transferred, properly analysed in light of the unusual

circumstances of the present case,²⁹ does not require reference to the usual commercial rates.

Factual findings: did Leamington and /or AVSA intend to and in fact injure Lisa?

82. In my judgment the overwhelming weight of the evidence suggests that the Controllers were primarily concerned with avoiding and/or evading tax obligations when Leamington was established and the transportation insurance and reinsurance programme was set up. Lisa has failed to prove the highest level of its pleaded case, namely that the predominant purpose of the scheme was to launder the proceeds of the off-books live chicken sales and to deprive Lisa of its share of all of this unreported income. However it seems more likely than not that some of the "black money" was "whitened" by being used to pay the premiums which were then distributed as purportedly legitimate corporate profits, and that the Controllers intended to deprive Lisa of its rightful share of the profits generated by Avicola.
83. Lisa's position on injury is set out in Mr. Hargun's closing Submissions in salient part as follows:

"72. Lisa refutes the contention that there was no intention to injure or that Lisa was in fact not injured in relation to the Avicola's reinsurance program with Leamington. Lisa refers to the following facts:-

72.1 At the Toronto Meeting, Rossell advised Juan Guillermo that Leamington had not declared any dividends since Leamington was building up its reserves. The fact that Rossell made this statement at the Toronto Meeting has not been challenged. That statement was untrue on both counts. First, during the

²⁹ In particular, the fact of no claims being submitted at all over 13 years for policies in relation to which Mr. Bailie felt losses would have occurred after only two years.

period 1996 – 1998, Leamington declared US\$10 million by way of dividends to its registered shareholder Villamorey. This is admitted in ¶22 of the Re-Amended Defence of Leamington. Secondly, Leamington was not building up its reserves at all. Leamington was declaring dividends as fast as its premium income permitted and, as stated above, had declared \$10 million in dividends in the previous two years. Again, this evidence is unchallenged (see ¶s 34 - 37 above).

72.2 Until recently, Lisa believed that Villamorey had not distributed the \$10 million received from Leamington by way of dividends during 1996 - 1998 because of the dramatic increase in Villamorey's expenses. Those expenses included the payment of "black salaries" to the executives. However, according to the witness statement of Villaverde, filed on behalf of Leamington, the dividends declared by Leamington during 1996 – 1998 and paid to Villamorey, were in fact transferred by Villamorey to La Brana for distribution for the benefit of the Gutierrez Mayorga and Bosch Gutierrez families. Accordingly, the end result is that all the dividends declared between 1996 and 1998 by Leamington were paid to the other two branches of the family to the exclusion of Lisa. This is the clearest evidence of injury to Lisa and the underlying facts are unchallenged.

72.3 In their witness statements, Villaverde and Rossell maintain that all the dividends declared by Leamington were paid to Villamorey, as the registered shareholder, and thereafter to the three branches of the family, including Lisa. They maintain that the only reason why Lisa did not receive any dividends from Villamorey, in respect of the dividends

declared by Leamington, after 1995 was because Lisa had sold its shareholding in Leamington to La Brana. This assertion is wrong on two counts. First, even in respect of the pre-1995 period, it is now accepted by the Defendants that Lisa did not receive its proportionate share of the dividends declared by Leamington. It is accepted by Maria Yip, the expert on behalf of the Defendants, that Lisa did not receive its share of the dividends declared prior to 1995. Indeed, in anticipation of this trial, La Brana has tendered, by letter dated 30 April 2008 payment of US\$229,301.61 (representing US\$105,607 plus interest) in respect of dividends declared by Leamington pre-1995. Secondly, the contention by the Defendants that Lisa had sold its indirect shareholding in Leamington in 1995 is, it is respectfully submitted, false. The Defendants admit that but for the contention that Lisa sold its indirect shareholding in Leamington in 1995, Lisa would have received, with interest, \$5,947,164. Lisa's contention that the suggestion of the alleged sale is false is further analysed in ¶s 65 - 70 below.

72.4 Even if the true position is that Lisa had sold its shareholding in Leamington in 1995, Lisa would still be entitled to its share of the "premiums" paid in respect of the transportation policies to Leamington as a result of its direct shareholding in Avicola and indirect shareholding through Villamorey. At the Toronto Meeting, Rossell advised Juan Guillermo that Lisa would start to receive dividends from Leamington. Subsequent to the Toronto Meeting, Lisa did indeed receive three payments after the Toronto Meeting. Rossell now contends that two of those payments were not made to Lisa in its capacity as a indirect shareholder of Leamington, but they

were *ex gratia* payments on par with the "incentive" payments made to the executives of the Avicola companies. Rossell says "In as much as the Poultry Companies paid premiums for Transport Policies reinsured by Leamington, Multi-Inversiones directors agreed to make *ex gratia* payments related thereto in favour of the other stakeholders in the poultry companies, including Lisa". What is clear is that Lisa did not receive these payments after the alleged sale in 1995 and despite the subsequent promise in August 1998, has only received a small portion of it. The Defendants appear to admit that had Lisa received the entirety of the "*ex gratia* payments", Lisa would have received an additional \$1,900,085 exclusive of interest. This is confirmed by Rossell when he says that Avicola commenced making these payments in 1998 but had not finished doing so when these proceedings were commenced in Bermuda. Lisa has not received any payment from any entity associated with the Avicola Group since 1998, despite maintaining one third economic interest in Avicola. Again, none of these facts are challenged by the Defendants.

72.5 Rojas confirms that the executives of the Avicola operating companies were paid "*ex gratia* payments" or "bonuses" by reference to the net amount of the premiums ceded to the Leamington transportation policies and their percentage share in the underlying Avicola companies. Villaverde confirms that these payments in relation to the Leamington programme to the executives were in fact made by Villamorey. Villaverde has confirmed that all the premiums received by Villamorey from Leamington after 1995 were transferred to La Brana for the benefit of the Gutierrez

Mayorga and Bosch Gutierrez families. The only other source of funds available to Villamorey was its shareholding in the Avicola companies. It appears, therefore, that the "distributions" made by Avicola (whether on the books or off the books) to Villamorey were used, in part, to make the incentive payments to the executives of the Avicola operating companies. Lisa, being a one third shareholder of Villamorey, was necessarily injured as a result of those payments."

84. Leamington submitted in paragraphs 15 to 18 of its Skeleton Argument as follows:

15. The essence of Lisa's claim is that the first defendant Leamington, a Bermudian Class I reinsurance captive, was a fraudulent vehicle used to distribute AVSA's funds to AVSA's other shareholders to the exclusion of Lisa. Lisa claims that Leamington perpetrated this alleged fraud by means of issuing policies covering non-existent risks at grossly inflated premiums. Lisa appears to be suggesting that Leamington was used as a vehicle for laundering "off-book" cash generated in Guatemala through the alleged background frauds. However, Lisa offers no explanation as to why a perpetrator of such a fraud would want to remit "cash" proceeds to a closely regulated corporate vehicle operating in a heavily scrutinized jurisdiction, a vehicle in which Lisa moreover, prior to 1995, had an equivalent interest. This suggestion accordingly makes no sense.

16. It is important to emphasise that fraud is the essence of Lisa's claim. Unless it can establish that the whole purpose of the Leamington reinsurance programme was to deprive it of sums which it would otherwise have received in its capacity as a

shareholder in AVSA, its pleaded claim will fail. If, for example, the most that Lisa could establish was that companies in the Poultry Group paid inflated re-insurance premiums to Leamington with a view to say, minimising tax paid in Guatemala and/or building up reserves in a tax friendly environment such as Bermuda, that would get Lisa nowhere: it had after all the same shareholding in Leamington as it had in the poultry companies, at any rate until 1995 when it disposed of its indirect interest in Leamington. Lisa has accordingly to go further and show that the whole purpose of the Leamington reinsurance programme was to deprive it of sums it would otherwise have received as distributions in its capacity as a shareholder in AVSA.

17. In this regard, Lisa's case faces a number of insuperable difficulties:

(i) It is common ground between the parties that Leamington only wrote two kinds of re-insurance business: transport policies and all-risks property policies. Lisa's Re-Amended Statement of Claim acknowledged (paragraph 15 – Trial Bundle ref) that Leamington wrote some genuine re-insurance business, but without any indication of which business was genuine and which was alleged to be fraudulent. Although Lisa was pressed to give particulars of which policies it was challenging, it was apparently unable to do so before service of its experts' reports. Accordingly, and for this reason, Kawaley J ordered sequential service (rather than simultaneous exchange) of experts' reports on 24 August 2007. From the relevant reports (see in particular), it is apparent that Lisa is not challenging the bona fides of the all-risks property policies, as opposed to the transport policies. However, the only reinsurance that AVSA itself ever purchased was property all-risks reinsurance. Accordingly, unless

it can make good its new case on the "de-facto" group, its claim will fail even if it is able to establish that the premiums paid by the other Poultry Companies in respect of transport re-insurance were grossly inflated.

(ii) Prior to its sale of its indirect interest in Leamington in 1995, Lisa in fact received dividends from Villamorey totalling some \$816,660, which reflected Lisa's share of the dividends declared by Leamington. Even after that sale, Lisa received ex gratia payments by reference to the profits that had been generated by Leamington on business with companies in which Lisa still had a shareholding interest. The result of such dividends and ex gratia payments is wholly inconsistent with the thrust of Lisa's case; namely, that Leamington was used as a vehicle to defraud it of sums that it would otherwise have received by way of dividends qua shareholder in AVSA.

18. Further, Lisa's case as regards the alleged Leamington fraud is riddled with inconsistencies:

(i) Lisa's principal witness of fact, Juan Guillermo Gutierrez, goes to great lengths to stress that Leamington's operations cannot be justified simply on the basis that tax advantages arose from its use. Yet Lisa's expert on insurance matters, Mr Spragg, appears to base many of his manifold criticisms of Leamington on the very fact that it appears, in his view, to have been used primarily as a mechanism for reducing tax payable in Guatemala.

(ii) AVSA would not have enjoyed any tax advantage from the Leamington programme if it had been used to launder "off book" cash from the sale of live chickens. On Lisa's case such cash sales were, in fact, being effected in order to avoid paying tax in

Guatemala. Conversely, there might well be tax advantages to be gained from the Leamington re-insurance programme to the extent that "on the books" legitimate profits that would have been subject to tax in Guatemala were reduced through the payment of premiums to Leamington.

85. In Leamington's Headline Points for Closing, it is submitted that Lisa cannot maintain a claim for any loss it suffered otherwise than as a shareholder of AVSA, a broad contention which has already been rejected above. This is a point which can validly be advanced by AVSA itself, but has no or no material bearing on Leamington's liability for any damage it has caused since Lisa has from the outset explicitly sought to recover losses referable to Avicola as a whole. Leamington's Headline Points for Closing do not directly address the following issues at all: (a) whether Leamington intended to injure Lisa, (b) whether Lisa in fact was injured as an Avicola Group shareholder. Leamington's case, based on its Skeleton Argument, may be summarised as follows. There was no intention to damage Lisa because (a) Lisa has failed to show that *"the whole purpose of the Leamington reinsurance programme was to deprive it of sums it would otherwise have received as distributions in its capacity as a shareholder in AVSA"*; (b) prior to the sale of its Leamington interest in 1995, Lisa received its share of dividends (and an accidental shortfall was later tendered) and after the sale it received an *ex gratia* payment equivalent to that received by the Avicola executives. This is inconsistent with a fraud on Lisa; and (c) Lisa's expert evidence suggests Leamington was used for tax purposes, which is inconsistent with Juan Guillermo's assertion that it was a money laundering vehicle.
86. Subject to considering the legal elements of the conspiracy and other claims, which are dealt with separately below, I reject the broad submission that Lisa can only complain of loss if it proves that the entire purpose of the Leamington programme was to defraud Lisa. However, I accept the narrower argument advanced by Mr. Riihiluoma that the averments that Leamington was primarily a money laundering vehicle have not been proved. In my judgment Leamington was

established primarily for tax purposes and Lisa itself was forced to concede that the Property All Risks programme was legitimate reinsurance.

87. The crucial evidential question is whether or not Leamington may be said to have injured Lisa as a shareholder of the Avicola Group. This may helpfully be considered in relation to three main scenarios: (1) post-1995 assuming Lisa's Leamington interest was not sold by Villamorey to La Brana; (2) post-1995 assuming Lisa's Leamington interest was sold by Villamorey to La Brana. I consider the latter scenario in case my primary finding that Lisa did not sell its indirect interest in Leamington is held to be wrong; and (3) whether Lisa suffered actionable injury under Guatemalan law?

Injury to Lisa: the post-1995 period assuming Lisa's Leamington interest was not sold by Villamorey to La Brana

88. The principal evidence which supports an intention to deliberately injure comes from two facts which cannot be disputed. Firstly, in the August 20, 1998 meeting, Rossell, an officer of Leamington, represented that substantial dividends had not yet been distributed by Leamington:

"You are going to start to receive all the profits... because we have left Levington [phonetic] a little over time...in order to strengthen the company and we hadn't distributed dividends...So, from today forward the money will start to come in to you...today I believe that, umh...ninety-five was cleared, I think it was? But throughout the rest of the year, we're going to send you all the pending amounts to get up-to-date on...on Levington..."³⁰

89. Secondly, it is clear that Lisa had received some of its dividend entitlement for the period 1990 to 1994 so that Rossell must have been speaking about the period 1995 onwards. Moreover, the phrase *"You are going to start to receive all the*

³⁰ Volume E, pages 192-193.

profits" in the present continuous tense is clearly prospective and cannot sensibly be read as a statement limited to what overdue amounts from the pre-1995 era. This rebuts the notion that Lisa's interest in Leamington had been sold in 1995, in which case no commitment to pay Lisa a dividend for 1995 (already "approved") and other "pending" dividends would have arisen for discussion. But more importantly, it is admitted that approximately \$10 million was in fact declared and distributed by Leamington through Villamorey between 1996 and 1998 so this excuse for non-payment of Lisa was plainly false. Ms. Yip does not dispute Mr. Gardemal's assertions in his November 29, 2007 Report where he outlines the following sample dividend payments:

- (i) February 2, 1996, Leamington distributed a \$1.2 million dividend to Villamorey, less than a month after a similar amount was paid into Leamington by Ancona by way of premium;
- (ii) April 28, 1997, Leamington distributed \$3 million to Villamorey by way of dividend;
- (iii) February 23, 1998, Leamington declared a dividend for \$3 million which was paid on February 1, 20 and March 12, 1998 in equal instalments.

90. Rossell by his own account has been General Manager and a director of Multi-Inversiones "*in charge of coordinating risk management for Multi-Inversiones and its affiliated or related companies*" (Witness Statement, paragraph 3). He has also been Leamington's Secretary and Treasurer since 1993 who "*held periodic meetings with Lionel Asensio and representatives of the Poultry Companies as to risks to be insured and the best use of Leamington*" (Witness Statement, paragraph 4). He must have known at the August 20, 1998 Toronto meeting that these and other substantial distributions had been made by Leamington.

Leamington's discovery documents show that requests for these distributions were typically made during this time period by Alameda with which Briz (Leamington's President) was associated. For example Briz spoke to Don Baker of Leamington's Insurance Managers about the availability of cash for dividends on November 10, 1995. Briz was then informed that on November 15, 1995 a \$1.1 million dividend had been paid to Villamorey. In each case Briz was faxed at Alameda³¹. Alameda consistently gave the dividend instructions during this period although Asensio often signed the relevant correspondence³². Briz himself on January 22, 1996 requested "*a Declaration of Dividends to be paid as soon as possible to VILLAMOREY, S.A.*", writing on Alameda letterhead and using the title "General Manager"³³. The link between Leamington's President, Briz, and Alameda, may explain why instructions from Asensio in relation to matters unrelated to the reinsurance programme (e.g. dividend and capital structure matters) appear to have been routinely accepted by Leamington's Bermuda-based agents. According to Gardemal's Report, Briz himself in a June 23, 1994 letter characterised Alameda as the "*functional division and office in charge of insurance and reinsurance*" for Multi-Inversiones³⁴.

91. Briz as the Multi-Inversiones treasurer would likely have worked under the general supervision of the General Manager Rossell. Briz was also at all material times President of Leamington and General Manager of Multi-Inversiones controlled Alameda. This constellation of facts not only illustrates why the best available evidence strongly points to Multi-Inversiones (and not AVSA) being viewed as the corporate entity which controlled Leamington. It also demonstrates that Rossell was in real terms a key agent and directing mind of Leamington, whose admissions and knowledge may properly be attributed to the First Defendant.

³¹ Volume K8, pages 434, 443.

³² Volume K [], pages [].

³³ Volume K8, page 383.

³⁴ Volume G 1, page 20, paragraph 2.

92. So Rossell was deliberately misleading Juan Guillermo on August 20, 1998 when he represented that Leamington had made no distributions since 1994, a 1995 dividend had merely been approved and further dividends were pending, while acknowledging that Lisa was entitled to participate in distributions which in fact had been made. His knowledge that Lisa had not received its share of these distributions and collusion in concealing the true position from Lisa is attributable to Leamington, which I find intended to injure Lisa and did injure Lisa to this extent. Leamington was allowing itself to be used as a vehicle to defraud Lisa by making distributions to Villamorey which were not being distributed (or promptly distributed) to Lisa but which had been, as Mr. Gardemal found without contradiction, actually distributed to the other two Villamorey shareholders at the date of the August 20, 1998 Toronto meeting. Of course, there is no suggestion whatsoever that any of these facts could possibly have come to the attention of Leamington's Bermuda-based insurance and/or legal representatives.
93. It is perhaps somewhat unclear whether Lisa would have received some or all of its entitlement had the present proceedings not been commenced and the secret recording not been revealed, as Rossell promised in Toronto in August 1998. On any view at that juncture, Lisa in fact had not received what is now admitted to be its full entitlement in respect of pre-1995 dividends, and was prejudiced by the delay in receiving the post-1995 dividends which had been distributed to Avicola's other shareholders. Dividing a Villamorey dividend into three is far from high science, yet Lisa was only offered its full pre-1995 dividend share in April 1998, ten years after it began investigating the financial position. Assuming Villamorey is indeed still the sole shareholder of Leamington, there is no doubt that Lisa has been injured by being deprived of its rightful third share of the post-1995 dividends described above. The position in economic terms is essentially the same as Lisa would any event have been entitled to one-third of the profits of the Avicola Group and Villamorey even if the Leamington interest had been sold.

94. Lisa cannot complain of being deprived of its share of the Villamorey dividends directly in the present proceedings because it abandoned any such claim years ago. But Lisa can complain that if the premiums which generated those profits, essentially through bogus reinsurance arrangements (the Transportation Policies) were not funnelled out to Leamington in that way, Lisa would as a shareholder of Avicola have participated in those monies in any event. The Plaintiff's primary case is that those profits ought to have been distributed by the Avicola companies themselves, and not channelled through Leamington at all.

Injury to Lisa: the post-1995 period (assuming Lisa's Leamington interest was sold by Villamorey to La Brana)

95. I now consider the position on the hypothesis that Lisa's indirect Leamington interest was indeed sold in 1995 as Leamington contends, in circumstances where the Transportation Policies were not genuine reinsurance and were a vehicle to gain illicit tax advantages for the two branches of the Gutierrez family to the exclusion of Lisa.

96. On this hypothesis, which clearly was not advanced by Lisa at all, the case for construing the transportation aspects of the Leamington programme as calculated to injure Lisa is, it seems to me, even stronger³⁵. The financial record shows that the overwhelming majority of dividend payments were made after the purported sale. This would suggest even more strongly that once Lisa sold its interest in Leamington, the Controllers decided to exclude Lisa altogether from the Avicola-generated profits by distributing them through a corporate vehicle (Leamington) in which Lisa had no interest at all. It would also suggest that Lisa was misled into selling its interest in the highly profitable Leamington for nominal consideration, because Rossell's 1998 explanation of how Leamington worked strongly suggests that Rossell had reason to believe that Lisa at that late stage did not fully understand the role played by Leamington.

³⁵ It is possible that the loss calculation is more complicated and it seems obvious that accepting that the sale of a valuable interest for nominal consideration in fact took place in 1995 is contrary to Lisa's commercial interests.

97. If Lisa's interest was sold for nominal consideration shortly before Leamington started to distribute the bulk of its dividends generated by Avicola "premium" income, I would have found that from this point (if not from the outset) a substantial purpose of Leamington was to defraud Lisa of its share of the Avicola Group profits.

98. But for the reasons I have already stated, my primary finding is that a proposed sale of Lisa's interest in Leamington was never consummated, and that defrauding or injuring Lisa was only a subsidiary function of the purported Transportation Policies which were predominantly used for tax evasion/avoidance purposes.

Legal and factual findings: did Lisa suffer actionable injury under Guatemalan law?

99. Professor Gordon very robustly asserted that Lisa could sue a third party such as Leamington for damage suffered by it in relation to its AVSA shareholding. Such injury would be direct injury and not merely reflective of Avicola's loss (Reply Report, paragraph 21). Mr. Ibarguen very firmly asserted that Lisa could not assert a claim against AVSA or Lisa under the Commercial or Civil Codes of Guatemala because it could only complain of suffering direct or personal loss in respect of AVSA dividends which had been declared but not paid.

100. I have already found that Lisa's case against AVSA based on the theory that it was the *de facto* parent of those Avicola companies which were reinsured by Leamington under the Transportation Policies has not been proved. No need to consider the position as regards AVSA arises. Had I been required to decide the liability of AVSA under Guatemalan law, I would have accepted the opinions expressed by Mr. Ibarguen in his oral evidence and, in particular, paragraphs 22 - 23 of his Third Affidavit and held that the claims against AVSA failed under Guatemalan law because no direct injury was suffered.

101. What is relevant is whether as regards the double actionability rule Lisa has proved that the tort of conspiracy claim is maintainable against Leamington under both Bermuda law and Guatemalan law on the assumption that the tort was substantially committed in Guatemala. This was decided as a preliminary issue by me (and subsequently affirmed by the Court of Appeal) as follows:

"46. The Defendants correctly assert that to justify an action in Bermuda for a tort committed abroad, the claim must be both actionable in Bermuda and the place where the tort was committed: Chaplin -v- Boys [1971] A.C. 356. The Plaintiff answers that the claims under paragraphs 15 and 16 are for equitable fraud, not tort at all. And the tortious conspiracy cause of action is based on acts committed by Leamington in Bermuda, not on torts committed abroad. Further and in any event, all claims would be actionable in Guatemala as causing intentional or negligent harm under Article 1645.

47. I accept Mr. Hargun's submission that Lisa's claims under paragraphs 15 and 16 do not engage the double actionability rule at all, because they are not foreign tort claims. As far as the conspiracy claim is concerned, the crucial test advanced by the Plaintiff's Counsel is the following dictum of Slade LJ in Metal & Rohstoff-v- Donaldson Inc. [1990] 1 Q.B 391 at 446:

"In our judgment, in double locality cases our courts should first consider whether, by reference exclusively to English law, it can properly be said that a tort has been committed within the jurisdiction of our courts. In answering this question, they should apply the now familiar 'substance' test...If on the application of this test, they find that the tort was in substance committed in this country, they can wholly disregard the rule in Boys v. Chaplin ...; the fact that some of the relevant acts occurred abroad will thenceforth have no bearing on the defendant's liability in tort. On the other hand, if they find that the tort was in substance committed in some

foreign country, they should apply the rule and impose liability in tort under English law, only if both (a) the relevant events would have given rise to liability in tort in English law if they had all taken place in England, and (b) the alleged tort would be actionable in the country where it was committed. We appreciate that the application of the substance test may give rise to difficult problems on the facts of some cases..."

48. *It is far from clear, having regard to the Plaintiff's pleaded case alone, where the tort was in substance committed. The conspiracy case is particularized in reliance on paragraphs 1-15 of the ASC, which embraces three frauds admittedly committed abroad. On balance, it seems to me that the alleged tort was in substance committed abroad, thus engaging the double actionability requirement.*

49. *I am satisfied that although the double actionability rule is engaged as regards paragraph 17 of the ASC, the acts complained of would be actionable in Bermuda and under Guatemalan law, in particular, under article 1645 of the Civil Code. To the extent that the pleading suggests that relevant acts may have occurred in El Salvador and Honduras³⁶, in the absence of expert evidence, this Court is entitled to rely on the presumption that foreign law is the same as Bermudian law. So I would reject the objection to Lisa's standing based on the application of the double actionability rule."³⁷*

102. Having regard to the evidence adduced at trial, I find that the conspiracy complained of was partly committed in Bermuda (where the dividends were formally declared), but substantially committed in Guatemala where the controlling minds of Leamington were primarily based. How was the conspiracy

³⁶ The domicile of two of the fronting companies according to paragraph 14 of the ASC.

³⁷ Volume B2 TAB 27; [2006] Bda LR 9.

actionable under Guatemalan law? I accept the evidence of Mr. Ibarguen that simulation requires both parties to the transaction to intend it to be a sham³⁸. Mr. Ibarguen agreed that in general terms Lisa's case would give rise to an action against the Administrators³⁹; but this would be a shareholder claim, not a claim against a third party such as Leamington. Mr. Ibarguen was bound to admit in general terms that where a legal person causes direct injury to another, they would be liable under Article 1645 of the Civil Code⁴⁰. Professor Gordon was therefore in my judgment right to assert quite confidently that the conspiracy to defraud claim against Leamington (and AVSA) if proved would be actionable under Guatemalan law:

*"...Article 1645. Any person who has caused damage or injury to another, intentionally or negligently, is obligated to repair it, except where it is established that the damage or injury was produced by the fault or negligence of the victim...This provision is common to every civil law tradition nation law dealing with negligent or intentional injury...The possible examples are endless. The common thread is that (1) a person...(including artificial persons) has (2) caused (3) injury (4) intentionally or negligently (5) to another...It is my opinion that Lisa has a separate cause of action under Guatemalan Civil Code Article 1645 against Avicola or Leamington...Guatemala has no provisions which directly create conspiracy as a civil action. However, Article 1645 applies to collective actions by more than one person, and conspiración is recognised in the civil law as two persons joining together for an unlawful purpose."*⁴¹

Legal and factual findings: conspiracy to defraud claim

103. In terms of identifying the legal elements of the tort of conspiracy to defraud, it is necessary to distinguish two main scenarios. Firstly, where the conspiracy

³⁸ Day 8, pages 1316-1317, 1364-1367.

³⁹ Day 8, page 1346.

⁴⁰ Ibid, pages 1380-1382.

⁴¹ Report, paragraphs 20-21.

involves unlawful means, an intention to injure the claimant is all that need be proved: *Clerk & Lindsell on Torts*, 14th edition (Sweet & Maxwell: London, 2006), paragraph 25-123. Ancillary to this point is the requirement that where the illegality relied upon involves the contravention of a statutory provision, as opposed to fraudulent means alone, the relevant statute must be construed to determine whether civil action is permissible for the contravention in question: *Clerk & Lindsell*, paragraphs 25-130-25-136. Where the conspiracy is effected by lawful means, the predominant purpose of the conspiracy must be shown to have been to injure the claimant: *Clerk & Lindsell*, paragraphs 25-130-25-136. In determining whether or not Leamington participated in the conspiracy, this Court must ascertain whether the Plaintiff has proved that its participation took place with the requisite knowledge of the unlawfulness of the conspiracy ⁴².

104. The conspiracy to defraud claim is, as previously set out above, pleaded as follows:

"17. Further, and in the alternative, the matters complained of in paragraph 15 and 16 hereof were committed by Leamington pursuant to a conspiracy between the Controllers (and in particular Rosell) and Leamington and (by reason of the matters set out in paragraph 17C and 17F below) Avicola to defraud Lisa of its true entitlement as a shareholder of Avicola of the distributions made by Avicola. The parties to the conspiracy included Losen, Rojas, Bonifasi, Rossell, Avicola and Leamington. Leamington joined the conspiracy after its incorporation on 23 July 19[8]7."

105. The primary plea was a conspiracy to defraud. However, the particulars relied upon under paragraph 15(i) cross-refer to the Pollos Vivos, Los Cedros and

⁴² See *Walsh and Taal –v- Horizon Bank International* [2008] Bda LR 16; [2008] SC (Bda) 20 Com, paragraphs 114-120, 130

Ancona Frauds. It is true that these "background frauds" make reference to breaches of Guatemalan tax law and laundering which have not been adequately proven, but the main thrust of the allegations is a fraudulent exclusion of Lisa from its share of the Avicola profits. It follows that the main thrust of the pleaded case on the Leamington fraud is that the reinsurance programme (limited at trial to the Transportation Policies programme) was fraudulently used as a means to exclude Lisa from its rightful share of the Avicola profits. The central allegation is that the policies were not genuine. The conspiracy alleged was neither a lawful means conspiracy nor was it an unlawful conspiracy requiring construction of the statutes allegedly contravened.

106. Although I am not satisfied that the predominant purpose of the conspiracy was to injure Lisa, the Plaintiff has proved that there was an intention to injure Lisa in relation to a conspiracy involving the use of (fraudulently) unlawful means. Lisa has also proved that the conspiracy involved the Controllers and was joined by Leamington after its incorporation in 1987. It is clear that Rossell, in particular, had actual knowledge of all of the facts which made the conspiracy unlawful. The most cogent evidence of this is his frontline role at the August 20, 1998 meeting in misleading Lisa's principal about the distributions made by Leamington from which Lisa had been indirectly excluded. His knowledge may be imputed to Leamington because "*an officer of a company must surely be under a duty, if he is aware that a transaction into which his company or a wholly owned subsidiary is about to enter is illegal or tainted with illegality, to inform the board of that company of the fact. Where an officer is under a duty to make such a disclosure to his company, his knowledge is imputed to the company*": *Belmont Finance Corporation-v- Williams Furniture Ltd. (No.2)* [1980] 1 All ER 393 at 404 (per Buckley LJ). Rossell was admittedly (a) both secretary and treasurer of Leamington from 1993, (b) in charge of coordinating risk management for Avicola, (c) in charge of Lionel Asensio, who ran Agencia de Seguros Empresariales, S.A., an insurance brokerage company, under his supervision and (d) at all material times also an officer of Multi-Inversiones. As such Rossell (and

Leamington's President Briz) knew that no genuine transfer of risk took place under the Transport Policies and that the profits generated were not being distributed to Lisa.

107. The Plaintiff has proved its tortious conspiracy to defraud claim.

Legal and factual findings: Lisa's equitable fraud claim

108. In its Closing Submissions, Lisa submitted as follows:

"130. The factual allegations in relation to Lisa's case on equitable fraud are set out in ¶s 8 & 15 of the Amended Statement of Claim. Lisa contends that Leamington was a participant in this fraudulent scheme to launder monies (whether on or off the books), to reduce the profits of Avicola and to reduce the dividends which would otherwise be payable to the Plaintiff. Lisa also asserts that knowledge of Rossell, as president, director and secretary of Leamington, is to be attributable to Leamington and that Rossell has been at all material times the controlling mind of Leamington (¶18). Lisa puts this case under equitable fraud in two ways.

131. First, on the basis of the plea that the transportation reinsurance contracts in substance were a sham and a fraud, Bermuda law will in those circumstances impose a constructive trust on Leamington as the fraudulent recipient of the premium. Equity will recognise the proprietary interest of the party defrauded.

132. Second, Lisa puts its case on the basis of dishonest assistance/knowing receipt – see further below.

133. In terms of remedies for equitable fraud, Lisa claims constructive trust (¶1 of the relief), return of the monies held upon trust, (¶2), accounting (¶5) and payments of monies due upon the taking of account (¶6)."

109. This claim, which relies on the same facts as the conspiracy to defraud claim in respect of a more straight forward cause of action, has also been proved. I find that the Transportation Policies were in substance a sham and a fraud because (a) they were not genuine reinsurance, and (b) were used in part to defraud Lisa of its rightful share of the Avicola profits. It bears repeating that the policies were valid on their face and that this finding is not based on a technical analysis of the reinsurance arrangements which Leamington's Bermuda-based insurance managers or lawyers ought to have carried out. Rather it is based substantially on an analysis of the surrounding evidence as to (a) the motivations of the controlling minds of Leamington, as partially evidenced by their own admissions, and (b) the fact that after Leamington's dividends were declared in Bermuda, Lisa was excluded from participating in the distributions made by Leamington's Panamanian shareholder, Villamorey.

110. I further find that Lisa's 1/3rd share of the premiums received by Leamington in respect of the Transportation Policies were received by Leamington with knowledge of that fraud constituting the First Defendant a constructive trustee in the Plaintiff's favour of the sums received. For the reasons already set out above, the relevant knowledge of Rossell and Briz as controlling minds of Leamington is attributable to Leamington.

Legal and factual findings: Lisa's claim for dishonest assistance/knowing receipt

111. This claim which relies on the same facts as applicable to the two aforementioned claims is also proved as against Leamington. Lisa's closing Submissions stated as follows:

"135. As set out above in ¶s 130 - 134, there was a constructive trust on Leamington as the fraudulent recipient of the false reinsurance premiums.

136. In addition, Leamington (by Rossell at the very least) well knew that the "premiums" received by it ultimately from Avicola were not bona fide insurance premiums but were fraudulent in nature. Leamington (by Rossell at the very least) was party to the scheme to launder the monies of Avicola (whether on or off the books) through Leamington by false insurance premiums. In those circumstances, the party defrauded (Lisa) is entitled to enforce a constructive trust over the proceeds of the fraud on the basis of dishonest assistance and/or knowing receipt (see El Ajou v Dollar Land Holdings PLC [1994] 2 All ER 685).

137. The elements giving rise to the cause of action for dishonest assistance are:

137.1A trust or other fiduciary relationship;

137.2A breach of trust or other fiduciary duty on the part of the trustee or other fiduciary;

137.3A causal link between the breach and the loss to the beneficiaries,

137.4 Assistance by the defendant in the breach;

137.5A dishonest state of mind on the part of the assistant.

See Underhill & Hayton, The Law of Trusts & Trustees, 17th ed, at para 100.18.

138. The elements giving rise to the cause of action for knowing receipt are:

138.1 Property held on trust or subject to some other fiduciary duty;

138.2 Misapplication of the property by the trustees or fiduciary in breach of trust or fiduciary duty;

138.3 Receipt of the property or its traceable proceeds by the defendant;

138.4 A causal link between the defendant's receipt and the breach of trust or fiduciary duty;

138.5 A dealing with the property by the defendant for its own benefit, and not in his character as agent for another party;

138.6 Knowledge by the defendant that the property has been transferred in breach of trust or fiduciary duty, either at the time of receipt or at any other time prior to his dealing with the property for his own benefit.

See Underhill & Hayton, The Law of Trusts & Trustees, 17th ed, at para 100.52.

139. These elements are all made out on the present facts. In particular, claims under these causes of action are not limited to situations where an express trustee has misappropriated trust property. They can also lie against defendants who have assisted in or received property misappropriated by other

fiduciaries who have voluntarily assumed responsibility for managing the property or where a defendant has received or helped a constructive or resulting trustee to misapply the trust property: see Bank Tejerat v Hong Kong & Shanghai Banking Corporation (CI) Ltd [1995] 1 Lloyds' Rep 239 and Heinl v Jyske Bank (Gibraltar) Ltd [1999] Lloyd's Rep Bank 511. Avicola and the Controllers are here liable as constructive trustees for the misappropriation of Avicola's assets. Leamington is liable for its role in receiving those assets by way of fraudulent reinsurance premiums and/or assistance in laundering those assets.

140. The pleas of equitable fraud and relief of constructive trust seek to obtain restitution from Leamington. As a matter of Bermuda conflict rules, the obligation to restore the benefit of an enrichment obtained at another person's expense is governed by the proper law of the obligation. The proper law of the obligation is (if the obligation arises otherwise than in connection with a contract or land) the law of the country where the enrichment occurs (see Rule 200 of Dicey & Morris: The Conflict of Laws, 13th Edition. Furthermore, only Bermuda law is relevant on the basis that the acts complained of took place in Bermuda."

112. I find that Leamington knowingly assisted a misapplication of the Transportation Policies by its receipt and distribution of the premiums paid in respect of the Transportation Policies and that the elements of the claim as delineated in the above submissions have been made out. Two points require further analysis as regards both constructive trust claims, and which arise from the above submissions.

113. In relation to the tortious conspiracy claim, I have found that the tort was substantially committed in Guatemala where it seems to me the tortious acts substantially occurred. It was there that the relevant instructions were given, implemented in Bermuda, which caused Lisa loss. Is it possible to find in the context of these alternative constructive trust claims that Bermuda law governs the obligation to make restitution because this is where the enrichment occurred? The discussion in *Dicey and Morris* on Rule 200 suggests: (a) where a restitutionary obligation is created following the commission of a tort, the law which governs the tort should also govern the equitable obligation to make restitution; (b) although the law where the enrichment occurs generally determines a constructive trust claim, this principle is not overwhelmingly supported by clear judicial authority, and factual variations may justify a different approach. The need to consider the constructive trust claims only arises in the present case on the hypothesis that no tort has in fact been committed at all (either because I am wrong in holding that the elements of the tort have been proved under Bermuda law or wrong in holding that the conduct complained of is actionable in Guatemala). In any event, I have found that Bermuda law governs the tort claim because the tort was partially committed abroad and the double actionability rule is met. In terms of looking at where the unjust enrichment occurs in relation of the constructive trust claims, however, the unjust enrichment complained of (as opposed to the acts causing it) substantially occurred in Bermuda to the extent that the premiums were (a) received by a Bermuda company, and (b) distributed with the approval of Board resolutions passed at meetings held in Bermuda.
114. The second issue which is not self-evident is the requirement that the constructive trustee knew of the breach of trust either (a) when the monies were received, or (b) before they were distributed in breach of trust. It is clear that the knowledge of Rossell can be attributed to Leamington from 1993 when he became an officer of Leamington and became deeply involved with the Avicola risk management programme. It is unclear precisely when in 1993 Rossell became involved, and

\$200,000 was declared that year. The vast majority of dividends were declared after 1993, and although \$2.5 million was paid before 1993, it is common ground that Lisa was partially paid its share of all pre-1995 monies and the entitlement of Lisa to the shortfall is not in dispute. It therefore is not necessary to consider the pre-1993 position in terms of what knowledge can properly be attributed to Leamington.

115. Although the preponderance of the evidence does suggest that Briz, admittedly Treasurer of Multi-Inversiones from 1984 to 2003, had actual knowledge of any breach of trust before the Leamington dividends were distributed, it accordingly matters not that the position prior to 1993 is ambiguous. Not only was Briz President of Leamington at all material times. Although he omits mention of this in his Affidavit, he was intimately involved with the dividend process. Firstly, as already mentioned when discussing the broad question of a fraud on Lisa above, he held himself out to be General Manager of Alameda. This was a company of which Lionel Asensio was Operations Manager, and Asensio was involved in both forwarding premiums and requesting the payment of dividends. Alameda, it seems obvious, was acting on behalf of the other two branches of the Gutierrez family, who owned Multi-Inversiones. Thus Briz on June 30, 1992 wrote to Leamington's insurance managers on Alameda letterhead stating: "*We hereby request a declaration of dividends to be paid to VILLAMOREY S.A. in the amount of U.S. \$1,300,000.*"⁴³ On that date \$1.3 million was paid to Villamorey, and \$200,000 was lent to Alameda. The dividend was retroactively approved in November 1992 when Lisa received 1/3rd of the total "distribution", even though only \$1.3 million was formally approved as a dividend. It is unclear that the comparatively small pre-1995 deficit is attributable to the pre-1993 era before Rossell entered the stage. But Briz' involvement as President of Leamington and agent for Villamorey, through Alameda, in 1992 strongly supports the inference that he knew that Leamington was acting in breach of trust in declaring dividends which were not paid to Lisa in the post-1993 period. On January 22, 1996, writing

⁴³ Volume K8, page 97.

as General Manager of Alameda, he requested that a dividend of \$750,000 should be paid by Leamington to Villamorey⁴⁴. A similar request had previously been made by him on November 13, 1995 for a \$1.1 million dividend⁴⁵. It seems more likely than not that Briz made these requests both with knowledge that Villamorey would exclude Lisa from its share of these monies and well-knowing that Lisa was a shareholder of Villamorey. Such knowledge on the part of Leamington's President is attributable to Leamington itself. It is in the face of these distribution requests that Briz himself admits that at all material times Villamorey was the sole shareholder of Leamington, and does not support the proposition that Villamorey sold its shareholding in Leamington in early 1995.

116. The general pattern appears to have been that before Leamington declared the dividend or made a distribution, a request came from Alameda. On a balance of probabilities it seems to me to be clear that when the request was made for a distribution, it was known how the funds were going to be disbursed. There can be no suggestion (in the absence of positive evidence to this effect) that it was only after Villamorey received the funds that a decision was made to exclude Lisa from the ultimate distribution. Briz' knowledge supports the knowing receipt claim alone, while Rossell's knowledge supports both the dishonest assistance and knowing receipt claims. In assessing the cogency of the evidence as to their knowledge generally, it is noteworthy that neither of these officers was willing to give oral evidence on oath to deny or refute the prejudicial inferences which clearly arise from the documentary and other evidence before this Court.

Legal and factual findings: Leamington's defence to the fraud and constructive trust claims

117. Leamington defended its position on three broad fronts: (a) the assertion that the Transportation Policies were not fraudulent, and (b) the following submissions set out in paragraph 5(i) of its Headline Points for Closing:

⁴⁴ Volume K8, page 383.

⁴⁵ Volume K8, page 438.

“Lisa’s case that Leamington was used as a vehicle to launder moneys generated by purported off-book sales of live chickens, oranges and manure is entirely irrelevant to the relief sought against Leamington. But, on any view, that case was shot to pieces at trial. Leaving aside the inherent improbability of AVSA or the other poultry companies using alleged off-book, untaxed monies to pay premiums on policies re-insured by Leamington (thereby gaining no tax advantage), rather than reducing their taxable profits by using on-book funds to pay the premiums (thereby throwing up profits in a low tax environment), Lisa’s accounting expert freely stated that he could not determine whether on-book or off-book funds were used to pay the premiums on policies reinsured by Leamington. [7/1146, line 7- 7/1148. line 10]. It is for Lisa, as claimant, to prove its case. If it cannot do so now, after ten years of litigation, its case cannot succeed.”

118. And (c), in its Supplemental Headline points for Closing, Leamington made the following additional points:

“1. In essence, Leamington submits the point is this: vicarious liability can be used to make defendants other than the primary wrongdoer liable for matters that have been pleaded. It cannot be used to make a defendant liable for matters that have not been pleaded.

2. A few simple propositions may help to explain Leamington's position. Assume that Lisa has suffered a loss of \$X as a shareholder in AVSA and \$Y as a shareholder in the other 18 companies. Assume also that all 19 companies are found to be co-conspirators against Lisa.

- i. *There is no reason in principle why, if all 19 companies are joined as defendants each one of the 19 should not be jointly and severally liable for \$X plus \$Y.*
- ii. *Equally, if only one of them is joined as a defendant (say, AVSA), Lisa can still hold that one defendant liable for the damage it has suffered as a shareholder in all of them – i.e. for \$X plus \$Y, if its claim is appropriately made. It would have to bring the claim in its capacity as a shareholder in all 19 companies, not just as a shareholder in AVSA; and it would have to plead the loss it had suffered as a shareholder in each.*
- iii. *However, if the only loss claimed is the loss suffered as a shareholder in AVSA, the claim being brought as a shareholder in that company but not the other 18 companies, Lisa can only ever recover \$X (unless, relying on the de facto parent allegations, Lisa can show that the \$Y loss sustained in respect of the other 19 companies would in fact have impacted on the amount of dividends it would have received from AVSA, because the profits of the other 18 companies were paid through AVSA). In this situation, vicarious liability cannot assist Lisa – it cannot be used to make AVSA liable for unpleaded losses suffered by Lisa, suffered in a different capacity to that in which it brought the claim.*

Leamington submits that the point may seem technical, but it is not an empty pleading point. A claim for the loss suffered in any one of the other 18 companies would, in fact, be a different cause of action. It would have required Lisa to prove different facts – most obviously, its position as a shareholder in that company – than those required to be proved in the action as presently constituted.

If Lisa had made an appropriate amendment whilst it was still open to it to do so, expanding the claim to cover loss suffered in its capacity as a shareholder in the other 18 companies, the position may have been different. But Lisa has left it too late to do that, the relevant limitation period having expired; this is undoubtedly why Lisa has chosen to advance its claim via de facto parent allegations.”

119. The last point will be dealt with first. I have already set out above why I reject Leamington’s pleading point that Lisa is not entitled to seek relief in respect of loss suffered in respect of its shareholding in the Avicola companies generally as opposed to simply AVSA. From Leamington’s perspective, the quantum of loss is unaffected because Lisa’s original claim against Leamington was for the loss of its rightful share of the profits of the Avicola Group. Of course the scope of loss is favourably affected from Leamington’s perspective in that it is limited only to the premiums paid by those Group members who were in fact insured under the Transport Policies. The fact that AVSA is not in fact the parent company of the Group has substantive impact on the case against AVSA, but not on the loss sought from Leamington. The suggestion that the other Avicola companies should have been joined by Lisa because it was necessary for Lisa to prove a wholly different case as regards its status of a shareholder of those companies, advanced by Leamington, is wholly unmeritorious. There is no dispute that Lisa is a shareholder of the other poultry companies which were reinsured under the Transportation Policies.
120. If Leamington would have wished to seek a contribution from a joint tortfeasor as this submission appeared to imply, it has always been open to it to serve a third party notice (a) from the outset on AVSA, and (b) from the date of the Plaintiff’s voluntary Further and Better Particulars, on the other Avicola companies concerned. It is not for a Plaintiff to join every potential tortfeasor so as to minimize the exposure of any one of joint tortfeasors. This point is highly

artificial since Leamington and the non-party companies are affiliates, and Leamington and AVSA had common representation for several years. In any event, the alternative constructive trust claims can properly be maintained against Leamington alone.

121. It is true that Lisa has failed to strictly prove that Leamington was a money laundering vehicle, and that this was not an essential element of its case. But this submission is not a substantive answer to the claim that Leamington was used to defraud Lisa. The main substantive defence advanced in respect of the Leamington Fraud was to contend, based primarily on expert evidence, that the Transportation Policies were genuine reinsurance policies. This argument has been rejected above primarily on the basis of an analysis of the factual evidence of fraud which Leamington elected not to call a single witness to controvert through oral testimony. The First Defendant has, on the facts and in the face of admissions by one of its significant operational officers that the reinsurance policies were a sham, essentially put the Plaintiff to strict proof of its core allegations.

Legal and factual findings: Lisa's loss

122. Leamington did not address factual issues of quantum in its Skeleton Argument or its Headline Points for Closing, its case being clearly set out in its expert evidence. I reject as a matter of Bermuda law the broad traverse that the loss claimed is irrecoverable because it is merely reflective of loss suffered by the Avicola reinsureds. On the facts of the present case the loss complained of by Lisa has always been (since the derivative claim was abandoned) alleged to be loss it has suffered separate and apart from the shareholders of the companies as a whole. Having regard to the fact that the Avicola companies are demonstrably under the control of those who are causing the damage complained of, Lisa must be entitled to seek direct relief even if it is theoretically open to it to compel the companies to take the requisite legal action on their behalf: *Johnson-v-Gore-Wood* [2002] 2 AC 1; *Giles-v-Rhind* [2002] EWCA Civ 142.

123. As far as Guatemalan law is concerned, for the reasons previously stated, I am satisfied that the tortious conduct complained of would be actionable against Leamington at the instance of Lisa under Article 1654 of the Civil Code. The position would likely be otherwise as regards AVSA where I found Mr. Ibarguen's evidence that shareholder claims are narrowly prescribed more persuasive.
124. It remains to consider the damages Lisa is entitled to recover for its tortious conspiracy claim and/or the compensation Lisa is entitled to recover for its constructive trust claims. It was agreed that Lisa's interest in the Avicola companies was one-third, taking its Villamorey interest into account. I summarily reject the submission that Lisa should be able to recover 50% of what the other two shareholding interests have received. I also reject the submission, if it was advanced as regards Leamington at all, that Lisa should be able to recover compensation for the executive incentive payments made. This claim would only not be double recovery if it relates to premiums paid in respect of the genuine Property Policies. I am not satisfied, having regard to all the evidence, that such payments (while admittedly unusual, according to Mr. Bailie) fall within the ambit of the Plaintiff's pleaded claims and were made in whole or in part either fraudulently or in breach of trust.
125. The loss has been analysed in two segments; firstly, the pre-1995 loss and secondly the post-1995 loss. Ms. Yip initially agreed that it appeared that Lisa was entitled to \$1,900,085 in respect of the post-1995 period. Mr. Gardemal contended that this was understated by 43%, and Ms. Yip agreed that this figure was understated by 41%. Mr. Gardemal's figure was based on an estimate as he was unhappy to rely on Leamington's documentation alone, and some of the underlying premium documentation could not be found. His percentage was based on an entirely logical estimation process. I find that there is no reason to doubt the accuracy of the premium income reflected in Leamington's audited financial statements on which Ms. Yip relied, and accordingly the post-1995 loss of Lisa is

\$1,900,085 plus \$54,019.14 as Ms. Yip agreed in her oral evidence in respect of arrears owing for the pre-1995 period (including a cheque recently tendered by La Brana in this regard). Mr. Gardemal in his Scenario Y calculated Lisa's one-third share of the premiums paid under the Transportation Policies as \$4,934, 515. But this covered premiums paid by both Poultry Companies and Mills. Scenario X was Poultry Companies only, and this was \$2, 388,039, using a 43% figure which I have rejected in favour of Ms. Yip's 41%.

126. Leamington objected to the production of the June 17, 2008 Update Gardemal Report. I reject that objection as it is always possible for experts to update their evidence in the course of the trial, and the Update was designed to give notice of supplementary calculations. Schedule A to Lisa's FBPs, however, lists nineteen companies which form part of the Avicola Group for the purposes of Lisa's claim. It is Leamington's case that none of these companies are Mills companies. Apart from attempting to broaden the financial scope of a claim which has clearly been substantially reduced by Leamington's success in forcing Lisa to concede the Property Policies were valid reinsurance, it is difficult to comprehend this aspect of Lisa's compensation claim. None of the Mills companies appear in Schedule A to the FBPs, and accordingly they fall outside of the scope of Lisa's pleaded case on loss, generously and purposively read. I am unwilling in these circumstances to infer as against Leamington that Avicola premiums were used to fund the policies of these companies on the grounds that AVSA has failed to make full disclosure.
127. Lisa is entitled to recover these sums plus interest at the statutory rate of 7%. Mr. Hargun invited the Court to leave the parties to calculate the interest, and no submissions were made as to the precise date from which interest should or should not run. In principle, interest should run from the date the relevant premiums were received by Leamington until payment (or possibly until tender of payment.) I will hear argument on the question of interest if necessary.

Summary

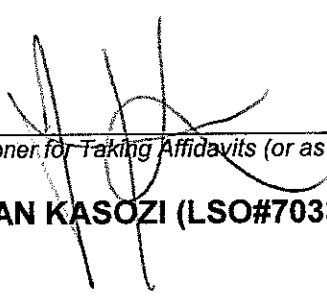
128. All claims against AVSA are dismissed on the grounds that there was no sufficient evidence that it was a participant in the Leamington Fraud.
129. Lisa's claims in tort for conspiracy to defraud and the alternative constructive trust claims succeed as against Leamington. Lisa is entitled to recover the total sum of \$1,954,104.14 plus pre- and post-judgment interest at the rate of seven per cent.
130. I will hear counsel as to costs and the computation of interest if required.

Dated this 5th day of September, 2008


KAWALEY J

EXHIBIT B

This is Exhibit "B" referred to in the Affidavit of JUAN GUILLERMO GUTIERREZ sworn March 22, 2020.



Commissioner for Taking Affidavits (or as may be)

N. JOAN KASOZI (LSO#70332Q)

Villamorey, S.A.
Informe del Auditor Independiente
Al 31 de diciembre de 2010 y 2009


Guatemala
Bámaca Morales & Asociados

Contadores Públicos y Auditores

Dictamen del Auditor Independiente

Al Consejo de Administración
y a los Accionistas de
Villamorey, S.A.

He auditado los estados financieros que se adjuntan de Villamorey, S. A., entidad domiciliada en Panamá, que incluyen los balances generales al 31 de diciembre de 2010 y 2009, los estados de resultados, de cambios en el patrimonio de los accionistas y de flujo de efectivo por los años que terminaron en esas fecha, así como un resumen de las políticas contables importantes y otras notas aclaratorias.

Responsabilidad de la administración por los estados financieros

La administración es responsable por la preparación y presentación razonable de estos estados financieros de conformidad con principios de contabilidad generalmente aceptados. Esta responsabilidad incluye: el diseño, la implementación y el mantenimiento de control interno para la preparación de una presentación razonable de los estados financieros, que estén libres de errores importantes, ya sea como resultado de fraude o error; la selección y aplicación de las políticas contables adecuadas y la elaboración de estimaciones contables que sean razonables de acuerdo a las circunstancias.

Responsabilidad del auditor

Mi responsabilidad es expresar una opinión independiente sobre los estados financieros basada en mi auditoría. Excepto por lo que se indica en los párrafos siguientes, realicé mi auditoría de acuerdo con Normas Internacionales de Auditoría. Esas normas requieren que cumpla con los requerimientos éticos y que planee y lleve a cabo la auditoría para obtener una certeza razonable de si los estados financieros están libres de errores importantes. Una auditoría también comprende aplicar procedimientos para obtener evidencia de auditoría sobre los montos y revelaciones en los estados financieros. Los procedimientos seleccionados dependen de mi criterio profesional, incluyendo la evaluación de los riesgos de errores importantes de los estados financieros, derivados de fraude o error. Al conducir las evaluaciones de los riesgos tengo en cuenta el control interno para la elaboración y presentación razonable de los estados financieros de la compañía, para diseñar procedimientos de auditoría que sean convenientes de acuerdo a las circunstancias, pero no con el propósito de expresar una opinión sobre el control interno.

Una auditoría también incluye evaluar la conveniencia de las políticas contables utilizadas, lo razonable de las estimaciones contables emitidas por la administración y la presentación general de los estados financieros.

Considero que la evidencia de auditoría que he obtenido es suficiente y apropiada para basar mi opinión de la auditoría.

7a. Avenida 6-53, Zona 4 Edif. El Triángulo, Nivel 16 Oficina 163
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Bámaca Morales & Asociados, a member of International. A worldwide organisation of accounting firms and business advisers.

BDT000190



Guatemala

Bámaca Morales & Asociados

Contadores Públicos y Auditores

Al 31 de diciembre de 2010 y 2009 existen las siguientes situaciones especiales:

- 1) La compañía no cuenta, en sus registros contables, con la integración de la inversión inicial en acciones en otras compañías por Q18,178,219. A partir de cierta fecha hasta el 31 de diciembre de 2,010 y 2,009 las transacciones ocurridas están debidamente integradas. Sin embargo, por no tener aquella integración y porque los registros contables no permiten la aplicación de procedimientos alternos de auditoría para determinar la composición de tales inversiones, no fue posible satisfacerme de la razonabilidad de tal monto inicial.
- 2) Fui informado por la administración de la Compañía y, en lo aplicable, confirmado por los abogados de la empresa acerca de las siguientes situaciones de índole legal:
 - a) Lisa, S.A. quien posee el 33% de las acciones comunes del capital pagado de Villamorey, S. A. y en esa calidad, en el año 2000 presentó dos demandas en Panamá: a) la primera, en el Juzgado Undécimo de Circuito del Primer Circuito Judicial de Panamá en contra de Villamorey, S.A. y otras dos entidades, reclamando el pago de daños y perjuicios, y b) la segunda, en el Juzgado Duodécimo del Circuito de lo Civil del Primer Circuito Judicial de Panamá, en contra de Villamorey, S.A. solicitando la nulidad de los acuerdos tomados en la Reunión Ordinaria de Accionistas de la Sociedad, celebrada en la ciudad de Guatemala, el diecisiete de noviembre de 2000.
 - b) En la primera demanda, el 11 de julio de 2008 el tribunal dictó sentencia en la cual declaró: a) desestimada la demanda porque Lisa, S.A. no probó su pretensión de daños, b) se le condenó al pago en costas por la suma de US\$ 1,200,000, c) se le fijó la suma de US\$200,000 por daños causados a Villamorey, S.A., y d) se le condenó al pago de US\$ 40,000 por costas de la reconvención.
 - c) En la segunda demanda, el 21 de octubre de 2008 el tribunal dictó sentencia en la cual declaró: a) desestimada la demanda, y b) se le condenó al pago en costas por la suma de US\$ 1,250 a favor de Villamorey, S.A. Lisa, S.A. por no estar de acuerdo apeló las dos sentencias, por lo que están pendientes las resoluciones de segunda instancia.
 - d) Villamorey, S.A. para garantizar el pago de las sumas de dinero, solicitó el embargo de las acciones y dividendos que Lisa, S.A. tiene en la sociedad y en otras siete sociedades guatemaltecas en las que ambas son accionistas.
 - e) El 21 de Junio de 2002, Lisa, S.A. presentó una nueva demanda en el Tribunal de Distrito de Estados Unidos de América, Distrito del Sur de Florida, identificado como Caso Número 02-21931 CIV-MOORE, en contra de sesenta personas individuales y jurídicas, incluyendo a Villamorey, S.A. Esta demanda fue desestimada por el tribunal de la Florida, resolviendo que son los tribunales guatemaltecos los competentes para conocer el caso, actualmente esa demanda no ha sido presentada, y para lo cual no se le fijó plazo.

- f) El 6 de abril de 2,011, Lisa, S. A. presentó una demanda en los tribunales de la ciudad de Toronto, Canadá, por US\$400,000,000; esta demanda fue notificada el 27 de abril de 2,011 y actualmente se prepara la defensa del caso.
- g) Las sentencias en los dos primeros procesos fueron favorables a Villamorey, S.A. por lo que se harán todas las gestiones hasta la finalización de los casos. Por ser todos los procesos de conocimiento, no es posible determinar el tiempo de su finalización ni cuantificar el monto de honorarios y gastos. En consecuencia, no se ha registrado ninguna reserva para pérdidas. Sin embargo, ha efectuado una provisión para probables gastos legales derivados de estos juicios por la suma de Q14,876,920.
- 3) La Compañía tiene la política de reconocer sus ingresos por concepto de dividendos sobre la base de lo percibido, lo cual difiere de lo estipulado por los principios de contabilidad generalmente aceptados donde se indica que deben reconocerse por el método de lo devengado. Debido a esta forma de contabilización, pudiera haber dividendos decretados por las compañías poseídas, que pudieran no haber sido reconocidos como ingresos.
- 4) En nuestro dictamen de fecha 12 de abril de 2,010 sobre los estados financieros de Villamorey, S. A. al 31 de diciembre de 2,009 y 2,008, incluimos un párrafo de énfasis relacionado con recuperabilidad del saldo de cuentas por cobrar por Q21,856,916 al 31 de diciembre de 2,009, tal como se indica en la nota 5 a los estados financieros. Este saldo fue cobrado en su totalidad en el año 2,010.

Opinión

En mi opinión, excepto por los ajustes que pudieran ser necesarios, derivados de los asuntos que se indican en los numerales del 1) al 3), anteriores, los estados financieros que se adjuntan ofrecen una presentación razonable en todos los aspectos importantes de la posición financiera de Villamorey, S. A. al 31 de diciembre de 2010 y 2009 y de su desempeño financiero y flujos de efectivo para los años que terminaron en esas fechas, de conformidad con principios de contabilidad generalmente aceptados.



David Roberto Bámaca Morales
 Contador Público y Auditor
 Colegiado N° 879

Guatemala, 24 de mayo de 2011

VILLAMOREY, S. A.**Balances Generales****Al 31 de diciembre de 2,010 y 2,009****(Cifras expresadas en Quetzales)**

	Nota		<u>2,010</u>		<u>2,009</u>
ACTIVO					
Activo Corriente					
Caja y Bancos	4	Q	76,686,611	Q	80,013,973
Cuentas por Cobrar	5 y 7		-		21,856,916
Inversiones en Acciones	6 y 7		119,912,333		120,008,193
<hr/>					
TOTAL ACTIVO		Q	196,598,944	Q	221,879,082
<hr/>					
PASIVO					
Pasivo Corriente					
Cuentas por Pagar a Accionistas	7	Q	2,265,928	Q	2,265,928
Dividendos por Pagar	7		33,872,478		-
Provisión para contingencias legales	8 y 9		14,876,920		14,876,920
Otras Cuentas por Pagar			66,967		121,640
<hr/>					
TOTAL PASIVO		Q	51,082,293	Q	17,264,488
<hr/>					
PATRIMONIO DE LOS ACCIONISTAS					
Capital Pagado	10		1,000,000		1,000,000
Utilidades Retenidas			103,614,015		152,917,128
Utilidad del período			40,902,637		50,697,466
<hr/>					
TOTAL PATRIMONIO DE LOS ACCIONISTAS		Q	145,516,651	Q	204,614,594
<hr/>					
TOTAL PASIVO Y PATRIMONIO DE LOS ACCIONISTAS		Q	196,598,944	Q	221,879,082

Las notas adjuntas son parte integral de los estados financieros.

VILLAMOREY, S. A.**Estados de Resultados****Años terminados el 31 de diciembre de 2,010 y 2,009****(Cifras expresadas en Quetzales)**

	Nota	<u>2,010</u>	<u>2,009</u>
Ingresos			
Dividendos	7	Q 39,618,148	Q 46,078,922
Gastos de Operación			
Gastos de Administración		201,141	564,780
Gastos financieros		<u>188</u>	<u>1,359</u>
Total de Gastos de Operación		201,329	566,138
 Otros Ingresos y Gastos - Neto-	7	 1,485,818	 5,184,682
 Utilidad Neta		 Q 40,902,637	 Q 50,697,466

La notas adjuntas son parte integral de los estados financieros.

VILLAMOREY, S. A.**Estados de Movimiento de Patrimonio de los Accionistas****Al 31 de diciembre de 2,010 y 2,009****(Cifras expresadas en Quetzales)**

		CAPITAL PAGADO		UTILIDADES RETENIDAS		TOTAL
Saldo al 31 de diciembre de 2,008	Q	1,000,000	Q	152,917,128	Q	153,917,128
Utilidad del año 2,009				50,697,466		50,697,466
Saldo al 31 de diciembre de 2,009		1,000,000		203,614,594		204,614,594
Utilidad del año 2,010				40,902,637		40,902,637
Ajuste a resultados de años anteriores				4,796		4,796
Pago de Dividendos				100,005,375		100,005,375
Saldo al 31 de diciembre de 2,010	Q	1,000,000	Q	144,516,651	Q	145,516,651

Las notas adjuntas son parte integral de los estados financieros.

VILLAMOREY, S. A.**Estados de Flujos de Efectivo****Años terminados el 31 de diciembre de 2,010 y 2,009****(Cifras expresadas en Quetzales)**

	<u>2,010</u>	<u>2,009</u>
Flujos de Efectivo de las actividades de operación		
Resultados de las actividades de operación	Q 40,902,637	Q 50,697,466
Menos partidas que no requirieron flujos de efectivo		
Baja en inversiones	100,000	-
Ajuste a los resultados de ejercicios anteriores	4,796	-
Cambios netos en los activos y pasivos		
(Aumento) Disminución en cuentas por cobrar	21,856,916	-1,664,387
Aumento (Disminución) en dividendos por pagar	33,872,478	-
Aumento (Disminución) en cuentas por pagar	-54,673	121,640
Efectivo neto obtenido por las actividades de operación	96,682,153	49,154,719
Flujos de efectivo por las actividades de inversión		
Aumento en Inversiones	4,140	-
Efectivo neto usado en las actividades de inversión	4,140	-
Flujos de efectivo por las actividades de financiamiento		
Pago de dividendos	100,005,375	
Efectivo neto usado en las actividades de inversión	100,005,375	-
Cambio neto en el efectivo	-3,327,362	49,154,719
Efectivo al inicio del año	80,013,973	30,859,254
Efectivo al final del año	Q 76,686,611	Q 80,013,973

Las notas adjuntas son parte integral de los estados financieros.

(1) Operaciones de la Compañía

Villamorey, S. A., fue constituida en junio de 1,971, bajo las leyes de la República de Panamá, por tiempo indefinido, para que pueda operar fuera de dicho país. Se dedica principalmente a efectuar inversiones en el capital social de compañías guatemaltecas. Desde el inicio de sus operaciones sus registros contables los mantiene y prepara sus estados financieros en Quetzales, moneda oficial de la República de Guatemala; la base contable utilizada se explica más adelante.

(2) Resumen de las Políticas Contables más significativas

Los estados financieros han sido preparados en todos sus aspectos importantes de acuerdo con principios de contabilidad generalmente aceptados. Las principales políticas contables adoptadas en la contabilización de sus operaciones y en la preparación de su información financiera se resumen a continuación:

a) Inversiones Temporales

Las inversiones temporales se presentan al costo más los intereses acumulados, el cual se aproxima al valor de mercado. Estas inversiones se encuentran colocadas con vencimiento a la vista.

b) Inversiones Permanentes

Las inversiones efectuadas en acciones representativas del capital pagado de compañías guatemaltecas están registradas al costo de adquisición.

c) Transacciones en moneda extranjera

Las transacciones en moneda extranjera se registran en moneda nacional (Quetzales), al tipo de cambio vigente al momento de la operación. Los saldos de activos y pasivos en moneda extranjera son reexpresados en moneda nacional al final de cada año, utilizando el tipo de cambio prevaleciente en el sistema bancario y el efecto correspondiente es incluido como parte de los resultados del período.

VILLAMOREY, S.A.**Notas a los Estados Financieros**

Al 31 de diciembre de 2010 y 2009

d) Reconocimiento de ingresos y gastos

Los ingresos provenientes de los dividendos son reconocidos por el método de lo percibido; los que provienen de inversiones en pagarés y otros títulos valores así como los que provienen de saldos de cuentas bancarias se reconocen por el método de lo devengado.

Los gastos se reconocen en el momento en que se incurren.

e) Instrumentos financieros

El valor razonable de un instrumento financiero representa la cantidad por la cual puede ser negociado en una transacción actual libre de presiones entre partes interesadas. Los siguientes métodos y suposiciones fueron utilizados al estimar el valor razonable de cada clase de instrumento financiero.

- Efectivo: Su valor en libros se aproxima al valor razonable debido a que son valores expresados en Quetzales que es la moneda de reporte y los saldos en moneda extranjera están convertidos al tipo de cambio vigente a la fecha de cierre.
- Cuentas por cobrar: Su valor en libros se aproxima al valor razonable debido a su corto vencimiento y fueron recuperadas en su totalidad.
- Cuentas por pagar: Su valor en libros se aproxima al valor razonable debido a su corto vencimiento.

(3) Unidad monetaria y tipo de cambio

Los estados financieros se expresan en Quetzales, moneda oficial de la República de Guatemala. El valor del Quetzal con respecto al Dólar de los Estados Unidos de América (US\$), se fija en el mercado bancario nacional a través de la oferta y demanda de divisas. A partir del 2 de diciembre de 2006 el tipo de cambio de compra y venta fue unificado, quedando vigente el tipo de cambio de referencia. Al 31 de diciembre de 2010 y 2,009 los tipos de cambio de referencia en el mercado bancario eran de Q8.01 y Q8.35 por US \$ 1.00, respectivamente.

No hay restricciones cambiarias en Guatemala para la repatriación de capitales, pago de acreedurías o cualquier otro fin. La divisa extranjera puede comprarse y venderse en cualquier monto en bancos del sistema o en casas de cambio autorizadas.

(4) Efectivo

Al 31 de diciembre, el saldo de efectivo se integra de la siguiente forma:

		<u>2,010</u>		<u>2,009</u>
Saldos en Quetzales	Q	41,563,968	Q	55,684,081
Saldos en Dólares de los Estados Unidos		35,122,643		24,329,892
	Q	76,686,611	Q	80,013,973

Dentro de los saldos en US\$ del 2,009, se incluyen US\$ 2,041,491, que devengaban una tasa de interés anual variable y se encontraban depositados en una entidad relacionada.

De manera voluntaria, se ha creado un fondo de Q33, 872,478, equivalente al monto de los dividendos por pagar, para garantizar su pago.

(5) Cuentas por cobrar

Este saldo proviene de una deuda más los intereses acumulados. Al 31 de diciembre, el saldo de estas cuentas por cobrar se integra de la siguiente forma:

		<u>2,010</u>		<u>2,009</u>
Rioneri Investors Inc.	Q	-	Q	10,928,458
Elba Capital Inc.		-		10,928,458
	Q	-	Q	21,856,916

Estas deudas devengaban una tasa de interés anual variable determinada, equivalente al promedio de la tasa bancaria pasiva que publique el Banco de Guatemala para la moneda local. Se estimó que la recuperación de estos saldos no tiene ningún riesgo importante.

(6) Inversiones en Acciones

Al 31 de diciembre, el saldo de las inversiones en acciones se integra de la siguiente forma:

	<u>2,010</u>	<u>2,009</u>
ADMINISTRADORA DE RESTAURANTES, S.A.	Q 34,629	Q 34,629
ADMINISTRADORA DE RESTAURANTES, S.A.	20	-
AGROPROCESOS AVICOLAS, S.A.	30,473,154	30,473,154
ALIMENTOS PARA ANIMALES, S.A.	12,466,290	12,466,290
AVICOLA DEL PACIFICO, S.A.	140,000	140,000
AVICOLA LAS MARGARITAS, S.A.	10,388,575	10,388,575
AVICOLA VILLALOBOS, S.A.	1,662,172	1,662,172
CERRO COLORADO, S.A.	5,886,859	5,886,859
COMPAÑIA ALIMENTICIA DE CENTROAMERICA, S.A.	34,629	34,629
COMPAÑIA ALIMENTICIA DE CENTROAMERICA, S.A.	20	-
COMPAÑIA IMPORTADORA LA PERLA, S. A.	1,020	-
COMPRVENTA DE PRODUCTOS ALIMENTICIOS, S.A.	34,629	34,629
COMPRVENTA DE PRODUCTOS ALIMENTICIOS, S.A.	20	-
CRECIMIENTO, S.A.	50,000	50,000
DISTRIBUIDORA AVICOLA DEL NORTE, S. A.	1,000	-
EL LLANO, S.A.	8,310,860	8,310,860
ESCOBIO, S.A.	6,233,145	6,233,145
IMPORTADORA DE ALIMENTOS DE GUATEMALA, S. A.	38,091	38,091
IMPORTADORA DE ALIMENTOS DE GUATEMALA, S. A.	20	-
INCUBACION, S.A.	54,800	54,800
INDUSTRIA AVICOLA DE PALIN, S.A.	1,000	1,000
INDUSTRIA AVICOLA DEL SUR, S.A.	6,925,717	6,925,717
INDUSTRIA FORRAJERA DE MAZATENANGO, S.A.	34,629	34,629
INVERSIONES EMPRESARIALES, S.A.	34,629	34,629
INVERSIONES TORRE NOVA, S. A.	1,020	-
LOS ABETOS, S.A.	5,194,288	5,194,288
MULTIPLICACION, S.A.	51,800	51,800
POLLO REY, S. A.	1,020	-
REPRODUCTORES AVICOLAS, S.A.	20,777,150	20,777,150
SAN JOSE EL RECUERDO, S.A.	4,848,002	4,848,002
SAN JUAN, S.A.	5,540,573	5,540,573
SISTEMAS Y EQUIPOS, S.A.	692,572	692,572
BASIC RESOURCES INTERNATIONAL, S. A.	-	100,000
Q	119,912,333	Q 120,008,193

VILLAMOREY, S.A.

Notas a los Estados Financieros

Al 31 de diciembre de 2010 y 2009

(7) Saldos y Transacciones con Partes Relacionadas

Villamorey, S. A. forma parte de un grupo de compañías que cuenta con una administración común; un volumen significativo de transacciones con efectos económicos es efectuado con las compañías de este grupo, bajo ciertas condiciones que son determinadas entre ellas.

Las transacciones con partes relacionadas durante los años terminados el 31 de diciembre fueron las siguientes:

Dividendos recibidos:

	<u>2,010</u>		<u>2,009</u>	
ADMINISTRADORA DE RESTAURANTES, S.A.	Q	58,600	Q	34,920
AGROPROCESOS AVICOLAS, S.A.		2,848,502		4,102,453
ALIMENTOS PARA ANIMALES, S.A.		6,458,260		6,313,019
AVICOLA LAS MARGARITAS, S.A.		2,359,400		3,302,139
AVICOLA VILLALOBOS, S.A.		6,216,226		11,171,296
CERRO COLORADO, S.A.		2,800,584		1,812,736
COMPAÑIA ALIMENTICIA DE CENTROAMERICA, S.A.		264,200		1,746,776
COMPRAVENTA DE PRODUCTOS ALIMENTICIOS, S.A.		310,000		1,656,501
EL LLANO, S.A.		1,660,252		2,440,779
ESCOBIO, S.A.		2,254,280		3,066,752
IMPORTADORA DE ALIMENTOS DE GUATEMALA, S. A.		338,200		463,467
INDUSTRIA AVICOLA DEL SUR, S.A.		819,068		1,677,971
INDUSTRIA FORRAJERA DE MAZATENANGO, S.A.		62,000		58,717
INVERSIONES EMPRESARIALES, S.A.		2,206,800		770,933
LOS ABETOS, S.A.		1,738,628		2,413,360
REPRODUCTORES AVICOLAS, S.A.		1,428,034		1,861,365
SAN JOSE EL RECUERDO, S.A.		1,804,976		2,331,104
SAN JUAN, S.A.		2,412,196		717,283
SISTEMAS Y EQUIPOS, S.A.		3,577,942		137,352
TOTAL DE DIVIDENDOS RECIBIDOS	Q	39,618,148	Q	46,078,922

Intereses devengados:

	<u>2,010</u>		<u>2,009</u>	
Ancona Finance, S. A.	Q	250,316	Q	1,169,627
Rioneri Investors Inc.		277,696		1,776,721
Elba Capital Inc.		277,696		1,776,721
	Q	805,708	Q	4,723,069

Derivado de esas transacciones y de otras habidas en años anteriores al 31 de diciembre, los saldos por cobrar y pagar son los siguientes:

Saldos por cobrar:

	<u>2,010</u>		<u>2,009</u>
Rioneri Investors Inc.	Q -	Q	10,928,458
Elba Capital Inc.	-		10,928,458
	<u>Q -</u>	<u>Q</u>	<u>21,856,916</u>

Saldos por pagar a accionistas:

	<u>2,010</u>		<u>2,009</u>
Accionistas con acciones nominativas	Q 643,555	Q	643,555
Accionistas con acciones al portador	1,622,373		1,622,373
	<u>Q 2,265,928</u>	<u>Q</u>	<u>2,265,928</u>

Saldos de dividendos por pagar a accionistas:

	<u>2,010</u>		<u>2,009</u>
Dividendos por pagar de accionista con acciones nominativas	Q 33,331,791	Q	-
Intereses acumulados sobre dividendos por pagar	540,686		-
	<u>Q 33,872,478</u>	<u>Q</u>	<u>-</u>

(8) Cuentas por Pagar - Provisión para Contingencias Legales

La provisión para contingencias legales ha sido creada para que, de manera conservadora, se tenga un monto destinado a cubrir parcialmente las eventualidades que pudieran derivarse de los procesos judiciales que se mencionan en la nota (9), siguiente.

9) Procesos Judiciales

Lisa, S.A. es accionista de la Compañía y en esa calidad, en el año 2000 presentó dos demandas en Panamá: a) la primera, en el Juzgado Undécimo de Circuito del Primer Circuito Judicial de Panamá en contra de Villamorey, S.A. y otras dos entidades, reclamando el pago de daños y perjuicios, y b) la segunda, en el Juzgado Duodécimo del Circuito de lo Civil del Primer Circuito Judicial de Panamá, en contra de Villamorey, S.A. solicitando la nulidad de los acuerdos tomados en la Reunión Ordinaria de Accionistas de la Sociedad, celebrada en la ciudad de Guatemala, el diecisiete de noviembre de 2000.

En la primera demanda, el 11 de julio de 2008 el tribunal dictó sentencia en la cual declaró: a) desestimada la demanda porque Lisa, S.A. no probó su pretensión de daños; b) se le condenó al pago en costas por la suma de US\$ 1,200,000; c) se le fijó la suma de US\$200,000 por daños causados a Villamorey, S.A., y d) se le condenó al pago de US\$ 40,000 por costas de la reconvenición.

En la segunda demanda, el 21 de octubre de 2008 el tribunal dictó sentencia en la cual declaró: a) desestimada la demanda, y b) se le condenó al pago en costas por la suma de US\$ 1,250 a favor de Villamorey, S.A. Lisa, S.A. por no estar de acuerdo apeló las dos sentencias, por lo que están pendientes las resoluciones de segunda instancia.

Villamorey, S.A. para garantizar el pago de las sumas de dinero, solicitó el embargo de las acciones y dividendos que Lisa, S.A. tiene en la sociedad y en otras siete sociedades guatemaltecas en las que ambas son accionistas.

El 21 de Junio de 2002, Lisa, S.A. presentó una nueva demanda en el Tribunal de Distrito de Estados Unidos de América, Distrito del Sur de Florida, identificado como Caso Número 02-21931 CIV-MOORE, en contra de sesenta personas individuales y jurídicas, incluyendo a Villamorey, S.A. Esta demanda fue desestimada por el tribunal de la Florida, resolviendo que son los tribunales guatemaltecos los competentes para conocer el caso, actualmente está pendiente que presente tal demanda, y para lo cual no se le fijó plazo.

El 6 de abril de 2,011, Lisa, S. A. presentó una demanda en los tribunales de la ciudad de Toronto, Canadá, por US\$400,000,000; esta demanda fue notificada el 27 de abril de 2,011 y actualmente se prepara la defensa del caso.

VILLAMOREY, S.A.

Notas a los Estados Financieros
Al 31 de diciembre de 2010 y 2009

Derivado de esas actuaciones judiciales, la Compañía se ha visto en la necesidad de realizar desembolsos importantes para las defensas legales correspondientes, dentro y fuera de Guatemala.

Las sentencias en los dos primeros procesos fueron favorables a Villamorey, S.A. por lo que se harán todas las gestiones hasta la finalización de los casos. Por ser todos procesos de conocimiento, no es posible determinar el tiempo de su finalización ni cuantificar el monto de honorarios y gastos. En consecuencia, no se ha registrado ninguna reserva para pérdidas. Sin embargo, ha efectuado una provisión para probables gastos legales derivados de estos juicios por la suma de Q14,876,920.

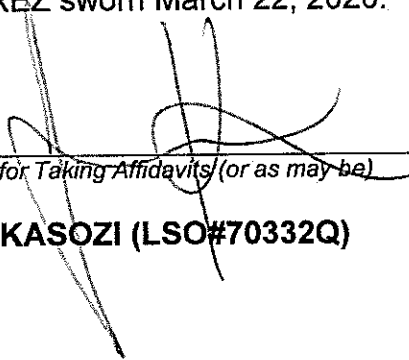
(10) Capital

El capital autorizado, suscrito y pagado de la sociedad es de US\$1,000,000 y está dividido y representado en 10,000 acciones comunes, pudiendo ser nominativas o al portador, con un valor nominal de US\$100.00 cada una.

Como se explica en la Nota N°1, desde el inicio de sus operaciones, los registros contables se llevan en Quetzales, derivado de ello este capital pagado está registrado en esta moneda; adicionalmente en la fecha que se colocaron las acciones, el tipo de cambio del Quetzal era Q1.00 igual a US\$1.00.

EXHIBIT C

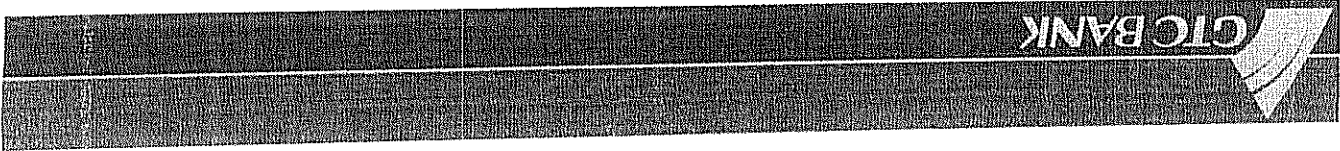
This is Exhibit "C" referred to in the Affidavit of JUAN GUILLERMO GUTIERREZ sworn March 22, 2020.



Commissioner for Taking Affidavits (or as may be)

N. JOAN KASOZI (LSO#70332Q)

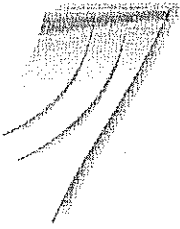
EN GUATEMALA: REPRESENTACIONES GTC, S.A.
5A. AVENIDA 5-55, ZONA 14, TORRENAZA WORLD BUSINESS CENTER, TORRE IV Nivel 16.
PHX (502) 2285-9797 y (502) 2383-9797, FAX: (502) 2383-9711



Eswin López Tercero
Contador General
GTC BANK INC.

El Contador General de GTC BANK INC. CERTIFICA: que las presentes fotocopias de los estados de cuenta en hojas enumeradas del 001 al 028 de la cuenta 900-05126-4 a nombre de la empresa Villalmorey, S.A., correspondientes al periodo de Mayo 2010 a Agosto 2012 son copia fiel de sus originales por haberlos impreso del sistema de control de depósitos del banco.

Y para los usos legales que al interesado convenga firmo y sello la presente en la ciudad de Guatemala a los veintinueve días del mes de Agosto del año dos mil doce.



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CORPORACIÓN G Y T CONTINENTAL		Fecha/hora : 21/08/12 08:58:15		
GTC BANK		Pág. : 1		
ESTADO DE CUENTA -- MAY/2010				
Nombre del contrato:		Asesor : A24		
VILLAMOREY, S.A.		Núm. Cuenta : 900051264		
Dirección de correspondencia:		Producto : CUENTA ESPECIAL COFINSA 2		
GUATEMALA		Moneda : DÓLARES AMERICANOS S.		
Fecha	Descripción	Débitos	Créditos	Saldo
	Saldo Anterior.....:			00.00
06/05/2010	Traslado de 900004999	00.00	4,166,250.00	4,166,250.00
25/05/2010	Traslado Apertura cd 010152676	4,166,250.00	00.00	00.00
31/05/2010	PAGO DE INTERESES	00.00	2,710.92	2,710.92
	Saldo Inicial	(-) Débitos 001	(+) Créditos 002	Saldo Final
	00.00	4,166,250.00	4,168,960.92	2,710.92

0000001

855

CORPORACION G Y T CONTINENTAL		Fecha/hora : 17/08/12 10:26:51		
GTC BANK		Pág. : 1		
ESTADO DE CUENTA -- JUN/2010				
Nombre del contrato:		Asesor : A24		
VILLAMOREY, S.A.		Rám. Cuenta : 900051264		
Dirección de correspondencia:		Producto : CUENTA ESPECIAL COFINSA 2		
GUATEMALA		Moneda : DÓLARES AMERICANOS 5.		
Fecha	Descripción	Débitos	Créditos	Saldo
	Saldo Anterior.....:			2,710.92
30/06/2010	PAGO DE INTERESES	00.00	00.60	2,711.52
	Saldo Inicial	(-) Débitos 000	(+) Créditos 001	Saldo Final
	2,710.92	00.00	00.60	2,711.52

000002

856

CORPORACION G Y T CONTINENTAL		Fecha/hora : 17/08/12 10:24:56		
GTC BANK		Pág. : 1		
ESTADO DE CUENTA -- JUL/2010				
Nombre del contrato:		Asesor : A24		
VILLAMOREY, S.A.		Núm. Cuenta : 900051264		
Dirección de correspondencia:		Producto : CUENTA ESPECIAL COFINSA 2		
GUATEMALA		Moneda : DÓLARES AMERICANOS \$.		
Fecha	Descripción	Débitos	Créditos	Saldo
	Saldo Anterior.....:			2,711.52
31/07/2010	PAGO DE INTERESES	00.00	00.62	2,712.14
	Saldo Inicial	(-) Débitos 000	(+) Créditos 001	Saldo Final
	2,711.52	00.00	00.62	2,712.14

000003

857

CORPORACION G Y T CONTINENTAL
GTC BANK

Fecha/hora : 17/08/12 10:26:58
Pág. : 1

ESTADO DE CUENTA -- AUG/2010

Nombre del contrato: VILLAMOREY, S.A.
Dirección de correspondencia: GUATEMALA

Asesor : A24
Núm. Cuenta : 900051264
Producto : CUENTA ESPECIAL COFINSA 2
Moneda : DÓLARES AMERICANOS \$.

Fecha	Descripción	Débitos	Créditos	Saldo
	Saldo Anterior.....:			2,712.14
31/08/2010	PAGO DE INTERESES	00.00	00.62	2,712.76
	Saldo Inicial	(-) Débitos 000	(+) Créditos 001	Saldo Final
	2,712.14	00.00	00.62	2,712.76

000004

858

CORPORACION G Y T CONTINENTAL		Fecha/hora : 17/08/12 10:25:05		
GTC BANK		Pág. : 1		
ESTADO DE CUENTA -- SEP/2010				
Nombre del contrato:		Asesor : A24		
VILLAMOREY, S.A.		Núm. Cuenta : 900051264		
Dirección de correspondencia:		Producto : CUENTA ESPECIAL COFINSA 2		
GUATEMALA		Moneda : DÓLARES AMERICANOS \$.		
Fecha	Descripción	Débitos	Créditos	Saldo
	Saldo Anterior.....:			2,712.76
30/09/2010	PAGO DE INTERESES	00.00	00.30	2,713.06
	Saldo Inicial	(-) Débitos 000	(+) Créditos 001	Saldo Final
	2,712.76	00.00	00.30	2,713.06

000005

851

CORPORACION G Y T CONTINENTAL		Fecha/hora : 17/08/12 10:25:08		
GTC BANK		Pag. : 1		
ESTADO DE CUENTA -- OCT/2010				
Nombre del contrato:		Asesor : A24		
VILLAMOREY, S.A.		Núm. Cuenta : 900051264		
Dirección de correspondencia:		Producto : CUENTA ESPECIAL COFINSA 2		
GUATEMALA		Moneda : DÓLARES AMERICANOS S.		
Fecha	Descripción	Débitos	Créditos	Saldo
	Saldo Anterior.....:			2,713.06
31/10/2010	PAGO DE INTERESES	00.00	00.31	2,713.37
	Saldo Inicial	(-) Débitos 000	(+) Créditos 001	Saldo Final
	2,713.06	00.00	00.31	2,713.37

000006

860

CORPORACION G Y T CONTINENTAL
GTC BANK

Fecha/hora : 17/08/12 10:36:42
Pag. : 1

ESTADO DE CUENTA -- NOV/2010

Nombre del contrato: VILLAMOREY, S.A.
Dirección de correspondencia: GUATEMALA

Asesor : A24
Núm. Cuenta : 900051264
Producto : CUENTA ESPECIAL COFINSA 2
Moneda : DÓLARES AMERICANOS \$.

Fecha	Descripción	Débitos	Créditos	Saldo
	Saldo Anterior.....:			2,713.37
30/11/2010	PAGO DE INTERESES	00.00	00.30	2,713.67
	Saldo Inicial 2,713.37	(-) Débitos 000 00.00	(+) Créditos 001 00.30	Saldo Final 2,713.67

000007

861

CORPORACION G Y T CONTINENTAL		Fecha/hora : 17/08/12 10:27:13		
GTC BANK		Pág. : 1		
ESTADO DE CUENTA -- DEC/2010				
Nombre del contrato:		Asesor : A24		
VILLAMOREY, S.A.		Hm. Cuenta : 900051264		
Dirección de correspondencia:		Producto : CUENTA ESPECIAL COFINSA 2		
GUATEMALA		Moneda : DÓLARES AMERICANOS S.		
Fecha	Descripción	Débitos	Créditos	Saldo
	Saldo Anterior.....:			2,713.67
31/12/2010	PAGO DE INTERESES	00.00	00.31	2,713.98
	Saldo Inicial	(-) Débitos 000	(+) Créditos 001	Saldo Final
	2,713.67	00.00	00.31	2,713.98

000008

862

CORPORACION G Y T CONTINENTAL		Fecha/hora : 17/08/12 10:34:17		
GTC BANK		Pág. : 1		
ESTADO DE CUENTA -- JAN/2011				
Nombre del contrato:		Asesor : A24		
VILLAMOREY, S.A.		Núm. Cuenta : 900051264		
Dirección de correspondencia:		Producto : CUENTA ESPECIAL COFINSA 2		
GUATEMALA		Moneda : DÓLARES AMERICANOS S.		
Fecha	Descripción	Débitos	Créditos	Saldo
	Saldo Anterior.....:			2,713.98
31/01/2011	PAGO DE INTERESES	00.00	00.31	2,714.29
	Saldo Inicial	(-) Débitos 000	(+) Créditos 001	Saldo Final
	2,713.98	00.00	00.31	2,714.29

000009

863

CORPORACION G Y T CONTINENTAL
GTC BANK

Fecha/hora : 21/08/12 08:58:37
Pág. : 1

ESTADO DE CUENTA -- FEB/2011

Nombre del contrato: VILLAMOREY, S.A.
Dirección de correspondencia: GUATEMALA

Asesor : A24
Núm. Cuenta : 900051264
Producto : CUENTA ESPECIAL COFINSA 2
Moneda : DÓLARES AMERICANOS S.

Fecha	Descripción	Débitos	Créditos	Saldo
	Saldo Anterior.....:			2,714.29
28/02/2011	PAGO DE INTERESES	00.00	00.28	2,714.57
	Saldo Inicial	(-) Débitos 000	(+) Créditos 001	Saldo Final
	2,714.29	00.00	00.28	2,714.57

000010

864

CORPORACION G Y T CONTINENTAL		Fecha/hora : 21/08/12 09:03:08		
GTC BANK		Pág. : 1		
ESTADO DE CUENTA -- AUG/2011				
Nombre del contrato:		Asesor : A24		
VILLAMOREY, S.A.		Num. Cuenta : 900051264		
Dirección de correspondencia:		Producto : CUENTA ESPECIAL COFINSA 2		
GUATEMALA		Moneda : DÓLARES AMERICANOS \$.		
Fecha	Descripción	Débitos	Créditos	Saldo
	Saldo Anterior.....:			2,716.10
31/08/2011	PAGO DE INTERESES	00.00	00.31	2,716.41
	Saldo Inicial	(-) Débitos 000	(-) Créditos 001	Saldo Final
	2,716.10	00.00	00.31	2,716.41

000016

870

CORPORACION G Y T CONTINENTAL		Fecha/hora : 21/08/12 09:03:11		
GTC BANK		Pág. : 1		
ESTADO DE CUENTA -- SEP/2011				
Nombre del contrato:		Asesor : A24		
VILLAMOREY, S.A.		Num. Cuenta : 900051264		
Dirección de correspondencia:		Producto : CUENTA ESPECIAL COFINSA 2		
GUATEMALA		Moneda : DÓLARES AMERICANOS 5.		
Fecha	Descripción	Débitos	Créditos	Saldo
	Saldo Anterior.....:			2,716.41
30/09/2011	PAGO DE INTERESES	00.00	00.30	2,716.71
	Saldo Inicial	(-) Débitos 000	(+) Créditos 001	Saldo Final
	2,716.41	00.00	00.30	2,716.71

000017

871

CORPORACION G Y T CONTINENTAL		Fecha/hora : 21/08/12 09:05:17		
GTC BANK		Pág. : 1		
ESTADO DE CUENTA -- OCT/2011				
Nombre del contrato:		Asesor : A24		
VILLAMOREY, S.A.		Núm. Cuenta : 900051264		
Dirección de correspondencia:		Producto : CUENTA ESPECIAL COFINSA 2		
GUATEMALA		Moneda : DÓLARES AMERICANOS \$.		
Fecha	Descripción	Débitos	Créditos	Saldo
	Saldo Anterior.....:			2,716.71
31/10/2011	PAGO DE INTERESES	00.00	00.31	2,717.02
	Saldo Inicial	(-) Débitos 000	(+) Créditos 001	Saldo Final
	2,716.71	00.00	00.31	2,717.02

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872

CORPORACION G Y T CONTINENTAL		Fecha/hora : 21/08/12 09:03:18		
GTC BANK		pág. : 1		
ESTADO DE CUENTA -- NOV/2011				
Nombre del contrato:		Asesor : A24		
VILLAMOREY, S.A.		Núm. Cuenta : 900051264		
Dirección de correspondencia:		Producto : CUENTA ESPECIAL COFIMSA 2		
GUATEMALA		Moneda : DÓLARES AMERICANOS \$.		
Fecha	Descripción	Débitos	Créditos	Saldo
	Saldo Anterior.....:			2,717.02
30/11/2011	PAGO DE INTERESES	00.00	00.30	2,717.32
	Saldo Inicial	(-) Débitos 000	(+) Créditos 001	Saldo Final
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000019

873

CORPORACION G Y T CONTINENTAL		Fecha/hora : 21/06/12 09:12:51		
GTC BANK		Pág. : 1		
ESTADO DE CUENTA -- DEC/2011				
Nombre del contrato:		Asesor : A24		
VILLAHOREY, S.A.		Húm. Cuenta : 900051264		
Dirección de correspondencia:		Producto : CUENTA ESPECIAL COFINSA 2		
GUATEMALA		Moneda : DÓLARES AMERICANOS S.		
Fecha	Descripción	Débitos	Créditos	Saldo
	Saldo Anterior.....:			2,717.32
31/12/2011	PAGO DE INTERESES	00.00	00.31	2,717.63
	Saldo Inicial	(-) Débitos 000	(+) Créditos 001	Saldo Final
	2,717.32	00.00	00.31	2,717.63

000020

874

CORPORACION G Y T CONTINENTAL		Fecha/hora : 21/08/12 09:13:43		
GTC BANK		Pág. : 1		
ESTADO DE CUENTA -- JAN/2012				
Nombre del contrato:		Asesor : A24		
VILLAMOREY, S.A.		Núm. Cuenta : 900051264		
Dirección de correspondencia:		Producto : CUENTA ESPECIAL COFINSA 2		
GUATEMALA		Moneda : DÓLARES AMERICANOS \$.		
Fecha	Descripción	Débitos	Créditos	Saldo
	Saldo Anterior.....:			2,717.63
31/01/2012	PAGO DE INTERESES	00.00	00.31	2,717.94
	Saldo Inicial	(-) Débitos 000	(+) Créditos 001	Saldo Final
	2,717.63	00.00	00.31	2,717.94

000021

875

CORPORACION G Y T CONTINENTAL		Fecha/hora : 21/08/12 09:15:49		
GTC BANK		Pag. : 1		
ESTADO DE CUENTA -- FEB/2012				
Nombre del contrato:		Asesor : A24		
VILLAMOREY, S.A.		Núm. Cuenta : 900051264		
Dirección de correspondencia:		Producto : CUENTA ESPECIAL COFINSA 2		
GUATEMALA		Moneda : DÓLARES AMERICANOS \$.		
Fecha	Descripción	Débitos	Créditos	Saldo
	Saldo Anterior.....:			2,717.94
29/02/2012	PAGO DE INTERESES	00.00	00.29	2,718.23
	Saldo Inicial	(-) Débitos 000	(+) Créditos 001	Saldo Final
	2,717.94	00.00	00.29	2,718.23

000022

876

CORPORACION G Y T CONTINENTAL		Fecha/hora : 21/08/12 09:13:50		
GTC BANK		Pág. : 1		
ESTADO DE CUENTA -- MAR/2012				
Nombre del contrato:		Asesor : A24		
VILLAMOREY, S.A.		Núm. Cuenta : 900051264		
Dirección de correspondencia:		Producto : CUENTA ESPECIAL COFINSA 2		
GUATEMALA		Moneda : DÓLARES AMERICANOS \$.		
Fecha	Descripción	Débitos	Créditos	Saldo
	Saldo Anterior.....:			2,718.23
31/03/2012	PAGO DE INTERESES	00.00	00.31	2,718.54
	Saldo Inicial	(-) Débitos 000	(+) Créditos 001	Saldo Final
	2,718.23	00.00	00.31	2,718.54

000023

87

CORPORACION G Y T CONTINENTAL		Fecha/hora : 21/08/12 09:13:53		
GTC BANK		Pág. : 1		
ESTADO DE CUENTA -- APR/2012				
Nombre del contrato:		Asesor : A24		
VILLAMOREY, S.A.		Núm. Cuenta : 900051264		
Dirección de correspondencia:		Producto : CUENTA ESPECIAL COFINSA 2		
GUATEMALA		Moneda : DÓLARES AMERICANOS \$.		
Fecha	Descripción	Débitos	Créditos	Saldo
	Saldo Anterior.....:			2,718.54
30/04/2012	PAGO DE INTERESES	00.00	00.30	2,718.84
	Saldo Inicial	(-) Débitos 000	(+) Créditos 001	Saldo Final
	2,718.54	00.00	00.30	2,718.84

000024

878

CORPORACION G Y T CONTINENTAL
GTC BANK

Fecha/hora : 21/08/12 09:15:58
Pág. : 1

ESTADO DE CUENTA -- MAY/2012

Nombre del contrato: VILLAMOREY, S.A.
Dirección de correspondencia: GUATEMALA

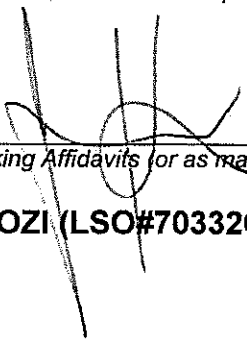
Asesor : A24
Núm. Cuenta : 900051264
Producto : CUENTA ESPECIAL COFINSA 2
Moneda : DÓLARES AMERICANOS S.

Fecha	Descripción	Débitos	Créditos	Saldo
	Saldo Anterior.....:			2,718.84
31/05/2012	PAGO DE INTERESES	00.00	00.31	2,719.15
	Saldo Inicial	(-) Débitos 000	(+) Créditos 001	Saldo Final
	2,718.84	00.00	00.31	2,719.15

000025

EXHIBIT D

This is Exhibit "D" referred to in the Affidavit of JUAN GUILLERMO GUTIERREZ sworn March 22, 2020.



Commissioner for Taking Affidavits (or as may be)

N. JOAN KASOZI (LSO#70332Q)

SAV.

INVERSION A PLAZO FIJO CORPORATIVA

Intereses al vencimiento: ☐Intereses mensuales: ☐

Nombre de la cuenta: Villamorey, S.A. Cuenta Especial

Razón social de la empresa: villa morey, S.A. Cuenta Especial

Dirección de la Empresa: Scotia Plaza, ave. Federico Boyd, No. 18 y calle 51 pisos, 9, 10, 11. Panamá Teléfono: (507) 263-5633

Número de cuenta: 900051264 Fecha de apertura: 06/05/2010

Monto inicial: 411661.250.00 Plazo de la inversión:

Fecha inicio de la inversión: Fecha vencimiento de la inversión:

Tasa a devengar: 0.10 Manejo de firmas: individual

Dirección entrega correspondencia: Sav. 15-45 zona 10 Centro Empresarial torre I nivel 8

Forma de renovación:

Automática ☐ no renovación automática ☐ incluir intereses ☐ no incluir intereses ☐Por el mismo plazo ☐ otras instrucciones:

Intereses a ser acreditados a otra cuenta del Banco:

Nombre del Representante Legal:

El Representante Legal acepta que todos los datos anteriores son correctos

Firma

Información de Representante Legal

Nombre completo: Juan Luis Bosch Gutierrez

Dirección domicilio: Edificación los Encinos, casa 2 Km 6.7 Carre. el Salvador

No. teléfono domicilio: (502) 2333-5602 e-mail: jish@guale.net

País de residencia: Guatemala No. de Cédula o Pasaporte: A-1 424025

País donde fue emitido: Guatemala Ocupación: Ejecutivo

Empresa para la que trabaja: Multi-Inversiones

Posición que ocupa: CO - presidente

Dirección de la empresa: Sav. 15-45 zona 10 Torre I pent house.

Número de teléfono: 2333-7106

Para uso exclusivo del Banco

Código del oficial: A 11

Firma

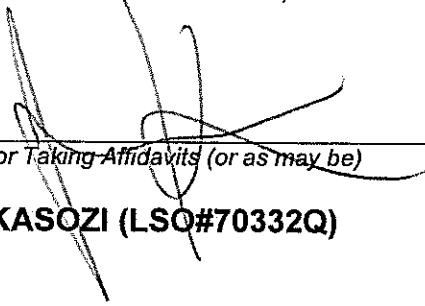
Nombre:

Descripción del documento: traslado 90004999.

90004999

EXHIBIT E

This is Exhibit "E" referred to in the Affidavit of JUAN GUILLERMO GUTIERREZ sworn March 22, 2020.



Commissioner for Taking Affidavits (or as may be)

N. JOAN KASOZI (LSO#70332Q)

Court File No. CV11906200CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

MARGARITA CASTILLO

Applicant

and

XELA ENTERPRISES LTD., TROPIC INTERNATIONAL LIMITED,
FRESH QUEST, INC., 696096 ALBERTA LTD., JUAN GUILLERMO
GUTIERREZ and JUAN ARTURO GUTIERREZ

Respondents

This is the CrossExamination of MARGARITA CASTILLO, the Applicant herein, on affidavits sworn the 17th day of January 2011 and the 9th day of September 2011, taken at the offices of Network Reporting & Mediation, One First Canadian Place, Suite 3600, 100 King Street West, Toronto, Ontario, M5X 1E3, on the 17th day of April, 2012.

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

Jeffrey S. Leon
Jason W.J. Woycheshyn

For the Plaintiff

Peter Manderville
Mark Crane

for the Respondents

Also Present:

Juan J. Rodriguez, Esq.
Juan Guillermo Gutierrez

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INDEX OF REFUSALS

Refusals are found on the following pages:

27, 86, 87, 119, 157, 162 163, 169, 170

*** The list of refusals is provided as a service to counsel and does not purport to be complete or binding upon the parties.

NETWORK REPORTING & MEDIATION (416) 3590305

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NETWORK REPORTING & MEDIATION (416) 3590305

April 17th, 2012

Margarita Castillo

1 Upon commencing at 10:04 a.m.

2 MARGARITA CASTILLO; Sworn.

3 CROSSEXAMINATION BY MR. MANDERVILLE:

4 1 Q. Will you state your name for the
5 record, please, ma'am?

6 A. Margarita Castillo.

7 2 Q. Ms. Castillo, you're an applicant in a
8 legal proceeding in Ontario Superior Court, court
9 file number CV11906200CL?

10 A. Yes.

11 3 Q. And you're the applicant in that
12 proceeding?

13 A. Yes, I am.

14 4 Q. In connection with that proceeding, you
15 have sworn three separate affidavits?

16 A. Yes.

17 5 Q. Just so you know, it's not really a
18 memory test.

19 A. No.

20 6 Q. If you're not sure, I'll refer you to
21 something and... Before we began, your counsel Mr.
22 Leon and I agreed that we would mark the various
23 application records and responding records as
24 exhibits and just refer to the contents by

NETWORK REPORTING & MEDIATION (416) 3590305

April 17th, 2012

Margarita Castillo

1 Correct, Mr. Leon?

2 MR. LEON: Yes, subject to I don't think
3 there are any documents here that are in dispute in
4 terms of the authenticity, but why don't we just
5 mark it, and if there are, I'll let you know.

6 MR. MANDERVILLE: We can raise it at the
7 time.

8 MR. LEON: I don't mind if we mark your
9 clients' application record, but there are some
10 documents that may be disputed documents, so I just
11 want to make it since this is a
12 crossexamination rather than a discovery, I don't
13 want the suggestion by marking it somehow we've
14 accepted that they're admissible in the proceeding.

15 MR. MANDERVILLE: I'm content with that. I
16 suspect I'll raise a similar caution when the time
17 comes.

18 BY MR. MANDERVILLE:

19 7 Q. Ms. Castillo, I'm showing you Volumes 1
20 and 2 of your application record.

21 A. Yes.

22 8 Q. Mr. Leon, I'd like to make this Exhibit
23 1, both of them, or one will be Exhibit 1, Volume
24 2, tab such and such and so on.

NETWORK REPORTING & MEDIATION (416) 3590305

April 17th, 2012

Margarita Castillo

1 Exhibit 11 and 12?

2 MR. MANDERVILLE: Sure.

3 MR. LEON: Maybe what makes most sense is
4 to mark her or, sorry, the applicant's motion
5 material or application material with numbers and
6 yours with letters and that way there's no

7 MR. MANDERVILLE: For the purpose of this
8 examination.

9 MR. LEON: For the purpose of this
10 examination, yes.

11 EXHIBIT NO. 11: Application Record,
12 Applicant.

13 EXHIBIT NO. 12: Application Record
14 Applicant.

15 BY MR. MANDERVILLE:

16 9 Q. Ms. Castillo, I'm showing you a
17 document entitled "Reply Application Record."

18 A. Yes.

19 10 Q. This will be Exhibit 2.

20 EXHIBIT NO. 2: Reply Application Record.

21 MR. LEON: Yes.

22 BY MR. MANDERVILLE:

23 11 Q. Ms. Castillo, I'm showing you a
24 document entitled "Second Reply Application
Record."

NETWORK REPORTING & MEDIATION (416) 3590305

April 17th, 2012

Margarita Castillo

1 12 Q. Mr. Leon, this will be Exhibit 3.

2 MR. LEON: Yes.

3 EXHIBIT NO. 3: Second Reply Application

4 Record.

5 BY MR. MANDERVILLE:

6 13 Q. Ms. Castillo, I'm showing you a
7 document entitled "Responding Application Record,
8 Volume 1."

9 A. Okay.

10 14 Q. I'm also showing you a document
11 entitled "Responding Application Record, Volume 2."

12 A. Okay.

13 15 Q. We have agreed that these will be
14 marked A1 and A2.

15 EXHIBIT A1: Responding Application
16 Record, Volume 1.

17 EXHIBIT A2: Responding Application
18 Record, Volume 2.

19 MR. LEON: Yes.

20 BY MR. MANDERVILLE:

21 16 Q. Ms. Castillo, I'm showing you a
22 document entitled "Supplemental Application
23 Record."

24 A. Yes.

NETWORK REPORTING & MEDIATION (416) 3590305

April 17th, 2012

Margarita Castillo

1 MR. LEON: Yes.

2 EXHIBIT B: Supplemental Application
3 Record.

4 MR. LEON: Although technically it should
5 be Supplemental Respondent to Reply Affidavit.

6 MR. MANDERVILLE: I appreciate you
7 overlooking that.

8 BY MR. MANDERVILLE:

9 18 Q. Lastly, Ms. Castillo I'm showing you a
10 document entitled "Affidavit of Juan Guillermo
11 Gutierrez, sworn September 27th, 2011?

12 A. Yes.

13 19 Q. Mr. Leon, this will be Exhibit C.

14 MR. LEON: Yes.

15 EXHIBIT C: Affidavit Juan Guillermo
16 Gutierrez, Sworn September 27, 2011.

17 BY MR. MANDERVILLE:

18 20 Q. Ms. Castillo, you've been sworn today?

19 A. Yes, I have.

20 21 Q. What is your date of birth?

21 A. May 30, 1958.

22 22 Q. Have you completed your high school
23 education?

24 A. No, I didn't finish high school.

NETWORK REPORTING & MEDIATION (416) 3590305

April 17th, 2012

Margarita Castillo

1 you completed?

2 A. I went to the equivalent of Grade 8 and
3 then I went into I did three years of
4 secretarial school.

5 24 Q. Okay.

6 A. Bilingual secretarial school.

7 25 Q. Spanish and English?

8 A. Yes.

9 26 Q. Where was the secretarial school? Was
10 that like a community college?

11 A. No, it was a specific school for
12 secretarial.

13 27 Q. This is in Guatemala City?

14 A. That's correct.

15 28 Q. Did you graduate from that program?

16 A. I did.

17 29 Q. And you have three daughters?

18 A. I do have three daughters.

19 30 Q. What are their ages, please?

20 A. The oldest is 30, the middle one is 27
21 and the youngest is 22.

22 31 Q. I understand that after you completed
23 the secretarial school program you went to work for
24 your father?

A. Yes. That wasn't my original plan, but ³³¹

NETWORK REPORTING & MEDIATION (416) 3590305

April 17th, 2012

Margarita Castillo

1 that's how I did, yes.

2 32 Q. And according to an affidavit of your
3 father you went to work for him in or about 1977,
4 and I take it at the time you would have been age
5 18 or 19?

6 A. Yes, that's correct.

7 33 Q. And you met your husband, Ricardo, at
8 your father's offices?

9 A. Yes.

10 34 Q. And he was a typewriter salesperson for
11 IBM at the time?

12 A. He was office products salesman for
13 IBM.

14 35 Q. To your knowledge, what is Ricardo's
15 level, highest level of education?

16 A. He finished high school and then he
17 went into university in Idaho, Moscow, Idaho. And
18 then

19 36 Q. Sorry, where?

20 A. Moscow, Idaho. And then he started law
21 school in Guatemala.

22 37 Q. Did he obtain a degree in Idaho?

23 A. I'm not I believe he did.

24 38 Q. Did he complete law school?

NETWORK REPORTING & MEDIATION (416) 3590305

April 17th, 2012

Margarita Castillo

1 that was about the time that we moved here, so he
2 never went back and finished.

3 39 Q. And you and Ricardo married in October
4 1980?

5 A. Yes, that's correct.

6 40 Q. And your first daughter, the 30year
7 old was born in November of '81?

8 A. Yes.

9 41 Q. And at that point you ceased working
10 outside the home?

11 A. I still after maternity leave, I
12 still came back to work but I was asking for time
13 to go, and so that's why my father told me that it
14 would probably be better that I go do a very
15 important job that was take care of my daughter.

16 42 Q. So would it be accurate for me to say
17 that you left the workforce in or about 1982?

18 A. Yes, that's accurate.

19 43 Q. At the time of your wedding your father
20 bought you and Ricardo a home in Guatemala City?

21 A. Yes.

22 44 Q. We've seen that your father decided to
23 leave Guatemala in 1982; correct?

24 A. That's correct.

NETWORK REPORTING & MEDIATION (416) 3590305

April 17th, 2012

Margarita Castillo

1 correct, you were 24 years old?

2 A. Yes.

3 46 Q. One child or two grandchildren now?

4 A. One.

5 47 Q. At the time your father decided to

6 leave Guatemala, what was Ricardo's source of

7 income at the time?

8 A. He was working for IBM.

9 48 Q. When your father elected to leave

10 Guatemala, you decided that you wanted to move with

11 your parents as well?

12 A. Yeah, he told me the idea and we agreed

13 that it's was a good opportunity, so we decided

14 to do it.

15 49 Q. I understand that ultimately your

16 father settled in Toronto in 1984?

17 A. Yes.

18 50 Q. And you did as well?

19 A. Yes, I came two months later.

20 51 Q. From 1982 to 1984, your father at least

21 resided primarily in Miami; is that correct?

22 A. Yes.

23 52 Q. Where did you live?

24 A. We were in Miami, too, but coming back

NETWORK REPORTING & MEDIATION (416) 3590305

April 17th, 2012

Margarita Castillo

1 53 Q. Did you have your own place in Miami or
2 did you live with your parents?

3 A. No, at some point we rented our own
4 apartment.

5 54 Q. Upon moving to Toronto, your father
6 Arturo gave you and Ricardo a house?

7 A. Yes.

8 55 Q. He bought it for you?

9 A. Yes.

10 56 Q. He also gave you shares in his
11 business?

12 A. Yes, he did.

13 57 Q. And he gave you an income stream from
14 the business?

15 A. Yes, that's how it was.

16 58 Q. At some point he also gave you and
17 Ricardo a cottage in the Muskoka area?

18 A. He helped us buy it buy it

19 Reporter Appeals.

20 A. Yes, he did.

21 MR. LEON: No, repeat what you said.

22 THE DEPONENT: Oh, yes, he helped us to buy
23 the cottage in Muskoka.

24 BY MR. MANDERVILLE:

NETWORK REPORTING & MEDIATION (416) 3590305

April 17th, 2012

Margarita Castillo

1 price of the cottage?

2 A. Not at that time.

3 60 Q. And I take it upon moving to Toronto
4 you elected to stay at home and raise your
5 children?

6 A. Yes, I stayed at home and raised my
7 children, to which I feel very lucky to have been
8 able to do it.

9 61 Q. And Ricardo was hired by your father to
10 work at your father's business?

11 A. Yes.

12 62 Q. Now, we know you became a director of
13 Xela in 2007. I believe it was May. Is that
14 correct?

15 A. I don't remember the exact date, but
16 yes, that sounds correct.

17 63 Q. From 1984, when you first arrived in
18 Toronto, until 2007, what involvement did you have
19 in the family business?

20 A. Before 2007 I was already going
21 sometimes to the board meetings just to listen
22 because I expressed to my father that I would like
23 to learn more about the business.

24 64 Q. How frequently would you do that?

NETWORK REPORTING & MEDIATION (416) 3590305

April 17th, 2012

Margarita Castillo

1 was.

2 65 Q. So from 1984 to

3 A. Oh, no, it was more I was elected a
4 director in 2007, so I think, if I remember
5 correctly, maybe 2006 I started going.

6 66 Q. And prior to 2006 would you go?

7 A. No. I would go to the office
8 occasionally but...

9 67 Q. Prior to 2007, how closely would you
10 say you monitored the company's affairs?

11 A. I did not personally monitor them.

12 68 Q. How frequently would you ask Ricardo
13 what's going on at the office?

14 A. Cannot pinpoint how frequent it was
15 because I know that he wanted to whenever he
16 came home from the office, it was family time in
17 his mind, so we didn't talk about business.

18 69 Q. Would it be fair for me to suggest that
19 from 1984 until 2006 at least, you generally did
20 not concern yourself with what was going on in the
21 business?

22 A. Oh, no, I was always curious to know
23 how things were going.

24 70 Q. Who would you ask about it, if not

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1 A. My father.

2 71 Q. How frequently would that happen?

3 A. I don't know exactly how frequency. I
4 cannot say exactly how many times or anything like
5 that.

6 72 Q. And until and I want to divide
7 between, say, before 2006 and afterwards. Until
8 2006 would you ever ask about the financial status
9 of the business or the financial statements or
10 anything like that?

11 A. Not that I remember. I know in '96
12 when there was the estate freeze, I know at that
13 time I learned more.

14 73 Q. Yes.

15 A. Mmhmm.

16 74 Q. Yes, and we'll talk about that.

17 A. Okay.

18 75 Q. I want to take a look at your first
19 affidavit which is in Volume 1 of the application
20 record, so Exhibit 11. It's at tab 2.

21 If you turn to the back of it, page numbered
22 88, and that's your signature on the back of it?

23 A. Yes, that's my signature.

24 76 Q. It indicates that it was sworn on

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1 A. That's correct, that's what it says.

2 77 Q. And at the time you swore to Mr.

3 Woycheshyn that everything in the affidavit was
4 true?

5 A. Yes, I did.

6 78 Q. The exhibits or the affidavits in the
7 materials that we've marked as letter exhibits,
8 have you read those affidavits?

9 A. Yes, I did.

10 79 Q. Affidavits of your father and your
11 brother and Mr. Korol?

12 A. Yes, I did read them.

13 80 Q. And Mr. Shields as well?

14 A. Yes.

15 81 Q. Mr. Leon, I would like to you get Ms.
16 Castillo Exhibit A2, please, the Responding
17 Application Record, Volume 2.

18 In particular, Ms. Castillo, I would like you
19 to turn behind tab 2 which is the first affidavit of
20 Juan Arturo Gutierrez, sworn June 17, 2011.

21 A. Yes.

22 82 Q. And first off I should caution you some
23 of the paragraphs are misnumbered in this
24 affidavit. There appear to be two paragraphs 2 and

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1 A. Yes, I see that.

2 83 Q. So to make sure we know what we're
3 talking about, I'll sort of draw your attention to
4 which I am referring to so you know.

5 A. Okay.

6 84 Q. The first paragraph 3 under the
7 heading, "Family History of the Gutierrez Group in
8 Guatemala"

9 A. That's page 2, yes.

10 85 Q. Correct. That be a good way to go
11 about it. Have you read that paragraph of your
12 father's affidavit?

13 A. Yes, I read it.

14 86 Q. Did you read Exhibit A with his lengthy
15 letter that provides an account of the family
16 history?

17 A. Yes, I read that letter.

18 87 Q. And that letter is written in the
19 latter part of 1998 according to your father?

20 A. Yes. It says yeah, it says the
21 letter, it's not dated, but that's what he says
22 here in the application.

23 88 Q. Would it be fair for me to suggest that
24 you were not aware of the family history at the

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1 A. No, I knew the family history.

2 89 Q. You would agree with me that your
3 father, having written that letter of the family
4 history in 1998, 13 years before your application
5 started, obviously the letter was not prepared with
6 the idea of responding to your application;
7 correct?

8 A. That's correct.

9 90 Q. I'd like you to keep your father's
10 affidavit handy because we'll refer back to it.

11 I'm going to turn to your first affidavit,
12 please. Now, paragraph 6, you indicate:

13 "In 1989 Ricardo, one of his colleagues
14 and I founded Tropic International Ltd., a
15 separate company from the family business."
16 Do you see that?

17 A. Yes, I see that.

18 91 Q. At the time you swore this first
19 affidavit, were you aware of the history of Tropic
20 that your father recounts in his affidavit?

21 A. No, I wasn't aware.

22 92 Q. I take it then you weren't aware of the
23 circumstances behind the startup and the failure of
24 your husband's partnership with Charles Graham?

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1 way they would wanted it to go.

2 93 Q. Did you understand at the time you
3 swore your first affidavit, did you understand that
4 your husband did not put up any financing for the
5 Tropic venture?

6 A. Yes, I understood that.

7 94 Q. Did you understand at the time you
8 swore your first affidavit that Xela or your father
9 had financed the Tropic venture from the startup?

10 A. Yes, that's what I knew.

11 95 Q. Did you understand when the initial
12 Tropic venture with Mr. Graham failed that Xela
13 paid off all the losses arising from the startup?

14 A. Yes, that's what I was told.

15 96 Q. And is it your understanding that your
16 husband Ricardo never put up any consideration for
17 the shares he had in Tropic?

18 A. Yes, the same way I never put anything
19 for anything else that my father gifted us.

20 97 Q. So, yes, you did understand that?

21 A. Yes.

22 98 Q. Mr. Leon, I apologize, but I want to
23 take about four minutes, maybe even three.

24 MR. LEON: All right.

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1 BY MR. MANDERVILLE:

2 99 Q. Ms. Castillo, before we broke, we had
3 taken a look at your father's first affidavit and
4 generally paragraph 3 on page 2 of it.

5 A. Yes.

6 MR. LEON: You've referred her to it. I'm
7 not sure she read it.

8 BY MR. MANDERVILLE:

9 100 Q. If you want to read through it, by all
10 means.

11 A. Okay, I'm ready to go.

12 101 Q. Before you became a director of Xela, I
13 take it you were well aware of the longstanding
14 dispute between your father and Xela, on the one
15 hand, and your father's nephews, your cousins in
16 Guatemala, on the other hand?

17 A. Yes, I was aware of that dispute.

18 102 Q. Before you became a director, you were
19 aware that Xela and your father contend that they
20 were owed a considerable amount of money, perhaps
21 in the hundreds of millions of dollars, by your
22 cousins?

23 A. Yes, that's what I understood from the
24 information that I had.

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1 director this was a significant dispute, a
2 significant source of discontent with your father
3 and with the company?

4 A. Yes, I knew that.

5 104 Q. Would you agree with me that if Xela is
6 owed perhaps hundreds of millions of dollars by the
7 nephews and their companies, it is in the best
8 interests of the corporation to try and obtain it?

9 A. Yes, I believe it would be in the best
10 interests of the company to resolve that matter.

11 105 Q. I'd ask you to take a look at paragraph
12 9 of your father's affidavit, first affidavit.
13 It's at page it begins at page 10.

14 A. Okay. Could I read it?

15 106 Q. Oh, absolutely.

16 A. I have read it.

17 107 Q. At the time you swore your first
18 affidavit, Ms. Castillo, were you aware of your
19 father's and perhaps your brother's dissatisfaction
20 with Ricardo's performance at the company?

21 A. Not to this point.

22 108 Q. Were you aware that it's contended that
23 he would play computer games during board meetings?

24 A. I wasn't present at those board

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1 the fact or not.

2 109 Q. You were not aware that that is the
3 assertion?

4 A. No.

5 110 Q. And in the same volume, Exhibit A2,
6 can you turn to tab 4, please. That is the
7 affidavit of your brother Juan Guillermo Gutierrez,
8 sworn June 20th, 2011?

9 A. Yes, I see that.

10 111 Q. Turn to paragraph 15 of that affidavit,
11 please. It's at page 8.

12 A. Paragraph 15?

13 112 Q. Yes, that's right, and by all means
14 take your time and read it.

15 A. I have read it.

16 113 Q. I take it at the time you swore your
17 first affidavit, you were not aware of the facts
18 set out by your brother in paragraph 15 that you've
19 just read?

20 MR. LEON: Well, you're not asking her, are
21 you, to acknowledge those are facts? You're just
22 saying is she aware of those statements?

23 MR. MANDERVILLE: Fair enough.

24 BY MR. MANDERVILLE:

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1 rephrase. At the time you swore your first
2 affidavit, am I correct that you were not aware of
3 the sorts of statements that your brother sets out
4 in paragraph 15 of his affidavit?

5 MR. LEON: Well, sorry, I don't want to
6 interrupt. There's a lot of statements there. Can
7 you just maybe explain to the witness she doesn't
8 have to answer "yes" or "no".

9 BY MR. MANDERVILLE:

10 115 Q. Sure, I'll okay. Your brother
11 contends at paragraph 15 of his affidavit that
12 Ricardo, your husband, used Xela's corporate credit
13 card to fund a trip with your daughters to the
14 World Cup in 2006, including plane tickets and many
15 of the expenses during their stay in Germany,
16 including restaurant bills.

17 At the time that you swore your first
18 affidavit, were you aware of that assertion?

19 A. I'm aware that when he made that trip
20 he would use the corporate card sometimes because
21 of the bigger credit limit, but I am as far as I
22 know, everything was accounted as it was a
23 personal. He never tried to put it as a business
24 expense or anything of the sort.

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1 company for those expenses?

2 A. I don't know how he accounted for those
3 expenses but...

4 117 Q. Fair to say that you don't know if he
5 did or not?

6 A. No, I don't know.

7 118 Q. Your brother Juan Guillermo also
8 contends in paragraph 15 of his affidavit that your
9 husband Ricardo used company funds to pay for a New
10 Year's trip to Australia and for his daughter
11 Daniella's school in Australia.

12 At the time you swore your first affidavit,
13 were you aware of that assertion concerning your
14 husband?

15 A. I am aware that he used the credit
16 card, the corporate credit card to pay for the
17 initial semester of her schooling due to the fact
18 that, like I said again, there was not enough time
19 to send a wire transfer, so the easiest was to use
20 a credit card in order to assure her placement in
21 the program, and then due to the fact of the larger
22 credit limit we used the card.

23 119 Q. Again, I take it, you're not aware as
24 to whether or not those funds were reimbursed to

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1 A. No. Like I said before, I'm not
2 exactly sure how they accounted for those because
3 he wasn't the only one using the corporate credit
4 card for personal uses.

5 120 Q. Well, no, I understand your response.
6 My question was I take it you're not aware as to
7 whether or not he reimbursed the company for those
8 personal expenses?

9 A. No, I'm not aware of that.

10 121 Q. Well, is there anything from preventing
11 Ricardo from increasing the credit limit on his
12 personal cards?

13 MR. LEON: You are asking her whether she
14 knows whether there was?

15 THE DEPONENT: Well, I don't know.

16 BY MR. MANDERVILLE:

17 122 Q. To your knowledge?

18 A. No, I don't know why he wouldn't do it
19 or why he didn't do it.

20 123 Q. Now, you subsequently became a director
21 of the company, and upon becoming a director, if
22 not before, you came to understand that as a
23 director you had certain duties and obligations to
24 the company?

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1 124 Q. Well, you knew that as a director you
2 were to prefer the company's interests to your own
3 personal interests?

4 A. In company matters, yes.

5 125 Q. Correct?

6 A. Yes.

7 126 Q. Would you agree with me that if the
8 company was not reimbursed for personal expenses
9 like your daughter's tuition or trips to Australia
10 or Germany, that would not be appropriate?

11 MR. LEON: Well, don't answer that. That's
12 a question of law.

13 REFUSAL

14 BY MR. MANDERVILLE:

15 127 Q. Based on your experience as a director,
16 Ms. Castillo, would you agree with me that using
17 corporate funds for personal expenses is not
18 something a director should be doing?

19 MR. LEON: Again, I don't think that's a
20 proper question to the witness.

21 BY MR. MANDERVILLE:

22 128 Q. What's the nature of your objection to
23 that question, Mr. Leon? I don't think it's a
24 question of law. I just want to have you clarify.

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1 to specific facts or you're asking a theoretical
2 question. Either way there's a problem.

3 BY MR. MANDERVILLE:

4 129 Q. During your time as a director of Xela,
5 Ms. Castillo, was it your understanding that you
6 could use corporate funds for personal expenses?

7 A. No, I did not use any corporate funds.

8 130 Q. Was it your understanding that that was
9 permitted or not permitted?

10 A. The way that the company was run, I
11 didn't see anything wrong about doing it. I did
12 not do it personally because I did not have any
13 access to credit cards or anything like that from
14 the corporate.

15 131 Q. Was it your understanding and your
16 counsel may want me to rephrase, but I'll give it a
17 shot. Was it your understanding that, if corporate
18 funds were used for personal expenses, they were to
19 be reimbursed to the corporation?

20 A. I don't know how what arrangements
21 were made regarding that, so I cannot answer that
22 question.

23 132 Q. What was your understanding?

24 A. No, I told you, I don't know how they

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1 company, so I don't know.

2 133 Q. Do you dispute your father's and
3 brother's assertion in their affidavits that when
4 your husband was confronted with these allegations,
5 he elected to resign from the company?

6 A. I don't know exactly if he was
7 confronted or when he was confronted, but I know
8 that he was thinking about resigning way before it
9 happened. So I don't see why that would be said
10 that that was the matter.

11 134 Q. I'm not sure you have answered my
12 question. I know you have given me your answer.
13 My question was do you

14 MR. LEON: Sorry, go ahead.

15 BY MR. MANDERVILLE:

16 135 Q. Do you dispute the assertion by your
17 father and by your brother in their affidavits that
18 when your father confronted your husband over
19 perhaps improper expenses, your husband elected to
20 resign from the company?

21 MR. LEON: I think she did answer it, but
22 she can answer it again.

23 THE DEPONENT: Well, like I said, I know
24 from conversations with my husband that he was

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1 there anymore. I don't I don't think he was
2 in I don't know if or when he was confronted
3 about that, if that was the case, which, to my
4 knowledge, it wasn't the case.

5 BY MR. MANDERVILLE:

6 136 Q. And your husband has never advised you
7 of this sort of thing?

8 A. No.

9 137 Q. Now, have you ever heard of a business
10 called Digalta?

11 A. Yes, I am aware of that business.

12 138 Q. At the time you swore your first
13 affidavit, were you aware of the transfer of
14 Digalta to your husband by your father?

15 A. Yes, I'm aware of that.

16 139 Q. What is your understanding of why
17 Digalta was transferred to Ricardo?

18 A. It was actually transferred to a
19 company that we it's not in Ricardo's name.
20 It's in a company in all our names, namely Ricardo,
21 my daughters and me under a trust and it's we
22 actually bought Digalta from Xela at that time.

23 MR. LEON: Xela is also sometimes
24 pronounced Xela. It's the same word, Xela.

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1 pronunciation.

2 BY MR. MANDERVILLE:

3 140 Q. Anglophones mispronounce it as Xela.

4 A. I'll remember to say Xela.

5 So it was a transaction made like we got
6 but that's our company actually bought Digalta from
7 Xela.

8 141 Q. In return for what?

9 A. There is a promissory note that we are
10 going to pay when the time comes.

11 142 Q. This is the promissory note that
12 matures in 2013?

13 A. I believe that's the date, yes.

14 143 Q. When Arturo says he offered Ricardo
15 Digalta in return for the transfer of the Tropic
16 shares to you, do you dispute that?

17 A. That's what he offer at the time, but
18 it was not exactly like that.

19 144 Q. What's your understanding of how it was
20 executed?

21 A. Well, the transfer of Digalta was done
22 previous to he transferred to the shares to my
23 name. It wasn't an exchange one for the other.
24 That's what I meant.

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1 place?

2 A. I don't remember the exact date.

3 146 Q. Can I ask you to turn to paragraphs 10
4 and 11 of your father's first affidavit, please.

5 A. Which is page?

6 147 Q. Sorry, page 11.

7 A. Page 11.

8 MR. LEON: Here, let me help you find it.

9 THE DEPONENT: Yes. And you said paragraph
10 number?

11 BY MR. MANDERVILLE:

12 148 Q. Paragraphs 10 through 12 actually.
13 It's on page 11.

14 A. Can I read it?

15 149 Q. Yes, absolutely.

16 MR. WOYCHESHYN: You might want to clarify
17 on the record, Mr. Manderville, that Exhibits A1
18 and A2, the actual records aren't numbered. So
19 the page references that you are referring the
20 witness to aren't the page numbers of the
21 respective affidavits.

22 MR. MANDERVILLE: That's correct. Thank
23 you.

24 THE DEPONENT: Is it 10 to 12?

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1 150 Q. Yes, it is.

2 A. I have read them.

3 151 Q. Do you accept the accuracy of what is
4 set out in paragraphs 10 through 12 of your
5 father's affidavit?

6 MR. LEON: Again, I don't think it's a fair
7 question when there's that much set out there to
8 just ask the broad question as you've asked,
9 particularly since she's already told you her
10 understanding. If you want to ask her specifics,
11 you can.

12 MR. MANDERVILLE: Well, Mr. Leon, I think
13 your client can answer "yes" or "no" or "I don't
14 know" or "some but not all," can she not, and then
15 we can move on from there?

16 MR. LEON: Okay. Go ahead and we'll see
17 where we get to.

18 THE DEPONENT: What was your question?

19 BY MR. MANDERVILLE:

20 152 Q. Do you accept the accuracy of what your
21 father has deposed to in paragraphs 10 through 12
22 of the affidavit we're looking at?

23 A. No, I don't agree with everything he
24 says here.

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1 things he says here you simply do not know about
2 and then some things you say are inaccurate?

3 A. I said I didn't agree with the way he
4 puts it here.

5 154 Q. Paragraph 10 states:
6 "Margarita asserts in her affidavit that
7 she acquired these Tropic shares from
8 Ricardo in 2008. This is untrue.
9 Margarita did not 'acquire' anything
10 from Ricardo, her husband, because she
11 did not pay anything for the acquisition."
12 It's accurate that you did not pay for the
13 acquisition; correct?

14 A. I remembered there being a nominal
15 amount of \$1, I guess, for the transfer between
16 husband and wife.

17 155 Q. Okay.

18 A. That's probably why I came up with the
19 word "acquire."

20 156 Q. Okay. He goes on:
21 "She" meaning you "was the
22 transferee of Ricardo's shares in
23 Tropic at my insistence in order to
24 rectify the original oversight

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1 beneficially owned by Xela from the
2 beginning."

3 Do you accept the accuracy of that?

4 A. I would put it more that I understood
5 that he wanted them to be in my name, not
6 necessarily that they were Xela owned in the
7 beginning.

8 157 Q. He goes on to say:
9 "Noticeably missing from Margarita's
10 affidavit" and this is the first
11 affidavit you swore "is any mention
12 of the Digalta transaction which is
13 covered by the affidavit of Xela's
14 CFO Mark Edward Korol, and which I
15 mention here again."

16 Do you agree that you don't mention the
17 Digalta transaction in your first affidavit?

18 A. No, I did not mention the Digalta
19 transaction in my affidavit because I felt it
20 wasn't what the affidavit was about.

21 158 Q. Paragraph 11 of your father's affidavit
22 says:

23 "Shortly after Ricardo's departure from
24 Xela, I asked Ricardo to transfer his

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1 refused."

2 Do you accept the accuracy of that?

3 A. Yes.

4 159 Q. "As a compromise, I suggested to

5 Ricardo that he transfer the Tropic

6 shares to his wife Margarita for the

7 benefit of Xela, and in exchange Xela

8 would transfer to him Xela's interest

9 in the Russian real estate venture

10 called Digalta. Ricardo accepted."

11 Do you accept the accuracy of that statement?

12 A. Yes, that's what it happened, but I

13 don't think it was exactly in exchange of.

14 160 Q. How would you put it?

15 A. Because like I told you, I he didn't

16 get Digalta in exchange of Tropic because Digalta

17 is a different transaction and he's going to repay.

18 161 Q. "Ricardo then transferred his shares

19 in Tropic to Margarita and he executed

20 general releases in favour of Xela and

21 others for any and all claims relating

22 to Tropic and Fresh Quest."

23 Do you accept the accuracy of that statement?

24 A. Yes, as far as I remember, that's what

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1 Do you accept the accuracy of what is set out
2 there?

3 A. I don't accept the accuracy of saying
4 that it will be uncollectible. I don't understand
5 why he would make that statement.

6 166 Q. Take away the "I believe it will be
7 uncollectible." Do you accept the accuracy of the
8 remainder of that sentence?

9 A. Yes.

10 167 Q. Goes on to say:
11 "Digalta was worth much more than the
12 promissory note, but I understood it
13 would create a tax problem (taxable
14 benefit for Ricardo) if we did not
15 stipulate to a number for the transfer."
16 Do you accept the accuracy of that statement?

17 A. I am not aware of what were the price,
18 the numbers or anything in that transaction. I'm
19 not aware of what it was.

20 168 Q. Okay. "I did this because as I had
21 always done in the past I wanted to know
22 that my daughter and her family were well
23 taken care of, and upon Ricardo's
24 departure from Xela I wanted to give

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1 something of himself and to be a

2 selfsupporting man."

3 Do you accept the accuracy of that statement?

4 MR. LEON: How can she say what he thought?

5 MR. MANDERVILLE: Well, the answer may be,

6 "I don't know."

7 THE DEPONENT: Yeah, I don't know what he

8 was thinking.

9 BY MR. MANDERVILLE:

10 169 Q. Certainly it's true that in the past
11 your father had taken steps to help you financially
12 and to look after you as best he could?

13 A. Yes.

14 170 Q. Your father goes on to state:

15 "By giving him Digalta in Russia with
16 substantial cash in hand, yearly net
17 income of approximately \$300,000, I was
18 hoping to ensure his ability to support
19 my daughter and my grandchildren."

20 Do you accept the accuracy of that statement?

21 A. I don't like the fact that he says "by
22 giving" because it's a business transaction that
23 will be concluded at the time when the promissory
24 note is finished. So when it says "by giving" I

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1 gave it to Ricardo.

2 171 Q. Okay.

3 A. And besides that, it was the company
4 that while he was working in Xela, that's what he
5 was taking care of and it was successful company
6 because of his management.

7 172 Q. You've used the words "his" a lot?

8 A. I meant he was the one doing that part
9 of the business.

10 173 Q. "He" being Ricardo or "he" being
11 Arturo?

12 A. Ricardo. He was the one travelling.
13 Ricardo was the one travelling to Russia and had
14 the contacts over there.

15 174 Q. And Digalta is a real estate company in
16 Russia?

17 A. Yes, I think you can say it's a real
18 estate, yes. It has buildings and rents offices.
19 Rents the buildings to rent the offices.

20 175 Q. So you take exception to his suggestion
21 that he gave Ricardo Digalta?

22 A. Yes.

23 176 Q. Instead you would say the \$400,000
24 that's been promised to be paid next year

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1 MR. LEON: Let him finish his question.

2 THE DEPONENT: Sorry.

3 BY MR. MANDERVILLE:

4 177 Q. You would say that the \$400,000 that's
5 been promised to be paid next year would be the
6 consideration for Digalta?

7 A. That's a transaction that was
8 stipulated at the time, the money that was
9 stipulated, and it's hurtful for me to read that he
10 says that he believes it will be uncollectible.

11 178 Q. If you turn back to paragraph 9 of your
12 father's affidavit at page 10, please. You see
13 halfway down the page in that paragraph your father
14 makes reference to:

15 "We also had a venture in Russia involving
16 retail hardware and Ricardo was given that
17 project to oversee. That ended in a
18 dispute with a local partner and a lawsuit
19 filed in Ontario which Xela had to pay to
20 settle."

21 Is that referring to Digalta?

22 A. I'm not sure what refers to it, but I
23 don't know if it was related to Digalta or not or
24 it was a separate entity. I don't know that.

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1 become aware of whether or not Xela had any more
2 than a single business venture in Russia?

3 A. Not that I know of that I can remember.

4 180 Q. Were you aware of any of Xela's
5 business ventures in Russia?

6 A. Yes, I was aware of them.

7 181 Q. Any other than Digalta?

8 A. Well, at the time of I heard about
9 this other venture that is mentioned here.

10 182 Q. But you don't know what the name of
11 that one was?

12 A. Don't remember the name.

13 183 Q. Now, you said to me earlier this
14 morning that in 2006 you started to attend some
15 directors meetings?

16 A. I think that's the accurate date, yes.

17 184 Q. This was while Ricardo was still a
18 director?

19 A. Yes.

20 185 Q. And you would both go together?

21 A. Yes.

22 186 Q. What was your incentive to start
23 attending directors meetings?

24 A. I wanted to learn more about the

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1 187 Q. Well, why in 2006? What prompted you?

2 A. I don't know exactly why the date is so
3 significant in that. I cannot pinpoint why it was.

4 188 Q. No single event spurred you to start
5 attending?

6 A. Not that I can think of.

7 189 Q. And I take it the other Xela board
8 members never objected to your attending?

9 A. That I don't know.

10 190 Q. Well, did anyone ever say in your
11 presence, "She is not a director. I don't want
12 Margarita to be in attendance"?

13 A. Not that I can remember them saying
14 that.

15 191 Q. Were you not, in fact, invited by
16 Arturo to start attending?

17 A. Yes, that's probably true.

18 192 Q. You became a director in 2007 and you
19 think it was in or about May; correct?

20 A. Yes.

21 193 Q. How frequently did the board meet?

22 A. Every three months, I believe, because
23 it was about four times a year.

24 194 Q. And up until February 2010 did you

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1 A. As far as I can remember, yes.

2 195 Q. And you received \$5,000 per month as a
3 director's fee?

4 A. That's correct.

5 196 Q. And in addition you also received a
6 monthly draw from the company?

7 A. Yes.

8 197 Q. How much would that be?

9 A. \$26,800.

10 198 Q. Per month?

11 A. Yes.

12 199 Q. Typical directors meeting, how long did
13 they last?

14 A. We go the whole day from 9:30 until
15 5:00, 5:30.

16 200 Q. You've stated in your second affidavit
17 that you did not receive a salary in addition to
18 the monthly draw and the director's fee because you
19 did not act in a management capacity?

20 A. That's correct.

21 201 Q. In advance of each directors meeting
22 you would receive a package of information?

23 A. Yes, I would. I would receive it the
24 night before.

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1 of previous meetings?

2 A. That's correct.

3 203 Q. And financial details of the companies?

4 A. Yes.

5 204 Q. And I understand that you're not on the
6 audit committee of the board?

7 A. That's correct.

8 205 Q. That's correct you were not?

9 A. Yes, I'm sorry, yes, I wasn't on that.

10 206 Q. It's not your fault. That was an
11 awkwardly phrased question. But the audit
12 committee would present a summary of their
13 deliberations at each board meeting?

14 A. Yes, I believe some of them.

15 207 Q. Did you pay attention at the board
16 meetings?

17 A. I did.

18 208 Q. Did you read all the materials provided
19 to you?

20 A. I did.

21 209 Q. So if my arithmetic is correct, and the
22 board met quarterly and each meeting would be
23 about a full day in duration?

24 A. Yes, that's correct.

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1 year

2 A. That's accurate.

3 211 Q. in attendance? And you understood
4 that your brother Juan Guillermo was chief
5 executive officer of the company during your time
6 as director?

7 A. Yes, that's what I knew.

8 212 Q. Fair to say that he devoted most of his
9 time to running the business?

10 A. Yes.

11 213 Q. Do you believe he should be compensated
12 for the time he spends running the business?

13 A. Yes. Why not?

14 214 Q. Do you believe his compensation for
15 running the business should be different than yours
16 for being a director?

17 A. At the time that I was that that was
18 mentioned to me I thought it was it should be
19 like that. I'm never opposed to that or questioned
20 it.

21 215 Q. So you accept that given that Juan is
22 running the company, it's fair for him to receive a
23 different measure of compensation than a director?

24 A. Yes. I never questioned that.

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1 MR. LEON: Maybe this could we take the
2 morning break? Is that

3 MR. MANDERVILLE: Sure, that's fine.

4 Recess at 11:18 a.m.

5 Resuming at 11:29 a.m.

6 BY MR. MANDERVILLE:

7 217 Q. Ms. Castillo, we were talking about
8 your tenure as a director of Xela. During your
9 time as a director who were the other directors?

10 A. There was Mr. Bill Dover. No, I'm
11 sorry, no, he was an advisor. Carl Shields.

12 218 Q. Cal.

13 A. Oh, Cal. It's just Cal, sorry.

14 219 Q. Calvin.

15 A. And then my brother, my father and me.

16 220 Q. What about Patrick Wilson?

17 A. I believe he was an advisor, too.

18 221 Q. You felt he was not a director?

19 A. I'm not sure exactly, but I always felt
20 that Patrick Wilson and Bill Dover were advisors.

21 222 Q. And when your father's affidavit
22 material suggests that there was your father, your
23 brother and you, and three others to make up six,
24 do you dispute that?

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1 exactly what there was, in what capacity the other
2 two were there.

3 223 Q. And your brother Juan, he was not on
4 the audit committee, was he?

5 A. That I don't know because I never I
6 didn't go to any audit committee meetings.

7 224 Q. Do you know who was on the audit
8 committee?

9 A. Yeah, I should rephrase that. I
10 believe that on the audit committee was Bill Dover,
11 Cal Shields and my father, but I don't know who
12 else attended, if anybody else attended the
13 meetings.

14 225 Q. And if I were to tell you that those
15 three were on the audit committee and that Mark
16 Korol, who you know to be the chief financial
17 officer of the company

18 A. Yes.

19 226 Q. and your brother, who you know to be
20 the CEO of the company, would attend on invitation
21 the audit committee periodically would that sound
22 correct to you?

23 A. That sounds about correct.

24 227 Q. So when you say at paragraph 83 of your

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1 the board not on the audit committee

2 A. Yes, I'm sorry, I don't need to look at
3 it. Could you repeat it?

4 MR. LEON: You should look at it.

5 THE DEPONENT: I should look at it? 83.

6 Oh.

7 BY MR. MANDERVILLE:

8 228 Q. You say, "Between 2007 and April 2010 I
9 was the only Xela director not on the audit
10 committee." Would you agree with me that's not
11 accurate?

12 A. That's how I understood it at the time.

13 229 Q. Would you agree with me now that that
14 was not accurate?

15 A. Well, you just told me that there were
16 two more members, so probably I wasn't taking
17 everybody's name as being a director.

18 230 Q. So to rephrase, you don't know whether
19 or not Patrick Wilson was on the audit committee?

20 A. I think he was not.

21 231 Q. And you don't know whether or not your
22 brother Juan was on the audit committee?

23 A. I don't know if he would attend the
24 meetings, if you are asking me that. I don't know.

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1 A. Well, I wasn't there.

2 233 Q. I was asking you if you know whether or
3 not your brother Juan was on the audit committee?

4 A. To my understanding, it was the three
5 gentlemen that I said before.

6 234 Q. Now, Ms. Castillo, in all three of your
7 affidavits, I think, you take issue with some of
8 Xela's money being used to fund political causes in
9 Guatemala; correct?

10 A. That's correct.

11 235 Q. And Mr. Shields have you read
12 Mr. Shields' affidavit?

13 A. I did read it.

14 236 Q. He has sworn that the issue of
15 political expenses was discussed regularly at the
16 board and was a "hotly debated topic" I believe was
17 his turn of phrase. Did you read that?

18 A. Yes, I read that.

19 237 Q. So you agree with me that the political
20 expenses by Xela was not a secret?

21 A. No, it was not a secret.

22 238 Q. It was openly discussed at the board?

23 A. I would put it more like it was openly
24 talked, not discussed.

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1 any of the political expenses?

2 A. I did raise my objections to my father
3 privately.

4 240 Q. But never at a board meeting?

5 A. No, not at the board level. I could
6 add that sorry, I could add that because of the
7 way I was raised, I was not going to question or
8 oppose my father's views at the board level.

9 241 Q. Of the six board members, do you recall
10 any others expressing objections to the issue of
11 political expenses?

12 A. I don't recall that.

13 242 Q. Do you recall your understanding of
14 what Xela's rationale was for making political
15 expenses?

16 A. Yes, I could recall that.

17 243 Q. What is your recollection of why?

18 A. It was always said that he was for
19 helping the cause of the dispute about Avicola.

20 244 Q. The dispute with your cousins?

21 A. That's correct.

22 245 Q. Would you agree with me that in the
23 debates concerning political expenses the board
24 decided it was in the best interests of the company

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1 A. I don't know if I can answer that
2 question exactly like that because I don't remember
3 it being put to vote or a decision, and that really
4 surprised me because my father always told me that
5 politics was something that he would never get
6 involved into, and the fact that we left Guatemala,
7 we should forget about Guatemala.

8 So I could not understand, and I raised that
9 to him why and at the time I said we, because I
10 considered myself part of Xela, why we were getting
11 involved in something that he mentioned to me several
12 times that he considered not a good way to go.

13 246 Q. But you understood that the hope was
14 that with the purchase of political influence, it
15 might assist in recovering the monies owed by the
16 cousins; correct?

17 A. That was how they how Juan put it at
18 the time at the board. I don't know if I could say
19 I agree or not agree because I didn't see the point
20 of doing that.

21 247 Q. You had no reason to disbelieve what
22 Juan said?

23 A. I did not agree with it but I didn't
24 disbelieve at the moment. I don't think it was

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1 248 Q. You were concerned it might be throwing
2 good money after bad?

3 A. Could you rephrase that? I don't
4 understand.

5 249 Q. You were concerned that it might be
6 throwing good money, the political expenses, after
7 bad in an effort to recover a debt you might not be
8 able to recover?

9 A. That's probably not the way I would
10 have put it. I just felt

11 250 Q. How would you have put it?

12 A. Sorry, you interrupted me.

13 251 Q. I apologize.

14 A. I probably thought that it's not
15 exactly the way you said it. Like I was saying, it
16 was more that it was an expense that I didn't see
17 it being beneficial the way it was explained.
18 Because, first of all, we were already a number of
19 years out of Guatemala. So you know how things
20 are, out of sight out of mind. So not everybody
21 was concerned about what either my father or my
22 brother were doing. That's how I saw it.

23 252 Q. Similarly, in your affidavits you voice
24 concern of legal expenses Xela was incurring in

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1 A. Yes.

2 253 Q. You understood that the company or its
3 subsidiary Lisa obtained a judgment in Bermuda?

4 A. Yes.

5 254 Q. Against companies controlled by your
6 cousins?

7 A. That's what it was explained to me when
8 the case came.

9 255 Q. You understood that the court in
10 Bermuda found that Lisa had been defrauded by
11 companies controlled by your cousin?

12 A. In that particular case, yes, that's
13 what I understand.

14 256 Q. You were pleased with the result from
15 the Bermuda court?

16 A. Yes, I was pleased. It was a good
17 thing for Xela.

18 257 Q. So at the time that Bermuda decision
19 came out, and you've heard about it, you understood
20 that your cousins had been defrauding your father's
21 businesses?

22 A. That's what I was told and that's how
23 it was explained to me.

24 258 Q. And you believed it?

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1 259 Q. Do you have any reason to question your
2 father's assertion that he believes he's owed many,
3 many millions of dollars by your cousins?

4 A. I never said that I didn't believe what
5 he thinks in that respect.

6 260 Q. In your view, is that the case, that
7 your father is owed many, many millions of dollars
8 by your cousins?

9 A. I don't know anything about the
10 financial situation of the companies or the
11 financial aspect of that transaction, so I don't
12 I don't know. I'm not going to say how much it is
13 but yes, I believe it's quite a significant amount.

14 261 Q. And I think you told me before that you
15 believe it's in Xela's best interests to try and
16 take steps to collect that?

17 A. Yes.

18 262 Q. Ms. Castillo, in your first affidavit
19 you make assertions as to the state of your
20 father's health. You suggest it's deteriorating.
21 Do you have any evidence at all to substantiate
22 that?

23 A. I went I took him to a hospital more
24 than one time, so I know his health is not of a

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1 263 Q. For what purpose?

2 A. A stent, a blockage in one of the
3 arteries.

4 264 Q. All right. Is that it?

5 A. Well, that's the two times that I went
6 with him to the hospital. More than I'm sorry,
7 it's more than two times. I actually flew with him
8 on an air ambulance to the Cleveland Clinic in
9 Cleveland, Ohio once. I also flew down to Florida
10 where they were during the winter for a specific
11 test. Don't recall exactly what time. And the
12 last time was when they called me to here in
13 Toronto, they called me if I could drive them to
14 Sunnybrook Hospital because he was having chest
15 problem, chest pain.

16 265 Q. There was concern about your father's
17 heart?

18 A. Well, I don't know his medical history,
19 but I know he has got cholesterol problems and he
20 gets blockage in his arteries.

21 266 Q. And he had heart surgery in the past?

22 A. He had a triple bypass in 1992, to
23 which I also went and accompanied him at the
24 hospital in Detroit.

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1 Cleveland?

2 A. He was the way I understood at the
3 time, he's been to the Cleveland Clinic on other
4 occasions and he wasn't feeling well. So instead
5 of going here to the hospital, he decided to go
6 back there where he already had a doctor.

7 268 Q. Do you understand the nature of his
8 ailment?

9 A. I don't have any medical knowledge, so
10 I don't understand exactly what it is.

11 269 Q. And you say, you swear that your
12 father's mental health has deteriorated in recent
13 years. Do you have any evidence at all to
14 substantiate that?

15 A. I believe I meant by forgetfulness
16 which that comes with age, and I didn't mean this
17 as any insult or anything. It's just a fact of
18 life.

19 270 Q. Anything other than forgetfulness?

20 A. I don't understand.

21 271 Q. I thought you were going to say you
22 can't remember.

23 A. No, I don't understand exactly what you
24 mean by that.

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1 deteriorated in recent years and you've told me
2 that you believe he is as he ages subject to
3 forgetfulness on occasion; correct?

4 A. I'd say that he suffers with
5 forgetting.

6 273 Q. Is there anything else?

7 A. I don't know exactly what's your
8 question there because I have no medical knowledge,
9 so I would not be able to tell you.

10 MR. LEON: Why don't you read the
11 statement. He wants to know whether there is
12 anything else behind why you said what's the
13 paragraph?

14 BY MR. MANDERVILLE:

15 274 Q. Paragraph 3.

16 A. Sorry, what page was it?

17 275 Q. 49.

18 A. 49.

19 276 Q. At the top right.

20 A. At the top.

21 277 Q. There's paragraph 3.

22 A. Okay, I read the paragraph.

23 278 Q. And you've told me on the subject of
24 the deterioration of his mental health that as he

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1 A. Yes, that's what I said.

2 279 Q. Is there any other indication of how
3 you say his mental health is deteriorating?

4 A. Well, I would say mental health was too
5 broad. It's more like forgetfulness, like I said.

6 280 Q. When you say here, "My father's
7 physical and mental health has deteriorated in
8 recent years" and this is in January of 2011
9 when you swore his affidavit how do you say his
10 physical health has deteriorated in recent years?

11 A. Well, by the fact that he has had those
12 problems with arteries being blocked by
13 cholesterol.

14 281 Q. The bypass, you mean?

15 A. After the bypass he had other problems.
16 As far as I remember, when I went with him to
17 Sunnybrook Hospital I was present when the doctor
18 was there and by that time he already had about
19 seven stents on different arteries.

20 282 Q. For cholesterol issues?

21 A. That's what I understand, yes.

22 283 Q. Is it fair for me to say that your
23 father, to your knowledge, has not lost any of his
24 intelligence over the years?

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1 say. I didn't question his intelligence in any
2 way.

3 284 Q. One figure, one person who figures in
4 these affidavits somewhat prominently is a fellow
5 named Roberto Barillas. He is your nephew;
6 correct?

7 A. Yes, he is my nephew by marriage.

8 285 Q. Is it Ricardo's one of Ricardo's
9 siblings' sons?

10 A. Yes, his sister's son.

11 286 Q. How old is Mr. Barillas?

12 A. I have to do the math. He's 45 now.

13 287 Q. And he had led you to believe that he
14 was an accountant?

15 A. I know he is an accountant.

16 288 Q. If you have read the affidavit material
17 filed by my clients, you'll see that the
18 Institute relevant Institute in Guatemala
19 indicates that he has never completed his
20 accounting program?

21 MR. LEON: Well, there's no evidence from
22 that institute no admissible evidence from that
23 institute or record on this application.

24 So you can ask the question a different way,

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1 BY MR. MANDERVILLE:

2 289 Q. So can I anticipate that you would take
3 the position that we don't accept the validity of
4 that particular exhibit?

5 MR. LEON: Well, you can take that on any
6 of the hearsay evidence that's in these affidavits
7 from different sources. This is an application and
8 it's evidence in dispute.

9 MR. MANDERVILLE: Okay. Just wanted to
10 have your position on it. That's all.

11 MR. LEON: Yes.

12 MR. MANDERVILLE: We're certainly not going
13 to argue it today.

14 MR. LEON: I'm not trying to preclude you
15 asking her what her

16 MR. MANDERVILLE: No, I understand that.

17 MR. LEON: understanding is on that.

18 MR. MANDERVILLE: No, you are just letting
19 me know ahead of time that we may be squabbling
20 over that, and I accept that and appreciate the
21 warning, the advance warning.

22 BY MR. MANDERVILLE:

23 290 Q. Ms. Castillo, I would ask you to pull
24 up the Responding Application Record, Volume 1,

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1 first affidavit.

2 MR. LEON: Yes. Is there a clean copy?

3 MR. WOYCHESHYN: Here.

4 BY MR. MANDERVILLE:

5 291 Q. If you could turn to Exhibit A of that
6 volume, please.

7 A. Yes.

8 292 Q. Exhibit A contains a few documents.
9 First is a document entitled "Certificate of
10 Accuracy" from the State of Florida.

11 A. Yes.

12 293 Q. And the second page is a translation, I
13 presume, of the Association of Economists, Public
14 Accountants and Auditors and Business Managers from
15 Guatemala, I note addressed to Attorney Jose Luis
16 Farfan Mancilla. Do you see that?

17 A. Yes, that's what it says.

18 294 Q. And I appreciate your counsel does not
19 accept the relevance or the admissibility of this
20 document, but do you agree with me the document
21 says that in the second paragraph:

22 "Mr. Roberto Barillas Castillo is not
23 registered in the registration book in
24 this Professional Association," which

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1 A. That's what it says, that he's not
2 registered. But that doesn't mean that he is not
3 an accountant.

4 295 Q. I understand that.

5 MR. LEON: Wait for his question.

6 THE DEPONENT: Oh.

7 BY MR. MANDERVILLE:

8 296 Q. On the next page within that exhibit
9 there's a document, onepage document headed
10 "Guatemala Association of Public Accountants and
11 Auditors"?

12 A. Yes, I see that.

13 297 Q. Again, this is an English translation.

14 It states:

15 "According to the letter we received,
16 January 24th, 2011, requesting that
17 we inform if Mr. Roberto Barillas
18 Castillo is registered in this
19 Professional Association as a Public
20 Accountant and Auditor, we wish to
21 advise you that the abovedescribed
22 person is not registered in this
23 professional association. Therefore,
24 such person is not a member of the

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1 Accountants and Auditors."

2 MR. WOYCHESHYN: "This Guatemalan."

3 MR. MANDERVILLE: Correct.

4 MR. LEON: That's what the

5 BY MR. MANDERVILLE:

6 298 Q. See that's what the document says?

7 A. Yes, that's what the document says.

8 299 Q. And the next document, it's again a
9 onepage document with the heading "Association of
10 Economists, Public Accountants and Auditors and
11 Business Managers, Guatemala, January 27th, 2011"?

12 A. Yes.

13 MR. LEON: That's a translation.

14 MR. MANDERVILLE: Yes.

15 MR. LEON: Well, my Spanish isn't that
16 good. The original documents are behind there.

17 MR. MANDERVILLE: I suspect your Spanish is
18 significantly better than mine.

19 BY MR. MANDERVILLE:

20 300 Q. Well, Ms. Castillo, could you read the
21 first Spanish page, "Colegio De Contadores
22 Publicos..."

23 MR. LEON: Yes, I'm not disputing

24 MR. MANDERVILLE: Okay.

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1 translations of what's said.

2 BY MR. MANDERVILLE:

3 301 Q. So, Ms. Castillo, you'd agree that
4 according to these documents Mr. Barillas is not
5 registered as a public accountant and auditor in
6 Guatemala?

7 A. According to those documents, that's
8 what it says, yes.

9 MR. LEON: Again, without accepting
10 admissibility, I think it's easier just to allow
11 her to answer and then we can deal with

12 MR. MANDERVILLE: I accept your counsel's
13 caveat.

14 BY MR. MANDERVILLE:

15 302 Q. Am I to presume that you disagree with
16 what those documents say?

17 A. I don't disagree or agree because I
18 don't know the nature of those documents.

19 303 Q. It's your belief that Mr. Barillas is
20 qualified as an accountant?

21 A. I don't know if I would say that
22 because I know him as personal on a personal
23 basis and I know he has graduated as an auditor and
24 accountant.

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1 a chartered accountant?

2 A. I don't know. I don't know the
3 difference between one and the other.

4 305 Q. And you understood that Mr. Barillas is
5 one of the principals of a company called BPA?

6 A. Yes, I know that.

7 306 Q. And you knew that he provided auditing
8 services to Xela?

9 A. Yes, I know that.

10 307 Q. There's also mention in these
11 affidavits of an individual named Jorge Porras?

12 A. Yes, he was mentioned in the
13 respondent's affidavit.

14 308 Q. Were you familiar with Mr. Porras?

15 A. Yes, I know him.

16 MR. LEON: Just so that it's clear, again
17 that's there's no direct evidence from Mr.
18 Porras, and we don't accept the admissibility of
19 the hearsay evidence that you've put forward.

20 BY MR. MANDERVILLE:

21 309 Q. You understand that Mr. Porras was or
22 is a lawyer who was with BPA?

23 A. Yes.

24 310 Q. And you understand that he provided

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1 A. I understood that was the case while
2 BPA was working with Xela in Guatemala.

3 311 Q. According to you, when did Xela's
4 relationship with BPA end?

5 A. I don't remember the exact date, but it
6 was somewhere in 2009.

7 312 Q. Did you ever retain Mr. Porras
8 personally?

9 A. Yes, I did.

10 313 Q. When?

11 A. In 2010.

12 314 Q. What did you ask him to do for you?

13 A. He helped me get a power of attorney.

14 315 Q. Is this the power of attorney dated in
15 April 2010?

16 A. That's it.

17 316 Q. That power of attorney in favour of Mr.
18 Barillas?

19 A. That's correct.

20 317 Q. Did Mr. Porras perform any other legal
21 services for you personally?

22 I'm being very careful not to ask what advice
23 you sought and obtained.

24 MR. LEON: No, I'm not sure the scope of

the privilege is limited to that. I'm not sure you⁴⁴⁷

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1 can ask her what he did or didn't do for her
2 because that's privileged but and at least under
3 our law.

4 BY MR. MANDERVILLE:

5 318 Q. Did you retain Mr. Porras to carry out
6 any other or perform any other legal services
7 other than the power of attorney we were just
8 speaking of?

9 A. As far as I remember, I asked him for
10 advice on another matter previously.

11 319 Q. A matter related to this application?

12 A. No, it doesn't have anything to do with
13 the application.

14 320 Q. Did you retain Mr. Porras personally on
15 any other occasions? You've told me about two.

16 A. Yes, not that I can remember.

17 321 Q. Before we continue, Mr. Leon, I'm going
18 to ask your client some questions about leaving
19 your offices in December 2009, and I guess I'm
20 going to give you an opportunity to decide whether
21 or not you want to invoke any sort of a common
22 interest privilege over what transpired in the
23 meeting because I am going to be asking for notes
24 of those present if it wasn't a privileged

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1 MR. LEON: Well, you go ahead and ask your
2 questions and we'll deal with them as they come
3 along. I mean, it is our position that it was at
4 least in part a privileged occasion, but I don't
5 want to restrict you off the top.

6 BY MR. MANDERVILLE:

7 322 Q. Ms. Castillo, I'd ask you to refer to
8 the second Reply Application Record. It's Exhibit
9 3. This contains your third affidavit sworn
10 September 9, 2011.

11 A. Yes.

12 323 Q. I think this is my first time referring
13 directly to this affidavit. Can you turn to page
14 14 of the document. That's your signature on the
15 document?

16 A. That's my signature.

17 324 Q. And you swore the contents of this
18 affidavit were true?

19 A. Yes.

20 325 Q. Beginning at paragraph 27 of this
21 affidavit, you speak about events of December 2009,
22 and you speak of a meeting that took place at
23 Bennett Jones' offices in December 2009?

24 A. Yes, I'm responding to what they said,

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1 326 Q. I'd ask you also to turn to my client's
2 Supplemental Application Record which is Exhibit B.
3 If you turn to tab 3 of that document, which should
4 be the supplemental of Juan Guillermo Gutierrez?

5 MR. LEON: Yes, we have it.

6 BY MR. MANDERVILLE:

7 327 Q. Beginning at page 4 of that affidavit,
8 your brother speaks of a conversation with
9 Mr. Porras?

10 A. Yes, that's what it says there.

11 328 Q. I guess I would like you to read
12 paragraphs 10 and 11.

13 MR. LEON: This is the evidence that we say
14 is not admissible as it is hearsay, so but he
15 wants you to read it, so read it.

16 THE DEPONENT: Okay.

17 MR. LEON: It says "we." It doesn't
18 identify who "we" is. But if you're telling me
19 that Juan Guillermo

20 BY MR. MANDERVILLE:

21 329 Q. You mean in the beginning of paragraph
22 11?

23 MR. LEON: Yes.

24 MR. MANDERVILLE: Oh, I okay.

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1 witness can consider that.

2 BY MR. MANDERVILLE:

3 330 Q. Mr. Leon, while your client is reading,
4 I take it that you would be feeling similarly
5 constrained with Mr. Barillas' evidence that is
6 referred to in your client's affidavits?

7 MR. LEON: Well, I would rather deal with
8 it on a questionbyquestion basis. I mean, she
9 has you have what she said about it. So there
10 are some Mr. Barillas is not a lawyer, so we're
11 not talking about solicitorclient privilege. As
12 the witness' affidavit said, she had a concern
13 about the conduct that Mr. Barillas brought to her
14 attention. So I'm not going to stop you from
15 asking about that.

16 I mean, I think it's obvious. I don't want
17 to interfere, but you've invited me to say something
18 that Ms. Castillo did not authorize Mr. Porras to
19 have the discussions that he had with whoever "we"
20 is.

21 MR. MANDERVILLE: Well, my invitation to
22 claim accommodant (phonet.) was privilege, if you
23 wished to avail yourself of that, would go beyond
24 Mr. Porras.

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1 there was no action where both of them were
2 defendants at the time these conversations took
3 place. I'm not suggesting that they were they
4 were on the basis of an existing or contemplated
5 proceeding where they had a common interest.

6 BY MR. MANDERVILLE:

7 331 Q. What of Ms. Kay?

8 MR. LEON: In terms of again, there was
9 no common interest with Ms. Kay at all at that
10 time. Whether there is now is probably irrelevant.

11 BY MR. MANDERVILLE:

12 332 Q. Ms. Castillo, have you read

13 A. Yes, I have read it.

14 333 Q. Now, you see at paragraph 10 of your
15 brother's affidavit, he notes that there is a typo
16 in the first sentence. It's May 27, 2011. He was
17 called to a meeting with Mr. Porras in Guatemala?

18 A. That's what it says there.

19 334 Q. You've told me earlier that you
20 understood that Porras was with Mr. Barillas in BPA
21 and had been Xela's corporate counsel in Guatemala?

22 A. Yes, that's accurate.

23 335 Q. Towards the end of that paragraph, your
24 brother says that:

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1 that he had separated himself from
2 Barillas because, 'He didn't agree with
3 the things he had done,' and wanted to
4 continue being our lawyer.'"

5 I take it that you don't know anything about
6 that?

7 A. Well, I know he left BPA, but I don't
8 know under what circumstances or anything else.

9 336 Q. To your understanding, when did
10 Mr. Porras leave BPA?

11 A. I don't know the date.

12 337 Q. Do you know the year?

13 A. Not 2011 sounds accurate.

14 338 Q. Your brother in his affidavit goes on
15 to describe some information received at meetings
16 held with Mr. Porras in paragraph 11?

17 A. Yes, that's what he does.

18 339 Q. In subparagraph (a) of paragraph 11, it
19 would appear that Mr. Porras has advised your
20 brother of meetings at Bennett Jones' offices,
21 which you agreed did occur in December 2009?

22 A. Yes, they occurred.

23 340 Q. Present at the meetings were Mr. Leon
24 and Mr. Woycheshyn and yourself and your husband

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1 Elliott firm?

2 A. Yes.

3 MR. LEON: I should tell you, and you
4 can Katherine Kay was there for only a short
5 period of time, if that assists in your
6 questioning.

7 MR. MANDERVILLE: It might.

8 BY MR. MANDERVILLE:

9 341 Q. And according to your brother's
10 affidavit, he's informed by Mr. Porras that the
11 purpose of the meeting at Bennett Jones' offices in
12 December or meetings, plural, at Bennett Jones'
13 offices in December 2009 was to plan the oppression
14 lawsuit that you filed?

15 A. That was not the case.

16 342 Q. You say that is inaccurate?

17 A. That was as as far as I remember,
18 that was not the purpose of the meeting.

19 343 Q. He goes on to state that:

20 "During the meetings, the lawyers at
21 Bennett Jones and Katherine Kay were
22 informed of the 'financial aid' which
23 would be provided to the Castillos by
24 my cousins" this is your brother

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1 Guatemala." is that accurate?

2 A. I don't even recall that ever being
3 discussed in those meetings.

4 344 Q. So financial aid from your cousins for
5 this application was discussed subsequently?

6 A. I have not received any financial aid
7 from them.

8 345 Q. Zero?

9 A. That's accurate. I have not received
10 any money from them.

11 346 Q. It goes on to state that:

12 "Katherine Kay was present, according
13 to Porras, because her clients had also
14 funded my brother" who is also your
15 brother "Luis Arturo Gutierrez in
16 suits bought by him against Xela and
17 my father several years ago."

18 Is that accurate?

19 MR. LEON: That she was president or
20 sorry, that she was present for the rest of it? I
21 think you have to break that down.

22 BY MR. MANDERVILLE:

23 347 Q. Well, you've told me Katherine Kay was
24 present?

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1 she there.

2 348 Q. Do you know now that she is the lawyer
3 in Canada for your cousins?

4 A. Yes, I'm aware of that now.

5 349 Q. Well, that sentence states:

6 "She was present, according to Porras,
7 because her clients had also funded my
8 brother, Luis Arturo Gutierrez, in suits
9 brought by him against Xela and my father
10 several years ago."

11 Is that accurate to your knowledge?

12 A. I'm not aware of who was my brother's
13 lawyer at the time.

14 350 Q. Sub (b) of paragraph 11:

15 "Porras indicated that my cousins paid
16 Margarita \$2.5 million to induce her
17 to bring the oppression case and to
18 cover her attorney's fees for same."

19 Is that accurate?

20 A. That's not accurate because nobody has
21 paid me anything.

22 351 Q. Goes on to state:

23 "The transaction was framed as a
24 backtoback loan to Margarita whereby

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1 from GTC Bank in Panama against a
2 financial instrument which Porras
3 indicated was a certificate of deposit
4 posted by my cousins as collateral."

5 Is that statement accurate?

6 A. I know I have a line of credit with the
7 GT Bank in Guatemala, but I don't know what's
8 and it's being backed up by my fiduciary. It's a
9 fiduciary loan but out of my net worth. That's how
10 I understand it is.

11 352 Q. Is it a bank in Guatemala or a bank in
12 Panama?

13 A. It's a Guatemalan bank with since
14 Panama it's probably a subsidiary from a Panamanian
15 bank. I'm not sure exactly how that works.

16 353 Q. Was there any certificate of deposit
17 posted by your cousins as collateral?

18 A. No, I don't think so. I don't think
19 that's accurate.

20 354 Q. Well, do you know it's not accurate or
21 do you just think?

22 A. I don't know. I don't know it's
23 accurate but as far I know it's a fiduciary loan
24 but go by my net worth.

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1 A. It's my net worth.

2 356 Q. So

3 A. That's what it means; right?

4 357 Q. So your evidence today here that it's
5 straight, "Here's my net worth. Would you please
6 loan me \$2.5 million," and the only collateral is
7 your own net worth?

8 A. That's how I know it is.

9 358 Q. And your evidence today is that your
10 cousins have had nothing to do with this loan?

11 A. I don't know if they had anything to do
12 with it.

13 359 Q. Goes on to state:

14 "The vehicle for the loan was a Panamanian
15 corporation called Hellenic Commercial
16 Group, and through this corporation
17 Barillas was also paid \$1.5 million to
18 bring the false criminal case against
19 me" meaning your brother "in
20 Guatemala relating to Boucheron."

21 Is that statement accurate to your knowledge?

22 A. I don't know anything about that.

23 360 Q. Was the vehicle for your loan a

24 Panamanian corporation called Hellenic Commercial

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1 A. No, I already told you how I went about
2 getting the loan.

3 361 Q. So you are disagreeing with the
4 statement that the vehicle for the loan was a
5 Panamanian corporation called Hellenic Commercial
6 Group.

7 MR. LEON: No, sorry all right, go
8 ahead.

9 THE DEPONENT: I would disagree because I
10 don't know anything about this corporation or this
11 group or anything of that, and as far as I
12 understand, I fill out all the forms that the bank
13 require and they gave me the loan.

14 BY MR. MANDERVILLE:

15 362 Q. Goes on to state:
16 "Margarita signed a power of attorney
17 appointing Roberto Barillas Castillo
18 as attorneyin fact for purposes of
19 executing the loan documentation in
20 Guatemala"?

21 A. Yes.

22 363 Q. That's true; correct?

23 A. That's accurate. Yes, that's true.

24 364 Q. "Porras notarized the document in Miami

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1 A. Yes.

2 365 Q. "The GTC Bank of Panama has a.
3 representative office in Guatemala at
4 G.T. Continental Bank"?

5 A. Yes, that's accurate. That's how I
6 know it's in Guatemala.

7 366 Q. Sub (c): "With respect to the
8 Boucheron case" and we'll talk
9 some more about that in a little bit
10 "Porrás stated that Barillas has
11 never been the shareholder, as he now
12 claims, and that the intellectual
13 author of the case was Juan Luis
14 Aguilar" I'm sure I mispronounced
15 that the lead litigation counsel
16 for my cousins in Guatemala."

17 Do you know anything about that?

18 A. No, I don't know anything about that.

19 367 Q. Do you know whether or not Barillas
20 Mr. Barillas is a shareholder of Boucheron?

21 A. I don't know what his capacity is with
22 Boucheron.

23 368 Q. Sub (b), he goes on to state that:
24 "Margarita and Ricardo first met with

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1 to plan their various actions in Canada
2 and Guatemala in February, 2010 at the
3 InterContinental Hotel in Guatemala City."
4 Is that accurate?
5 A. I never met with my cousins' counsel.
6 369 Q. At any time?
7 A. No.
8 370 Q. Goes on to state:
9 "There was a subsequent meeting in
10 Guatemala in March 2010 at the Unicentro
11 Building in the offices of Pepsi."
12 Is that accurate?
13 A. If you mean meeting with my cousins,
14 yes, that's accurate.
15 371 Q. In March 2010?
16 A. Yes.
17 372 Q. What was the purpose of that meeting?
18 A. We were getting reacquainted and just
19 to talk about general things.
20 373 Q. What specific things did you talk
21 about?
22 A. I cannot recall exactly what was talked
23 about.
24 374 Q. Did you talk about the possible

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1 A. I don't recall if I did or not.

2 375 Q. Did you talk about financial assistance
3 from your cousins for this lawsuit?

4 A. No, I didn't.

5 376 Q. How come you can remember that?

6 A. Because I know that I never asked them
7 for money or any financial.

8 377 Q. I take it this was a prearranged
9 meeting with your cousins?

10 A. We were in Guatemala visiting my
11 motherinlaw, and I understand that's we were
12 there, so that's why it was arranged.

13 378 Q. I take it it wasn't a spontaneous
14 decision on you and your husband's part, "Let's go
15 to Pepsi." It was a prearranged meeting; correct?

16 A. Oh, to meet in that specific place?

17 379 Q. Yes. Did your cousins tell you about
18 why they wanted to meet with you or what did you
19 tell them about why you wanted to meet with them?

20 A. I don't remember the specifics on that.
21 You have to remember that I grew up with them, so
22 there was as soon as we establish a connection
23 again, the connection was still there.

24 380 Q. In Juan Arturo's or Juan Guillermo's

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1 cousins are suing you, among others, in a number of
2 lawsuits down in Guatemala; correct?

3 A. Yes, my name is included in the main
4 lawsuit because in some of the changes my name was
5 included there.

6 381 Q. They've named you as a defendant in
7 actions claiming improper behaviour by the company
8 and your father and your brother and you?

9 A. I'm not sure exactly how many or what
10 is the premise of them.

11 382 Q. And I understand you encountered one of
12 your cousins at a music concert, Christmas, New
13 Year's, 2008, in around there?

14 A. Yes.

15 383 Q. That was a chance encounter, I
16 understand?

17 A. Completely by chance.

18 384 Q. Prior to that time, when was the last
19 time you had been in contact with one of your
20 cousins?

21 A. I cannot remember a date but it's
22 probably before the before the Avicola lawsuit
23 started.

24 385 Q. So in the mid1990s perhaps?

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1 386 Q. So a gap of 12, 13 years

2 A. Yeah, probably.

3 387 Q. approximately? And at the time
4 you're meeting with your cousins in March 2010, you
5 do understand that you're still a director of Xela?

6 A. Yes, I was still a director.

7 388 Q. And you understand that Xela contends
8 that these are the cousins who defrauded it of many
9 millions of dollars?

10 A. Yes, I understand that's the case.

11 389 Q. You understood at the time that there
12 was a court in Bermuda that had found as fact that
13 your cousins had defrauded Xela and your father of
14 millions of dollars?

15 A. Yes, I understand that.

16 390 Q. And it's your evidence today that you
17 can't recall what this meeting was about?

18 A. I don't recall exactly what was talked
19 about, yes.

20 391 Q. How long did the meeting last?

21 A. Half an hour, 45 minutes. I'm not
22 sure.

23 392 Q. And your husband Ricardo was there as
24 well?

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1 393 Q. And was Mr. Barillas there as well?

2 A. Yes, he was with us.

3 394 Q. And was anyone else from your side, for
4 want of a better term, there?

5 MR. LEON: Yes, I don't accept that

6 MR. MANDERVILLE: No, I appreciate that.

7 BY MR. MANDERVILLE:

8 395 Q. Who else was at the meeting?

9 MR. LEON: You can ask her who was there
10 and what she remembers about it.

11 BY MR. MANDERVILLE:

12 396 Q. Who else was at the meeting?

13 A. Three of my cousins.

14 397 Q. Which ones?

15 A. Or two of them. I'm not you see, I
16 remember exactly was Juan Jose Gutierrez and Felipe
17 Bosch. I don't remember if anybody else.

18 398 Q. Did you take any notes at the meeting?

19 A. No, I did not.

20 399 Q. Did your husband take any notes at the
21 meeting?

22 A. No, he didn't.

23 400 Q. Did Mr. Barillas take any notes at the
24 meeting?

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2 A. No, I don't think we were taking notes
3 because it was an informal meeting.

6 A. I don't remember if there there was
7 someone else but it wasn't in the capacity of being
8 a lawyer. I don't remember who it was. I am not
9 good with names.

13 A. Yes, I did.

16 A. Yes, I did.

19 MR. LEON: Well, we are going to refuse.

21 BY MR. MANDERVILLE:

23 MR. LEON: Relevancy.

24 MR. MANDERVILLE: Well, your client has

deposed, in particular in her third affidavit, that⁴⁸⁵

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1 she's experiencing financial hardship. Her
2 financial net worth statements might verify that or
3 not. They're relevant given what she's deposed to.

4 MR. LEON: Well, we can deal with that at
5 some point. That's my position.

6 BY MR. MANDERVILLE:

7 407 Q. I'd also like a copy of the loan
8 application, please.

9 MR. LEON: Same answer. That, in
10 particular, I don't see the relevance. Ordinarily
11 how one pays for to fund a lawsuit is not relevant
12 in the context of that lawsuit.

13 I've let you ask about this because you are
14 attempting to make it relevant in the material that
15 was filed by your clients to an extent, but I don't
16 think it goes into the details of her how she is
17 obtaining money to pay for this very lawsuit.

18 REFUSAL

19 BY MR. MANDERVILLE:

20 408 Q. Ms. Castillo, why would you go to a
21 Guatemalan bank for a loan for an Ontario lawsuit
22 when you could go down the street to Bank of Nova
23 Scotia?

24 A. That was a decision that we made with

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1 409 Q. Do you have assets in Guatemala? I
2 believe your assets are in Ontario, are they not?

3 A. Yes, they are.

4 410 Q. Do you have assets in Guatemala?

5 A. No, I don't have any assets in
6 Guatemala.

7 411 Q. Do you have assets in Panama?

8 A. No, I don't have any.

9 412 Q. Turn to paragraph 38 of your affidavit,
10 please, your third affidavit.

11 A. The third one?

12 413 Q. Yes. Page 12.

13 A. Yes, what paragraph you said?

14 414 Q. Page 12, paragraph 38.

15 A. I have read it.

16 415 Q. You'll see what you've sworn to there,
17 that you are not in a financial position to
18 personally pay the professional fees necessary to
19 pursue a legal action.

20 "I asked my cousins in Guatemala if
21 they could assist in arranging
22 financing. They did so by arranging
23 for me to obtain a line of credit to
24 finance my application."

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1 A. I see that.

2 416 Q. And you've sworn that that is true?

3 A. The wording probably is not exactly how
4 I would put it that moment right now. The way I
5 understand it is not arranging by it but just
6 pointing us in the right direction, I would say.

7 417 Q. So you've sworn that it's true that you
8 asked your cousins in Guatemala if they could
9 assist in arranging financing for you; correct?

10 A. That would be correct, yes.

11 418 Q. Well, you've sworn to it. It is
12 correct?

13 A. Yes, it is correct but it's not that
14 they gave me the financial. They pointed me in the
15 right direction

16 419 Q. You go on to swear that it's true that
17 they, your cousins, did so by arranging for you to
18 obtain a line of credit to finance this
19 application; correct?

20 A. That's what it says in my affidavit.

21 420 Q. That's true, isn't it? You swore that
22 it is.

23 A. Yes, but "arrange" is probably a very
24 broad word there.

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1 line of credit to finance the application or not?

2 A. I don't know if they had anything to do
3 with it or not.

4 422 Q. So when you swore, "They did so by
5 arranging for me to obtain a line of credit to
6 finance my application," you swore that without
7 regard to whether or not it was true?

8 A. No, that's probably what I understood
9 at the moment, but I don't know exactly to what
10 point you're thinking that this the arrangements
11 were because

12 423 Q. Now, you swore that this was true

13 MR. LEON: I'm sorry, she hadn't finished.

14 MR. MANDERVILLE: Sorry. My apologies.

15 THE DEPONENT: Because like I said I went
16 to the way the bank does it. I fill out an
17 application, I presented my papers and they
18 approve.

19 BY MR. MANDERVILLE:

20 424 Q. Now, you swore this affidavit on
21 September 9, 2011, and the financing was put in
22 place sometime in 2010; correct?

23 A. Yes.

24 425 Q. Are you now saying when you swore in

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1 me to obtain a line of credit to finance my
2 application," that that is inaccurate?

3 A. No, I'm just saying that the word
4 "arranging" probably is not the right word that I
5 should have used that day when I swore this
6 affidavit. It's more like they pointed me in the
7 right direction, if you can say it like that,
8 saying what bank.

9 426 Q. I have a handful more questions and
10 then we'll break, if that's okay with you.

11 MR. LEON: Are you okay to keep going a
12 bit?

13 THE DEPONENT: I'm fine, yes.

14 BY MR. MANDERVILLE:

15 427 Q. Turn to paragraph 34 of that same
16 affidavit of yours, please, at page 11.

17 A. I'm going to read it.

18 428 Q. All right. No, please do. I want you
19 to.

20 A. I finished reading it.

21 429 Q. You've sworn there that during this
22 meeting at Bennett Jones' offices on December 10th,
23 2009, that Ms. Kay, Katherine Kay of Stikemans
24 indicated that she was not in a position to act for

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1 been retained by your cousins in Guatemala?

2 A. Yes, that's what she told us at that
3 moment.

4 430 Q. So in December 2009, more than a year
5 before you start this application, Ms. Kay is
6 attending a meeting and telling you she has been
7 retained by the cousins to act on their behalf?

8 A. Yes, that's accurate.

9 431 Q. You go on to do swear:
10 "My cousins understood that I was
11 becoming frustrated with Xela and
12 were willing to be supportive of my
13 attempts to resolve my concerns
14 whether through litigation or
15 otherwise"?

16 A. Yes, that's what it says in my
17 affidavit.

18 432 Q. And that's true?

19 A. Yes.

20 433 Q. So, Ms. Castillo, if I understand
21 correctly, you're swearing that you've been told by
22 your cousins' lawyer that your cousins were willing
23 to be supportive of your attempts to pursue
24 litigation if you chose to; correct?

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1 me that.

2 434 Q. Well, could you read I'll have you
3 read the third sentence, "My cousins understood
4 that I was becoming frustrated."

5 Could you read the next sentence after that?

6 A. Okay, yes, if that's what she said. I
7 don't remember what was said in that meeting.

8 435 Q. But you have sworn that Ms. Kay
9 provided you with that information; right?

10 A. Yes, that's what I understand.

11 436 Q. So if I understand correctly, in
12 December 2009, more than a year before you start
13 this application, you were told by the cousins'
14 lawyer that they will support you should you choose
15 to commence litigation; correct?

16 MR. LEON: "Be supportive." I'm not sure
17 those two are the same thing.

18 BY MR. MANDERVILLE:

19 437 Q. You were told your cousins would be
20 supportive of you should you choose to commence
21 litigation; correct?

22 A. That's correct.

23 438 Q. And later on in the same sworn
24 affidavit you knew you were not in a financial

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1 pursue a legal action. You asked your cousins if
2 they could assist in arranging financing and they
3 did so by arranging a line of credit to finance the
4 application; correct?

5 A. Well, I already said that they didn't
6 per se arrange for me to do it.

7 439 Q. But you've sworn that that's what
8 happened; correct?

9 A. That's what happened.

10 440 Q. Do you want to break now, Mr. Leon, if
11 that's okay?

12 MR. LEON: Sure.

13 Luncheon Recess at 12:35 p.m.

14 Resuming at 1:57 p.m.

15 BY MR. MANDERVILLE:

16 441 Q. Ms. Castillo, you understand you're
17 still under oath?

18 A. Yes, I do.

19 442 Q. Before we broke for lunch, we were
20 talking about, among other things, the affidavit of
21 your brother sworn in August 2011.

22 A. Where is that?

23 443 Q. It's found in the Supplemental
24 Application Record, Exhibit B at tab 3.

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1 THE DEPONENT: Yes. I'm sorry, yes. So
2 where do you want me to be?

3 BY MR. MANDERVILLE:

4 444 Q. To paragraph 11, please, which I guess
5 would be at page 5 now of the affidavit.

6 A. Oh, I think I don't have the same one
7 that you do because I don't have any paragraph 11
8 in this one.

9 445 Q. It begins at page 4, paragraph 11. You
10 should see, if you have the correct affidavit
11 should

12 MR. LEON: Which affidavit are you
13 referring to?

14 BY MR. MANDERVILLE:

15 446 Q. Juan Guillermo's affidavit of August
16 2011 in the Supplemental Application Record, tab 3.
17 Paragraph 11 begins at page 4 and continues on to
18 page 5.

19 MR. LEON: Sorry, I've got the wrong
20 document here. Supplemental Application Record.
21 I've got it here. Tab 1?

22 BY MR. MANDERVILLE:

23 447 Q. Tab 3.

24 MR. LEON: Tab 3. Yes.

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1 448 Q. Do you have page 5 in front of you, Ms.

2 Castillo?

3 A. Page 4 and page 5.

Q. Page 5 is a continuation of the assertions by Mr. Porras, all under paragraph 11 of the affidavit, and we talked about up to subparagraph (d) of what is set out there.

8 I want to continue with subparagraph (e), and
9 take the time to read it and (f), and then I'll ask
10 you a few questions about it.

11 A. I've finished reading.

12 450 Q. Subparagraph (e) of 11 in that
13 affidavit concerning statements by Mr. Porras
14 states:

15 "As far as why he was coming forward now,
16 Porras indicated that he had been a paid
17 informant of my cousins, Ms. Kay's clients,
18 while acting as our lawyer, and that he
19 was to have shared the \$1.5 million paid
20 to Barillas, along with the other BPA
21 partner, Anibal Arellano. Porras says
22 that Barillas and Arellano doublecrossed
23 him and cut him out of his share, so
24 Barillas and Arellano ultimately shared

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1 Do you know anything about the truth or
2 falsity of that statement?

3 A. No, I don't know anything about that.

4 451 Q. And then sub (f) of the same paragraph
5 states:

6 "Lastly, Porras indicated that he feared
7 retaliation by my cousins and would only
8 testify if he was compelled by judicial
9 process under conditions that would ensure
10 his safety."

11 Again, do you know anything about the
12 accuracy of that statement?

13 MR. LEON: That he said it or that he
14 believed it?

15 BY MR. MANDERVILLE:

16 452 Q. Do you know whether or not he said it?

17 A. Don't know.

18 453 Q. Do you know whether or not he believed
19 it?

20 A. I don't know.

21 454 Q. Now, I understand that Xela attempted
22 on a number of occasions, but more recently,
23 attempted settlement discussions with your cousins
24 in the winter of 2009, the beginning of the winter

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1 A. There was talk about going to a
2 settlement discussion in the winter 2009, yes,
3 that's accurate.

4 455 Q. And, in fact, there was a settlement
5 meeting, correct, or a few of them?

6 A. I was present in one that was in 2010.

7 456 Q. Can I refer you to a document titled
8 "Affidavit Juan Guillermo Gutierrez Sworn September
9 27, 2011." That's Exhibit C to your examination.

10 MR. LEON: Your notice said you were
11 crossexamining on her affidavits. I must have
12 read it wrong. Got it.

13 BY MR. MANDERVILLE:

14 457 Q. Turn to paragraph 9 of the affidavit,
15 and I guess I'd like you read paragraphs 9 through
16 11 and then I'll have some questions about those.

17 A. Okay.

18 MR. LEON: I know you didn't draft these
19 affidavits, but those paragraphs sure are long.

20 MR. MANDERVILLE: I was going to refrain
21 from the same observation.

22 THE DEPONENT: Up to 11 you said?

23 MR. MANDERVILLE: Yes.

24 MR. LEON: Just so that it's clear on the

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1 hearsay evidence which we say is inappropriate on
2 the application.

3 BY MR. MANDERVILLE:

4 458 Q. Are you familiar with someone named
5 Mauricio Herman?

6 A. Yes, he's a friend of my husband and
7 mine.

8 459 Q. And to your knowledge, is it accurate
9 to say for your brother to have deposed that in
10 late 2008, Mauricio Herman, which he describes as
11 being a friend of your husband's, and Roderico
12 Rossell initiated the possibility of settlement
13 discussions with your cousin?

14 MR. LEON: Now, that's about three
15 questions. Can we break it down?

16 BY MR. MANDERVILLE:

17 460 Q. Look at paragraph 9 of your brother's
18 affidavit here, Ms. Castillo. Do you see the
19 second sentence:

20 "The conversations were initiated in
21 October or early November 2008 through
22 a mutual friend of Ricardo Castillo and
23 Roderico Rossell, a gentleman named
24 Mauricio Herman."

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1 accurate?

2 A. The way I remember, that's how it
3 happened, yes. Actually, I we were at a board
4 meeting, and I got a phone call before I went into
5 the meeting from Ricardo telling me that Mauricio
6 had called him because Mr. Roderico Rossell had
7 approached him to see if there was any way he could
8 get Ricardo's number to call him to maybe talk
9 about this.

10 461 Q. Okay.

11 A. And I immediately relayed that
12 information to Juan and my dad.

13 462 Q. And then subsequently there was an
14 initial settlement conference involving you and
15 Juan, among others, and your cousins in Guatemala
16 in February 2009?

17 A. Yes.

18 463 Q. And you attended at that settlement
19 conference?

20 A. I attended that one, yes.

21 464 Q. You signed a Nonaggression and
22 Confidentiality Agreement along with your brother?

23 A. Yes, I did sign that.

24 465 Q. Is that Exhibit B to

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1 MR. MANDERVILLE: Sure.

2 THE DEPONENT: The actual one, yes. Yes, I
3 remember signing this.

4 BY MR. MANDERVILLE:

5 466 Q. And that is your signature on the
6 Spanish version of the document?

7 A. Yes.

8 467 Q. And your brother goes on to state that
9 the original Nonaggression and Confidentiality
10 Agreement was signed by Margarita, your father and
11 Juan and was exchanged with the cousins on March
12 11, 2009, the date of the second settlement
13 meeting.

14 Are you aware of a second settlement meeting?

15 A. I was not present at a second meeting
16 but I know that I knew that it was going to
17 happen.

18 468 Q. And it did happen?

19 A. For what I was told by Juan, yes.

20 469 Q. In paragraph 10 of his affidavit, your
21 brother makes known, you told me about it, that you
22 encountered your cousin Felipe Bosch at a music
23 concert Christmas, New Year '08, '09?

24 A. Yes.

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1 this meeting through using a security team and that
2 you did not disclose it?

3 A. That's not accurate.

4 471 Q. Okay.

5 A. They learned about that meeting because
6 I told my dad that I saw my cousin in that concert.

7 472 Q. When would you have told your dad that?

8 A. That I don't recall, when I told him.

9 473 Q. Was it before the settlement discussion
10 that you participated in in February 2009?

11 A. I don't remember the exact date.

12 474 Q. When you attended the settlement
13 conference in February 2009, were you personally
14 hopeful they would be successful?

15 A. Oh, yes, I was very hopeful that we
16 would be successful.

17 475 Q. Did you take steps to prepare for the
18 meeting?

19 A. What do you mean by that?

20 476 Q. Review any documents, discussing with
21 your brother and your father and anyone else at
22 Xela who was involved the issues you wanted to
23 raise at the settlement meeting?

24 A. Well, I knew some of the issues and

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1 support system there, so I wasn't provided any
2 documents to bring or to carry or to talk about.

3 477 Q. Did that upset you?

4 A. No, I understood that my position was
5 to be the if you want to say the family aspect
6 of the meetings because it was business but it's
7 also family.

8 478 Q. In paragraph 11 of this affidavit, your
9 brother states halfway down:

10 "Despite the importance of this first
11 settlement meeting, Margarita declined
12 to meet with our team that morning and
13 she showed up to our office literally
14 half an hour before we were to leave for
15 the settlement meeting."

16 Is that accurate?

17 A. I don't think I would say declined to
18 be there. I asked if it was necessary for me to be
19 there, and if I wasn't there, it was because I was
20 told that it wasn't necessary for me to be there
21 and I was told to be there at a certain time and
22 that's what I did.

23 479 Q. He goes on to state that:

24 "We were subsequently informed by a

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1 meet with us and our lawyers that
2 morning, Margarita spent the morning
3 meeting with her nephew, Roberto
4 Barillas Castillo, at the home of
5 her motherinlaw."

6 Is that accurate?

7 A. Well, I met with him, yes. He lived in
8 that house and I was with my motherinlaw and he
9 was in the house. But it wasn't instead of. It
10 was you said "rather than meeting." No, it
11 wasn't rather than meeting. It was I was told that
12 it wasn't necessary, my presence, at the
13 preparation meeting, and that's why I didn't go.

14 480 Q. Following the initial meeting, your
15 brother states that:

16 "After the initial settlement meeting,
17 we reconvened at our offices in order
18 to debrief our lawyers, who were not
19 allowed to participate in the
20 negotiations. We also had to debrief
21 my father, who was in Jupiter, Florida."

22 Do you recall that that's accurate?

23 A. Yes, and I we actually talked to my
24 father over the phone while we were riding from the

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1 481 Q. In a car?

2 A. In the car, yes.

3 482 Q. Goes on to state:

4 "Before we could begin our debriefing

5 sessions, however, Margarita excused

6 herself in order to visit her

7 motherinlaw, who was elderly. We

8 were subsequently informed by our

9 security personnel that she again

10 met with her nephew, Roberto Barillas

11 Castillo."

12 Is that accurate?

13 A. That's not how I remember. I was there

14 for the debriefing and everybody was going to go to

15 someone's birthday party, and I excused myself from

16 that birthday party in order to go spend time with

17 my motherinlaw. And like I said before, Roberto

18 lived in the house. He was there too.

19 483 Q. So Roberto lived in the same house as

20 your motherinlaw?

21 A. Yes.

22 484 Q. I'd ask you to turn, Ms. Castillo, to

23 your third affidavit, which is in the Second Reply

24 Application Record, Exhibit 3.

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1 MR. LEON: He didn't say.

2 THE DEPONENT: Oh, you didn't say.

3 BY MR. MANDERVILLE:

4 485 Q. I'm keeping you in suspense.

5 A. I thought you said.

6 486 Q. I'd ask you to turn to page 13, please.

7 A. 13. I'm there.

8 487 Q. Could you read paragraph 41, please?

9 A. I have read it.

10 488 Q. Okay. You say that you met with your
11 cousins in Guatemala in the fall of 2009. What was
12 the purpose of that meeting?

13 A. To get reacquainted with them.

14 489 Q. Who arranged that meeting?

15 A. It was arranged. I'm not exactly sure
16 how it happened.

17 490 Q. And where was this meeting held?

18 A. You already asked me about it and
19 stated before it was at the InterContinental Hotel.

20 491 Q. I believe that was the meeting that was
21 in March 2010.

22 MR. LEON: Do you want to check on that?

23 THE DEPONENT: No, I know. I know. Where
24 did you think it's

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1 492 Q. Juan Guillermo's affidavit in the
2 Second Application Record, Exhibit B, paragraph
3 11(d) at page 5.

4 MR. LEON: Tab?

5 MR. MANDERVILLE: Tab 3.

6 MR. LEON: Yes.

7 MR. MANDERVILLE: At page 5.

8 BY MR. MANDERVILLE:

9 493 Q. Just part of paragraph 11(d).

10 A. Yes, I've read it.

11 494 Q. Do you agree with me, at least
12 according to that document, and I believe, and you
13 can correct me, I believe you agreed with me
14 previously that the meeting with your cousins at
15 the Pepsi offices occurred in March 2010?

16 A. Yes.

17 495 Q. And I'm talking about what you say at
18 paragraph 41 of your third affidavit, that you met
19 with your cousins in the once in the fall of
20 2009, and you've told me that was a getacquainted
21 meeting, and I asked you where did it take place.

22 A. That was the one at the
23 InterContinental Hotel.

24 MR. LEON: In other words, she says your

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1 BY MR. MANDERVILLE:

2 496 Q. So, when Juan Guillermo recounts Mr.
3 Porras saying that you met with your cousins in
4 February 2010 at the InterContinental Hotel, that's
5 mistaken in your view and it occurred in the fall
6 of 2009?

7 A. Yes, that's mistaken there.

8 497 Q. And who attended at that meeting?

9 A. It was Ricardo, myself, Juan Jose,
10 Felipe and Roberto.

11 498 Q. Just the five of you?

12 A. Yes.

13 499 Q. And who suggested scheduling the
14 meeting?

15 A. That I'm not sure. I could not say.

16 500 Q. Did you ask for it to be scheduled?

17 A. No, I didn't.

18 501 Q. Did you ask Mr. Barillas to arrange it?

19 A. No, I didn't.

20 502 Q. How were you contacted about having a
21 meeting?

22 A. Ricardo told me.

23 503 Q. Did Ricardo say who had contacted him?

24 A. I did not ask him at the time.

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1 A. I don't remember exactly what it was
2 discussed, but it was, like I said, to get
3 acquainted, a friendly meeting. We ask about each
4 other's families and as far as I remember that was
5 all that was discussed.

6 505 Q. Did you talk about possibly obtaining
7 financing with them at that time?

8 A. I don't recall about the specifics we
9 talked about that day.

10 506 Q. Did you talk about your professed
11 dissatisfaction with Xela?

12 A. That's a possibility. They were
13 surprised that I did not attend any other meetings.
14 They if I recall correctly, they expressed their
15 surprise that I did not attend any other meetings
16 in the settlement agreements because it was their
17 understanding I was going to be there. And when I
18 was asked by my father not to assist to the to
19 go to the next one, they specifically told them
20 that I was some medical, some that I had
21 something medical or I was sick or something that
22 was an excuse that was not accurate.

23 507 Q. Who is "they"? You said "they" told
24 them. Who is "they"?

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1 one writing the emails and "them" would be the
2 cousins.

3 508 Q. So it's your evidence that Juan told
4 your cousins that you couldn't attend because

5 A. I read that I'm sorry.

6 509 Q. Because you had a health issue?

7 A. Don't exactly remember if it's a health
8 issue or I was sick or something with that in
9 that respect. That's what they what Juan told
10 them. And I know that because I read the email
11 that was sent.

12 510 Q. And this meeting takes place relatively
13 shortly before your meetings at Bennett Jones in
14 Toronto in December of 2009?

15 A. At what meeting you are referring to?

16 511 Q. This meeting in the fall of 2009 at the
17 InterContinental Hotel in Guatemala City takes
18 place weeks or a month before your meeting at
19 Bennett Jones' offices in December 2009?

20 A. Yes.

21 512 Q. So do you recall whether or not you
22 expressed to your cousins any dissatisfaction with
23 your involvement at Xela at the meeting of the fall
24 of 2009?

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1 didn't say.

2 513 Q. Do you recall in general what you said?

3 A. No, I don't.

4 514 Q. Is it your evidence it was nothing more
5 than a getacquainted discussion?

6 A. As far as I remember, that's what it
7 was.

8 515 Q. Did you keep any notes of the meeting?

9 A. No, I did not.

10 516 Q. Did Ricardo?

11 A. No, he didn't.

12 517 Q. Did anyone else?

13 A. No. It was an informal meeting. There
14 was no reason to keep notes on it.

15 518 Q. Was it in a hotel room?

16 A. Yes.

17 519 Q. Whose room?

18 A. I don't know. I...

19 520 Q. Well, was it your room?

20 A. No, I wasn't staying there.

21 521 Q. Was it Ricardo's room?

22 A. Obviously if I wasn't staying there, he
23 wasn't staying there either.

24 522 Q. What prompted you to be in Guatemala in

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1 A. We would go occasionally to go visit my
2 motherinlaw.

3 523 Q. What was the purpose of this particular
4 visit to Guatemala?

5 A. Her birthday is at the end of October,
6 so that's why we chose that date.

7 524 Q. Had this meeting been arranged before
8 you went down?

9 A. No, not that I know of.

10 525 Q. You were a director of Xela at that
11 time; correct?

12 A. Yes, I was.

13 526 Q. Did you disclose to your cousins at
14 this meeting any information about Xela?

15 A. I have never disclosed any information
16 about Xela to them.

17 527 Q. So you did not at this meeting?

18 A. No.

19 528 Q. Did you disclose any information about
20 Xela to Roberto Barillas?

21 A. No, I didn't.

22 529 Q. We know you were in Guatemala for the
23 settlement meeting in February 2009?

24 A. Yes.

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1 between February '09 and this meeting in, you
2 think, the latter part of October 2009?

3 A. Not in 2009, no.

4 531 Q. Go to paragraph 41 of this affidavit.

5 Ms. Castillo, you go on to state at the first
6 sentence of paragraph 41 that you met with your
7 cousins again a second time in the winter of 2010?

8 A. Yes.

9 532 Q. When did that meeting take place?

10 A. Excuse me?

11 533 Q. When did that meeting take place?

12 A. At the end of February, beginning of
13 March. I don't remember exactly. I know I was in
14 that time in Guatemala, but I don't know exactly
15 the date.

16 534 Q. Where did that meeting take place?

17 A. That's the meeting that took place at
18 the Pepsi building.

19 535 Q. So if I can summarize correctly, you
20 had a meeting with your cousins in the fall of 2009
21 and then again in late February, early March 2010?

22 A. Yes.

23 536 Q. And prior to your departure as a
24 director of Xela in April 2010, did you have any

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1 frame?

2 A. No, I didn't.

3 537 Q. Did you have any other conversations
4 with your cousins or their representatives during
5 that time frame?

6 A. No.

7 538 Q. Could you turn to paragraph 48 of that
8 same affidavit please, Ms. Castillo. When did you
9 ask your cousins if they could assist in arranging
10 financing for the litigation?

11 A. I'm not sure. I don't remember exactly
12 the date.

13 539 Q. Was it by way of a phone call? Was it
14 by way of a meeting?

15 A. I don't remember that.

16 540 Q. Would there be an email to your
17 cousins asking for assistance in financing?

18 A. I haven't exchanged any emails with
19 them.

20 541 Q. At any time?

21 A. No.

22 542 Q. Would you have sent them a letter
23 requesting this?

24 A. No.

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1 request?

2 A. Don't remember doing it myself, so I
3 don't know exactly how, when it was, but it was
4 verbal if it wasn't written.

5 544 Q. Well, it says, "I" you swear, "I
6 asked my cousins in Guatemala if they could assist
7 in arranging financing." That's you asking;
8 correct?

9 A. Well, that's what I said there, yes,
10 I but I don't remember actually asking myself,
11 even though I said that here.

12 545 Q. If it was not you, who would it have
13 been, Mr. Barillas on your behalf?

14 A. No, it would have been Ricardo.

15 546 Q. So is it your evidence you did not
16 personally ask or that you may have and you can't
17 recall?

18 A. I don't my evidence, I don't
19 remember exactly.

20 547 Q. And according to your affidavit, you're
21 asking your cousins to assist in providing you with
22 money; correct?

23 A. No, I wasn't asking them for the money,
24 if that's what you're asking me.

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1 affidavit which says, "I asked my cousins in
2 Guatemala if they could assist in arranging
3 financing" according to that you're approaching
4 your cousins, either directly or through Ricardo,
5 and asking if they can assist in providing you with
6 a source of money; correct?

7 A. Yes, that's what it says here.

8 549 Q. And that's not something that you can
9 remember how it came about?

10 A. No, I don't remember how it came about.

11 550 Q. What response did you or Ricardo get to
12 that request?

13 A. I don't remember exactly what was the
14 response.

15 MR. LEON: Well, if she doesn't remember
16 exactly making it, I'm not sure how she'd remember
17 the response but...

18 BY MR. MANDERVILLE:

19 551 Q. Well, was it a negative response?

20 A. No.

21 552 Q. It was a positive response; correct?

22 A. Yes.

23 553 Q. They were willing to help?

24 A. Yes, they were willing to help.

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1 for the loan from the Guatemalan bank yourself.

2 Did you go down to Guatemala and prepare the loan
3 documentation, fill in the loan documentation?

4 A. I don't remember saying that I arranged
5 the loan myself. I filled out the forms and I
6 signed the forms and I gave them to Jorge Porras
7 when he came to Miami

8 Reporter Appeals.

9 A. When I signed my the power attorney.

10 555 Q. So you prepared the documents either in
11 Ontario or Florida?

12 A. I don't remember exactly how much I
13 filled it out at home and how much I filled out
14 when he was there. He assisted me to fill out the
15 remaining information. I don't recall exactly how
16 that came about.

17 556 Q. Can you explain to me why you decided
18 to do this by way of a power of attorney rather
19 than applying yourself?

20 A. Because I'm not physically in the
21 country all the time, Guatemala, so it makes sense
22 to do it like that.

23 557 Q. And is the loan or the line of credit
24 exclusively in your name or is it in other people's

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1 A. It's in my name.

2 558 Q. Only?

3 A. As far as I know, it's in my name. The
4 application was in my name.

5 559 Q. Does Mr. Barillas not have access to it
6 as well?

7 A. Well, he has access to it to make
8 transfers to me. With the power attorney he can go
9 to the bank and ask for the transfer.

10 560 Q. That's right. So the bank must know he
11 has that authority; correct?

12 A. Yes, I assume it is that the case.

13 561 Q. I'm going to ask your counsel for some
14 undertakings, and, with respect, I may get a curt
15 response.

16 MR. LEON: Never curt.

17 BY MR. MANDERVILLE:

18 562 Q. In the circumstances, Mr. Leon, I'm
19 going to ask for the loan documentation in Ms.
20 Castillo's or Mr. Barillas' possession concerning
21 this particular loan agreement?

22 MR. LEON: Didn't you already ask for that?

23 MR. MANDERVILLE: I asked for the
24 application form.

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1 REFUSAL

2 BY MR. MANDERVILLE:

3 563 Q. I'd ask in addition for the actual loan
4 agreement?

5 MR. LEON: Same answer.

6 REFUSAL

7 BY MR. MANDERVILLE:

8 564 Q. Ask for a copy of the current loan
9 statement indicating any transfers in or out of the
10 account?

11 MR. LEON: Same answer, only with more
12 vigor.

13 REFUSAL

14 MR. MANDERVILLE: Off the record.

15 OfftheRecord Discussion.

16 MR. LEON: Based on any questions that you
17 asked, I do not understand any basis for relevance
18 of any of this, but, in particular, why you should
19 be entitled to know what payments have been made.

20 MR. MANDERVILLE: I believe I've already
21 asked for any statements of the net worth that were
22 provided to the bank.

23 MR. LEON: I believe you did and

24 MR. MANDERVILLE: And I believe you said

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1 MR. LEON: I refused.

2 BY MR. MANDERVILLE:

3 565 Q. Now, I want to change topics a little
4 bit, Ms. Castillo. There was, as I understand it,
5 a bit of a controversy concerning Mr. Barillas in
6 the fall of 2009 over monies owing by BPA to Xela;
7 correct?

8 A. I believe it was the contrary, the
9 other way around, Xela owed BPA for some services
10 rendered.

11 566 Q. Was there also not an issue about
12 \$100,000 owing to Xela by Barillas?

13 A. It is not he the one that owes Xela,
14 from what I understand.

15 567 Q. What is your understanding?

16 A. It is a different company. It's
17 Boucheron, a company called Boucheron.

18 568 Q. Boucheron is a Xela subsidiary;
19 correct?

20 A. It's not under Xela. I don't believe
21 it's a Xela subsidiary.

22 569 Q. What is your understanding of what
23 Boucheron is?

24 A. It's a company that provide services.

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1 A. Don't know exactly the matter, but as
2 far as I understood at the moment, it was to pay
3 some of the salaries for the employees in
4 Guatemala, executives in Guatemala.

5 571 Q. Executives for who, for Xela?

6 A. I don't know. I told you I don't know
7 what the purposes was.

8 572 Q. Your understanding was a company set up
9 to pay salaries of executives?

10 A. Yes.

11 573 Q. Executives in whose employ?

12 A. Well, yes, Xela employees.

13 574 Q. So you did not understand that it was a
14 Xela company?

15 A. I don't think it was ever viewed as a
16 Xela subsidiary.

17 575 Q. Can I ask you to take a look at
18 Mr. Korol's affidavit. It is in the Responding
19 Application Record, Volume 1.

20 MR. LEON: Sorry, which?

21 BY MR. MANDERVILLE:

22 576 Q. Responding Application Record, Volume
23 1, Exhibit A1. Tab 1 is the first affidavit of
24 Mark Korol, sworn June 15th, 2011. You know

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1 Xela?

2 A. Yes.

3 577 Q. At paragraph 10 of his affidavit, page
4 7, Mr. Korol discusses the incorporation of
5 Boucheron?

6 A. No.

7 578 Q. I would ask you to read paragraph 10,
8 please.

9 A. Okay.

10 MR. LEON: Now, again, this appears to be
11 information not within his, Mr. Korol's, personal
12 knowledge, so I take the same position on that.
13 This is prior to his employment.

14 BY MR. MANDERVILLE:

15 579 Q. Can you also turn to Exhibit B, which
16 Mr. Korol refers to in paragraph 10. First turn to
17 Exhibit B. It's a wire transfer request dated
18 November 12th, 2002. Is that your signature
19 approving the wire transfer request?

20 A. Yes, I was the second signature there.

21 580 Q. If you continue on, two pages later,
22 after the wire transfer requisition, there's an
23 invoice under the letterhead of
24 PriceWaterhouseCoopers?

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1 581 Q. Do you have that in front of you?

2 A. Yes, I have it in front.

3 582 Q. It appears to be an invoice in
4 connection with the incorporation of Boucheron and
5 another company, but Boucheron Universal Corp. on
6 behalf of Xela; correct?

7 A. That's what the invoice appears to be.

8 583 Q. And I acknowledge your counsel's
9 caution, but do you have any reason to question the
10 accuracy of that document?

11 A. That, the invoice?

12 584 Q. Yes?

13 A. No.

14 585 Q. Any reason to question the accuracy of
15 Mr. Korol's statement that Boucheron was
16 incorporated on behalf of Xela?

17 A. I don't know exactly how it was
18 incorporated, so I cannot say "yes" or "no" to that
19 statement.

20 586 Q. Is it fair to say that's not something
21 that is controversial?

22 MR. LEON: If you look sorry.

23 THE DEPONENT: You asked me what? I'm
24 sorry.

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1 587 Q. Is it fair to say that the issue of
2 Boucheron being incorporated on behalf of Xela is
3 not something that is controversial?

4 A. Oh, I don't know why it would be if
5 that's the way it was that's how it is expressed
6 here.

7 588 Q. And I take it you don't have any
8 evidence on that issue to contradict that of
9 Mr. Korol?

10 A. No, I wasn't involved in any of those
11 administrative matters at the time.

12 589 Q. I mean, I take it it was pure
13 coincidence that you signed the wire transfer?

14 A. I was the second signature because they
15 always needed two signatures in there and I am
16 always I am mostly always in Toronto so I was
17 asked to be a second signature, so I accepted to be
18 second signature.

19 MR. LEON: That supplements her answer
20 before in terms of things that she did for Xela
21 that you asked her about.

22 MR. MANDERVILLE: Okay.

23 BY MR. MANDERVILLE:

24 590 Q. I was asking you about an issue between

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1 concerning BPA and monies that Mr. Barillas alleged
2 were owed to him and monies that Xela alleged were
3 owed to it by Mr. Barillas; correct?

4 A. I'm sorry, can you repeat it?

5 591 Q. I should because it was awkwardly
6 phrased. I was asking you about an issue that
7 arose in the fall of 2009 between Mr. Barillas and
8 Xela, and I want your recollection, as best you
9 can, and you can disagree with what I am about to
10 suggest.

11 As I understand it, the controversy, if you
12 will, concerned some monies which Mr. Barillas
13 claimed he was owed by Xela for auditing services,
14 and it also concerned some money that Xela contended
15 were owed to it by Mr. Barillas for other services;
16 correct?

17 A. I recall the services towards BPA. I
18 don't recall the other way around.

19 592 Q. Do you recall there was \$100,000 in
20 issue which Xela was of the view Mr. Barillas
21 should be refunding to Xela?

22 A. I recall hearing that amount of money,
23 but I don't know exactly owed to whom.

24 593 Q. You don't recall what the issue was on

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1 A. Something to do with the bank account,
2 I believe.

3 594 Q. The amounts owing to Mr. Barillas by
4 Xela was in the order of about \$32,000, you said;
5 correct?

6 A. Don't remember the exact amount, but I
7 think that's the amount that is being talked about.

8 595 Q. And you agreed in the fall of 2009 to
9 mediate to some extent the dispute?

10 A. Yes, I was approached to talk to
11 Roberto to come and talk to my father, and I
12 facilitated that meeting.

13 596 Q. What's your understanding of what
14 transpired as a result of your efforts and the
15 meetings?

16 A. Roberto and my father met and they
17 discussed what they wanted from each other, which
18 basically my they had decided to finish their
19 involvement with BPA, so they were asking for the
20 accounting documents and papers and books and
21 things that BPA had from Xela subsidiaries, and I
22 believe Roberto mentioned to him that there were
23 some outstanding invoices for services rendered.

24 597 Q. What role did you play?

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1 listening.

2 598 Q. Were you not aware at the time that
3 Xela was of the view that Mr. Barillas had
4 misappropriated or embezzled approximately \$100,000
5 U.S. of Xela's funds in Boucheron?

6 A. I was aware of that, but to my
7 understanding that was not the reason of the
8 meeting was not to discuss that matter.

9 599 Q. Did Mr. Barillas, to your
10 understanding, satisfy all the conditions that were
11 asked of him before you released the funds to him?

12 A. When I asked Juan if it was okay to
13 release the funds as he I told him for what I
14 if I remember correctly the words, for what I
15 understand, Roberto already BPA finalized all
16 the things that they had to do, so he said okay to
17 pay them.

18 600 Q. I'd ask you to read paragraph 14 of
19 Mr. Korol's affidavit.

20 A. 14, you said?

21 601 Q. Yes, I did. That's at page 9.

22 MR. LEON: Again, there's all sorts of
23 hearsay in there without saying even the source of
24 the hearsay.

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1 BY MR. MANDERVILLE:

2 602 Q. See, at the very bottom of page 9, top
3 of page 10, Mr. Korol states:

4 "Barillas turned over the accounting
5 books and records in Guatemala but he
6 refused to cooperate with Grant
7 Thornton by providing backup support
8 or working papers for end of year
9 balances. This action directly
10 resulted in Grant Thornton issuing
11 a qualified audit opinion to the
12 detriment of Xela's best interests
13 and resulting in damage to the
14 respective companies."

15 Do you accept that statement as accurate?

16 A. I don't know exactly what transpired
17 when they were doing this, so I don't know if
18 that's accurate or not.

19 603 Q. Mr. Barillas turning over the
20 accounting books and records, that is something
21 that occurred during your tenure as a director?

22 A. Yes. But it should

23 MR. LEON: Sorry.

24 THE DEPONENT: I am not finished. It

should say "BPA", not "Barillas" because it was the ⁵⁶⁹

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1 company that was providing the service.

2 BY MR. MANDERVILLE:

3 604 Q. However, this would have occurred in
4 the fall of 2009 while you were still a director of
5 Xela; correct?

6 A. Yes.

7 MR. LEON: "This" being what?

8 MR. MANDERVILLE: Barillas turning over
9 accounting books and records in Guatemala.

10 BY MR. MANDERVILLE:

11 605 Q. Do you have any recollection, Ms.
12 Castillo, about discussion concerning Barillas'
13 alleged refusal to cooperate with Grant Thornton
14 by providing backup support of working papers?

15 A. No, I don't know anything about that.

16 606 Q. Was it ever suggested to you that you
17 should not have released the funds to Mr. Barillas
18 because he had not lived up to his end of the deal?

19 A. I did not release the funds until I was
20 told by Xela to that it was okay to release
21 them, and that's how it happened.

22 607 Q. And your evidence is that you were told
23 by Xela it's okay to release the funds to Mr.
24 Barillas?

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1 608 Q. All right. And is it also your
2 evidence that you were told by Xela that the
3 \$100,000, allegedly embezzled, was a separate issue
4 and would be dealt with separately?

5 A. I don't think I ever spoke to anyone in
6 Xela respecting in that respect, but what I know
7 it was it didn't have anything to do with the
8 BPA matter.

9 609 Q. How do you know that?

10 A. Because it wasn't discussed when my
11 father and Roberto were talking about resolving the
12 books and the invoices.

13 610 Q. Were you present for the discussion
14 with your father and Mr. Barillas?

15 A. Yes, I was there. Yes, I was there.

16 611 Q. Where did it take place?

17 A. At my house.

18 612 Q. Now, in February 2010 there was a board
19 meeting of Xela. That would be the sort of winter
20 quarters board meeting; correct?

21 A. Yes.

22 613 Q. And you attended that meeting?

23 A. I was at that meeting.

24 614 Q. And at that meeting, as you know, a

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1 criminal complaint against Mr. Barillas?

2 A. I learned about that resolution when I
3 read the affidavits.

4 615 Q. You contend that you did not know about
5 it at the meeting?

6 A. No, I left the meeting before it
7 finished.

8 616 Q. And you left the meeting upset?

9 A. I left the meeting upset but it wasn't
10 anything to do with this resolution or that was
11 passed after I left. It wasn't because of that
12 that I left.

13 617 Q. And you got up and it's been
14 characterized that you stormed out of the meeting.

15 I take it you don't accept that
16 characterization, but you got up and left the meeting
17 upset because of another issue?

18 A. I got up, took my papers and left the
19 meeting.

20 618 Q. Did you say anything to the rest of the
21 board?

22 A. No, I just got up and left.

23 619 Q. What time of day would that have been?

24 A. Late in the afternoon. I wasn't

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1 620 Q. According to your second affidavit,
2 paragraph 46, you got upset and left because there
3 was a typo in the list of the shareholder?

4 MR. LEON: No, no, that's not her evidence.

5 BY MR. MANDERVILLE:

6 621 Q. There was a PowerPoint presentation of
7 the list of shareholders and your name wasn't on
8 the list?

9 MR. LEON: Well...

10 THE DEPONENT: That's more than a typo.

11 BY MR. MANDERVILLE:

12 622 Q. Was there any doubt at that time that
13 you were a Xela shareholder?

14 A. Can you repeat the question?

15 623 Q. Was there any doubt at that time that
16 you were a Xela shareholder?

17 A. Not in my mind, but the presentation
18 that they were doing was the shareholders of Xela
19 moving forward and I was not in that list.

20 624 Q. Did you say to anyone, "How come I'm
21 not on that list?"

22 A. I did.

23 625 Q. To whom?

24 A. I said it in the board. Like I said it

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1 said, "How come I'm not in the list?"

2 626 Q. What was the answer you got?

3 A. "It's an honest mistake."

4 627 Q. Sorry?

5 A. I was told, "It's an honest mistake."

6 628 Q. Do you have any reason to believe
7 otherwise?

8 A. It really upset me that I was not in
9 that list and I have been I felt I was being
10 pushed out; so that upset me when I read it like
11 that, when I saw it like that.

12 629 Q. To your knowledge, who are the Xela
13 shareholders?

14 A. My father and Juan and myself through
15 Alberta companies and the Gutierrez family trust.

16 630 Q. And so the listing for you would be a
17 listing of your Alberta numbered company?

18 A. That would be the listing that would
19 probably be there.

20 631 Q. That would be sort of what would show
21 up? And your brother and your father, of course,
22 would know, okay, that particular Alberta company
23 is Margarita's; correct?

24 A. Yes, I know which one it is but they

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1 we talked about who were the shareholders, I don't
2 recall it ever being said like the numbered
3 companies. It was said the names.

4 632 Q. So on this PowerPoint presentation how
5 did it appear, Alberta companies or personal names?

6 A. Personal names.

7 633 Q. And to your recollection your father's
8 name was there and your brother's name was there
9 and your name was not there?

10 A. That's correct.

11 634 Q. And that upset you so that you got up
12 and left the room?

13 A. Well, I asked and the answer was not
14 well, it was insulting to say that it's just "an
15 honest mistake." And then Juan proceeded to have a
16 temper tantrum that I did not appreciate, so I
17 decided I'm not going to keep stay here, and I
18 got up and left.

19 635 Q. Well, do you anywhere in your
20 affidavits speak of being told it was an honest
21 mistake or that your brother had a tantrum?

22 A. I don't recall if I ever specified that
23 matter.

24 636 Q. And when Mr. Korol and your brother

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1 was passed to authorize a criminal complaint
2 against your nephew, Mr. Barillas, they're
3 mistaken?

4 A. Yes, that's not accurate because that
5 wasn't spoken while I was at the meeting.

6 637 Q. Is there any indication in the minutes
7 that Director Margarita Castillo took issue with
8 the omission of her name on the shareholders' list?

9 A. I haven't seen the minutes of that
10 meeting, so I don't know if it's stated or not.

11 638 Q. I believe they're an exhibit to an
12 affidavit. I'll tell you there is no mention of
13 that.

14 MR. LEON: She didn't control the minutes.
15 She didn't receive a draft to approve them or
16 review them, so I don't think you can fault her for
17 that.

18 BY MR. MANDERVILLE:

19 639 Q. During your tenure as a director, Ms.
20 Castillo, you read the minutes when they would come
21 to you?

22 A. Yes, I did.

23 640 Q. Did you ever object to any of them?

24 A. No.

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1 say, "Wait a second, you missed something here" or
2 "You should change something"?

3 A. When we would talk about the minutes,
4 it was at the time of the board meeting that the
5 minutes from the previous meeting was approved. I
6 recall that at one moment I reminded him that he
7 was probably doing too much copy and paste because
8 the list of the companies or the person at one
9 point it was he had more things listed that they
10 were actually in there. But that was just like a
11 pointing out like I think you are doing too much
12 cut and paste and should review that list there.

13 642 Q. So you recall doing that?

14 A. Yes, at one point I did that.

15 643 Q. And the February 2010 board meeting was
16 the last board meeting you attended?

17 A. That's correct.

18 644 Q. And by the time of that board meeting
19 you had already met with your cousins at least once
20 and counsel for the cousins and your legal counsel
21 to discuss litigation?

22 MR. LEON: Sorry, can you repeat that if
23 you are asking her about what she did with her
24 legal counsel?

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1 645 Q. At the time of this board meeting,
2 February 2010, you've told me you had already met
3 with your cousins and on at least one occasion and
4 their legal counsel and your legal counsel to
5 discuss, among other things, the possible
6 commencement of litigation?

7 MR. LEON: No, she didn't say that, to my
8 recollection. She acknowledged there was a
9 meeting.

10 BY MR. MANDERVILLE:

11 646 Q. Can you turn to your third affidavit,
12 in the Second Reply Application Record, Exhibit 3.

13 A. Second Reply?

14 647 Q. Yes. In particular, I would ask you to
15 turn to page 10 of your affidavit.

16 A. Yes, I'm there.

17 648 Q. Paragraph 32.

18 A. Yes.

19 649 Q. You swear that:

20 "On December 8th, 2009, Ricardo,

21 Roberto" would be Roberto Barillas

22 "Jorge" would be Mr. Porras

23 "and I met with my lawyers at Bennett

24 Jones. At this point I was seeking

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1 director of Xela with respect to
2 the Boucheron activity. This
3 included exploring whether I would
4 find it necessary to start a legal
5 proceeding against Xela or Juan."

6 Correct?

7 A. Yes, that's correct; that's what it
8 says there.

9 650 Q. My previous question to you was that at
10 the time of the meeting, directors' meeting in
11 February 2010, where you became upset and left, you
12 had at that point had meetings with your cousins,
13 had meetings a meeting at least with your
14 cousins' lawyer and a meeting with Bennett Jones to
15 discuss the possibility of commencing litigation;
16 correct?

17 A. I don't recall being the commencing
18 litigation prior to being part of that meeting or
19 the motivation for that meeting.

20 651 Q. So when you've sworn that it's true at
21 paragraph 32 of your affidavit that this meeting
22 I'm saying that parenthetically "included
23 exploring whether I would find it necessary to
24 start a legal proceeding against Xela or Juan"?

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1 sentence before that too.

2 MR. MANDERVILLE: Well, and I did read that
3 into the record before, Mr. Leon.

4 MR. LEON: I know you did.

5 BY MR. MANDERVILLE:

6 652 Q. If I take your sworn evidence at face
7 value here, Ms. Castillo, is it not true that one
8 of the things that you were meeting Bennett Jones
9 about was possible commencement of litigation?

10 A. With emphasis on the word "possible"
11 because it wasn't for sure.

12 653 Q. Do you want to take 10 minutes?

13 MR. LEON: Sure.

14 Recess at 3:04 p.m.

15 Resuming at 3:18 p.m.

16 BY MR. MANDERVILLE:

17 654 Q. Ms. Castillo, we were talking a little
18 earlier about the Xela board meeting of February
19 2010, and I understand that shortly following that
20 board meeting and that board meeting was in Fort
21 Lauderdale; correct?

22 A. That's correct.

23 655 Q. I understand that shortly following
24 that board meeting you went to Guatemala?

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1 end of the month I went to Guatemala.

2 656 Q. Was that when you met with your cousins
3 at the Pepsi offices?

4 A. Yes.

5 657 Q. Now, I want to talk to you a little bit
6 about what I'm going to call the Xela estate
7 freeze. Do you know the process I'm speaking of
8 when I use that term?

9 A. Yes, I do.

10 658 Q. As I understand it, in 1996 your father
11 arranged for you and Juan and he to have Alberta
12 holding companies?

13 A. Yes, it was in 1996.

14 659 Q. And you and Juan obtained independent
15 legal advice in connection with the arrangements
16 that your father wanted to put in place?

17 A. Yes, that's what I remember.

18 660 Q. Am I correct that the intention, your
19 father's intention, was to give you and Juan shares
20 in Xela through the companies but that you wouldn't
21 be able to redeem them until your father passed
22 away?

23 A. Yes, that was the way it was, as I
24 understand understood it at the time.

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1 about this is the intention of what these documents
2 are saying?

3 MR. LEON: I don't think you can ask that
4 question.

5 MR. MANDERVILLE: Fair enough.

6 BY MR. MANDERVILLE:

7 662 Q. Do you today have any issue with the
8 independent legal advice you obtained back then?

9 MR. LEON: No, you can't ask that either.
10 That's why

11 BY MR. MANDERVILLE:

12 663 Q. Why is that, Mr. Leon?

13 MR. LEON: It's legal advice. It's
14 privileged, isn't it?

15 BY MR. MANDERVILLE:

16 664 Q. I'm not asking what the advice was.

17 I'm asking if there was any assertion now that
18 there was an issue in connection with that advice.

19 MR. LEON: I think that's the same thing.

20 BY MR. MANDERVILLE:

21 665 Q. You've told me you understood your
22 father's intentions with the estate freeze?

23 A. In 1996, yes, I understood.

24 666 Q. And you understood that his intention

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1 not be able to redeem your shares in Xela until
2 your father passed away; correct?

3 A. Yes, that's what I understood at the
4 time.

5 667 Q. You understood that the various
6 documents that were prepared were done in an effort
7 to achieve that intention?

8 A. Yes, that's what I understood at the
9 time.

10 668 Q. And at the time you didn't have any
11 particular objection to that?

12 A. No, I didn't have any objections to
13 that at the time.

14 669 Q. Now, Ms. Castillo, at a certain point
15 in 2010 you, through Mr. Leon, let Xela know that
16 you were not happy with how things had unfolded
17 during your tenure with Xela?

18 A. I think that's how you can put it.
19 There some correspondence that was back and forth.

20 670 Q. If you feel I'm inaccurate in how I'm
21 putting it, by all means correct me.

22 A. I don't know exactly what context you
23 want.

24 671 Q. Well, I understand there was

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1 and then Xela's counsel attesting to your
2 dissatisfaction with how things were happening at
3 Xela?

4 A. Yes, I think that's how you can put it,
5 yes.

6 672 Q. And

7 MR. LEON: Sorry, just a small matter. I
8 don't recall actually writing to Xela. I recall
9 corresponding with Mr. Rodriguez.

10 MR. MANDERVILLE: And that's fine. I'm
11 not I'm certainly not suggesting an ex parte
12 conversation. I wondered if your initial letter
13 had gone to the company and then they involved a
14 lawyer.

15 MR. LEON: I don't recall.

16 BY MR. MANDERVILLE:

17 673 Q. And one of the issues which remains
18 live is the value of your shares in Tropic?

19 A. That's correct.

20 674 Q. And in connection with that, and after
21 the parties had entered into confidentiality
22 agreements, they agreed to share some documents?

23 A. Yes, that's what I remember.

24 675 Q. One of the document Xela provided to

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1 Mr. Badham?

2 A. I don't know exactly what documents
3 were provided to my advisor, but I've heard about
4 that valuation by Mr. Badham.

5 676 Q. Ms. Castillo, can you turn to the
6 Supplemental Application Record of my clients,
7 Exhibit B.

8 MR. LEON: Supplemental Application Record.
9 B?

10 BY MR. MANDERVILLE:

11 677 Q. It's Exhibit B, tab 2, which would be
12 the supplemental affidavit of Mark Korol.

13 Exhibit A to the document is to
14 Mr. Korol's supplementary affidavit is a valuation
15 prepared by Mr. Badham?

16 A. You said A?

17 678 Q. Tab 2, sub A.

18 A. Yes, that's what it says on the front
19 page.

20 679 Q. Michael Badham, FQ Valuations,
21 September 15, 2010?

22 A. Yes.

23 680 Q. Have you seen that document before?

24 MR. LEON: Before this affidavit or

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1 BY MR. MANDERVILLE:

2 681 Q. Before today? I presume you

3 A. Oh, sorry.

4 682 Q. Do you see that Mr. Korol deposes that
5 this was provided to Mr. Cohen, your financial
6 advisor, in October 2010?

7 MR. LEON: He says he believes it was
8 produced in October 2010.

9 BY MR. MANDERVILLE:

10 683 Q. Is there any dispute about that?

11 MR. LEON: I don't know of any. See, a
12 part of the thing was it was provided to Mr. Cohen,
13 not to me and not to my

14 MR. CRANE: The email dated October 26,
15 2010 at 10:34 a.m. from Mr. Cohen to Mr. Korol may
16 be of some assistance to Mr. Leon's

17 MR. LEON: And he says the (inaudible) is a
18 result of reviewing the draft valuation memorandum
19 prepared by Michael Badham. I don't think that's
20 any different than what's been produced here.

21 BY MR. MANDERVILLE:

22 684 Q. I apologize, Mr. Leon. Is it was it
23 not provided to your office?

24 MR. LEON: If I recall

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1 second.

2 OfftheRecord Discussion.

3 BY MR. MANDERVILLE:

4 685 Q. Ms. Castillo, you'd agree with me that
5 based on Mr. Korol's affidavit in Exhibit 2, it
6 would appear that the Badham valuation was provided
7 to your financial advisor in October 2010?

8 A. That's what it says there.

9 686 Q. And that would have been a couple of
10 months before you started your application?

11 A. Yes.

12 687 Q. In fact, it was your evidence that you
13 and perhaps your counsel did not actually see the
14 valuation until some time subsequent to the
15 commencement of the application?

16 A. That's accurate. I didn't see it
17 before I saw the actual affidavit that was attached
18 to it.

19 688 Q. Your financial advisor, Mr. Cohen, is,
20 among other things, considering or assessing the
21 accuracy of that valuation; correct?

22 A. That's what I understand that he is
23 doing, yes.

24 689 Q. I'd ask you to turn to Mr. Korol's

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1 Application Record, Volume 1. In particular, if
2 you open Mr. Korol's affidavit and turn to page 11
3 at the bottom, paragraph 17.

4 A. Yes, I've finished it.

5 690 Q. Mr. Korol states there that no funds
6 from Fresh Quest have been utilized to fund
7 political activities in Guatemala.

8 Do you take any issue with that statement
9 concerning Fresh Quest?

10 MR. LEON: Sorry, where are you reading
11 from?

12 THE DEPONENT: Here.

13 BY MR. MANDERVILLE:

14 691 Q. It starts, "Funds from Fresh Quest were
15 utilized to fund political activities in Guatemala.
16 This is untrue."

17 A. And your question was?

18 692 Q. Mr. Korol asserts that no funds from
19 Fresh Quest were utilized to fund political
20 activities in Guatemala. Do you accept the
21 accuracy of that or do you know one way or the
22 other?

23 A. I don't have any information regarding
24 specifics, so I don't agree or disagree.

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1 to your third affidavit, please. It's in your
2 Second Reply Application Record.

3 MR. LEON: Yes.

4 BY MR. MANDERVILLE:

5 694 Q. Paragraph 32, please, page 10.

6 A. Yes, I've

7 695 Q. Have you read it through?

8 A. Yes.

9 696 Q. The fourth sentence you state:

10 "With that in mind" that being

11 "exploring whether I would find it

12 necessary to start a legal proceeding

13 against Xela or Juan. With that in

14 mind, I had Roberto and Jorge explain

15 the Boucheron situation to my lawyers."

16 What was, to use your phraseology, the

17 "Boucheron situation"?

18 A. It is discrepancy for what I was

19 what I was being told by Roberto or whatever I was

20 told when I asked my father about that.

21 697 Q. I would like to you elaborate what was

22 the Boucheron situation? What were you being told

23 by Roberto, what were you being told by your

24 father?

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1 having some issues with the bank. They were asking
2 him questions because he was the legal
3 representative of the company and he didn't have
4 those answers.

5 So he asked Juan for the appropriate answers
6 and he never got an answer. That's what he told me.

7 So I asked my father and he said, "Oh, that's
8 already been resolved." That's what I got from him.

9 698 Q. Okay.

10 A. Meaning "him" meaning my father.

11 699 Q. So your father told you "that's already
12 been resolved," and am I correct then that all of
13 the other information you got about the socalled
14 Boucheron situation came from Mr. Barillas?

15 A. Yes, and directors told me that the
16 matter with the bank, to the directors' knowledge,
17 was not resolved. That's what he was told me that
18 time.

19 700 Q. So this is Mr. Barillas telling you all
20 this?

21 A. Yes.

22 701 Q. And was there anyone else besides Mr.
23 Barillas who was giving you information about
24 Boucheron?

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1 702 Q. What explanation did you ask Mr. Porras
2 to provide when you say, "I had Roberto and Jorge
3 explain the Boucheron situation to my lawyers"?

4 A. Just in general. I didn't know
5 specifically something.

6 703 Q. And was Mr. Barillas concerned that the
7 laws in Guatemala might be violated?

8 A. I don't know what his concerns were. I
9 don't I'm not in his head, so I don't know what
10 he was thinking.

11 704 Q. Who arranged for Mr. Barillas and Mr.
12 Porras to come to Toronto?

13 A. They talked to me about coming and I
14 did not say, "Don't come."

15 705 Q. So they flew up from Guatemala on their
16 own?

17 A. Yes. As I remember, yes.

18 706 Q. Who paid for them to come?

19 A. I don't know.

20 707 Q. You? Did you pay?

21 A. I don't recall paying for that.

22 708 Q. Is that something you would remember if
23 you did pay?

24 A. Roberto would come up anyway every year

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1 trips.

2 709 Q. What about Mr. Porras, how often would
3 he come up to visit you?

4 A. No, he didn't come to visit me. He was
5 one time when they were still working at PwC and a
6 certain point they had to come for another matter
7 which related to another of the PwC clients, and it
8 was the end of summer, so they were here, they
9 stayed with us. Roberto stayed with us.

10 710 Q. And Mr. Porras stayed with you as well
11 in the summer months?

12 A. In that time, yes.

13 711 Q. And that was he was up here to do in
14 connection with his legal business for Xela; right?

15 A. No, it just had something to do when
16 they worked at PwC still. So I don't know. I
17 didn't question him what he was doing here.

18 712 Q. All right. In December 2009 was when
19 Mr. Porras comes up here. You don't know who paid
20 for him to come?

21 A. No, I don't know.

22 713 Q. Did Ricardo?

23 A. I don't know if he did. I don't think
24 so. I take care of the accounts.

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1 know that Ricardo didn't?

2 A. I don't recall Ricardo doing it but I
3 know I didn't.

4 715 Q. You take care of the accounts, so
5 that's something you would recall; correct?

6 A. Well, yes.

7 716 Q. Can you tell me why you would be
8 seeking Canadian legal advice about a Guatemalan
9 situation?

10 A. I don't know exactly what you are
11 asking me there. I don't understand the question.

12 717 Q. You say, "I had Roberto and Jorge
13 explain the Boucheron situation to my lawyers."
14 The lawyers in this instance being Bennett Jones.

15 I said can you tell me why you would have
16 Jorge and Roberto be explaining to Canadian lawyers a
17 Guatemalan situation?

18 A. That's due to the fact that I was a
19 director of Xela and I was looking for the best
20 interests of the company and wanted to know if
21 there was anything that could I cannot pronounce
22 that word. I can think of the word in Spanish but
23 not English, so give me a moment. I'll go about it
24 other way. That could be detrimental for anything

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1 718 Q. So you were concerned that something
2 might be going on that was detrimental to Xela?

3 A. Yes.

4 719 Q. And in December 2009, you were a
5 director of Xela; correct?

6 A. I was.

7 720 Q. Did you raise this with members of the
8 board?

9 A. I would have raised anything about it
10 with my father privately.

11 721 Q. Did you?

12 A. Yes, I probably did. Most likely I
13 did.

14 722 Q. Did you or did you not?

15 A. I did.

16 723 Q. When would you have raised it with your
17 father?

18 A. I don't know the exact date.

19 724 Q. Would it have been before the meetings
20 with Bennett Jones?

21 A. Most likely.

22 725 Q. So sometime before December 8th, 2009
23 you raised with your father concerns about the
24 Boucheron situation?

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1 Boucheron situation because that didn't concern me
2 directly, but I always thought that if there was
3 anything that what could be detrimental for Xela, I
4 just wanted to find out. I was always dismissed
5 when my father went, "That's nothing that you need
6 to know. That's not your concern," so...

7 726 Q. How did you approach your father on
8 this particular issue?

9 A. I don't recall exactly the exact way I
10 would approach him about it.

11 727 Q. Was it an email, a phone call?

12 A. Could have been in person. Most likely
13 in person.

14 728 Q. What do you recall saying to him?

15 A. I don't recall what exactly we talked
16 about.

17 729 Q. Well, I appreciate you may not it's
18 been a few years. I appreciate you may not recall
19 exactly, but what do you recall?

20 A. Well, he asked, "What is the" what
21 was going on with that, like why was that an issue.

22 730 Q. Based upon the information you'd
23 received from Mr. Barillas?

24 A. Yes, because that was the only

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1 asked questions to my father, I was never given any
2 explanation.

3 731 Q. Was that the occasion when your father
4 said, "Don't worry, it's all resolved"?

5 A. That could be one of the situations,
6 yes.

7 732 Q. You're not sure?

8 A. Like I told you, I had different
9 conversations at different points in time, and we
10 talked about so many different things, that I don't
11 know exactly. I cannot pinpoint when and where.

12 733 Q. Did you tell your father, "I am
13 concerned about this situation. I'm going to go
14 speak to lawyers in Toronto about it"?

15 A. I don't recall exactly what I told him
16 but I

17 734 Q. Did you tell him that?

18 A. That I was concerned, yes, I did.

19 735 Q. Did you tell him, "I'm going to speak
20 to lawyers in Toronto about it"?

21 A. I don't recall telling him that.

22 736 Q. Did you tell him, "Mr. Barillas and Mr.
23 Porrás are coming up here and we're going to
24 discuss the Boucheron situation with my lawyers"?

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1 737 Q. Any reason why?

2 A. Well, I didn't feel it was necessary
3 for me to tell him everything I was doing.

4 738 Q. Did you appreciate that when you met
5 with Bennett Jones in the company of Mr. Barillas
6 and Mr. Porras among others that you were, among
7 other things, discussing the company for which you
8 are a director?

9 A. I wasn't discussing anything. I was
10 getting information from them. I wasn't providing
11 any information.

12 739 Q. Off the record.

13 OfftheRecord Discussion.

14 BY MR. MANDERVILLE:

15 740 Q. So you never mentioned to your father
16 or I presume to your brother or anyone else at the
17 board, "I'm concerned about the Boucheron
18 situation. I'm going to have Mr. Barillas and Mr.
19 Porras come up here and we will meet with lawyers
20 in Toronto to discuss it"?

21 A. No, I did not mention that to my
22 father. He would be the only person I would have
23 mentioned something like that, but I didn't talk to
24 him about that.

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1 about that?

2 A. No, I didn't.

3 742 Q. And this meeting takes place very
4 shortly after your meeting with the cousins,
5 correct, in Guatemala?

6 A. Yes, in the same year.

7 743 Q. I think it was within two months?

8 A. Yes.

9 744 Q. You say in paragraph 32:

10 "At no point during this meeting was
11 any confidential privileged information
12 provided to Roberto or Jorge. Rather,
13 they were the ones providing information
14 to me and my lawyers."

15 Did you make notes of that meeting?

16 A. No, I did not take any notes.

17 745 Q. Did your lawyers make notes of that
18 meeting?

19 A. That I don't know. I assume they did.

20 746 Q. Given that you swear that there was no
21 confidential privileged information provided, I'd
22 like your lawyer's notes of that meeting, please.

23 MR. LEON: No.

24 REFUSAL

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1 747 Q. Why is that, Mr. Leon?

2 MR. LEON: They're privileged.

3 BY MR. MANDERVILLE:

4 748 Q. So, Ms. Castillo, when you say at no
5 point during this meeting was any confidential
6 privileged information provided, is that
7 inaccurate?

8 A. Provided by me. I didn't provide
9 anything.

10 749 Q. "At no to point during this meeting
11 was any confidential privileged information
12 provided to Roberto or Jorge. Rather, they
13 were the ones providing information to me
14 and my lawyers."

15 Are you inclined to sort of resile from what
16 you've said there and say there was, indeed,
17 privileged information exchanged?

18 MR. LEON: Well, you're asking her a legal
19 question as to what's privileged. You see

20 MR. MANDERVILLE: No, I realize that, Mr.
21 Leon, and I appreciate you giving me your position
22 on this because I wouldn't mind getting it.

23 MR. LEON: It's litigation privilege.
24 You'll see that it says, "I would find it

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1 start a legal proceeding against Xela or Juan." So
2 it was provided to the lawyers as part of

3 BY MR. MANDERVILLE:

4 750 Q. In contemplation of litigation or for
5 the substantial purpose of contemplating
6 litigation?

7 MR. LEON: We can argue about what the

8 BY MR. MANDERVILLE:

9 751 Q. No, but that's the position you're
10 going to take?

11 MR. LEON: The position I'm going to take
12 is that any notes that we have are privileged.

13 BY MR. MANDERVILLE:

14 752 Q. So, Ms. Castillo, two points then
15 arising from

16 MR. LEON: No, sorry, I don't mean to be
17 cute about it. The question is, when you say in
18 contemplation of litigation, in contemplation of
19 what? You can't assume what the litigation was
20 that it was in contemplation of, if I can put it
21 that way.

22 MR. MANDERVILLE: You don't think that's
23 too cute?

24 MR. LEON: No, I don't. That's not the way

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1 BY MR. MANDERVILLE:

2 753 Q. Well, two points I want to raise with
3 you, Ms. Castillo. You've told me before that when
4 I said you were speaking to your lawyers about
5 commencing a legal proceedings against Xela and
6 Juan, you told me that wasn't really what it was
7 about. I take it that is what it was really about;
8 correct?

9 A. I meant I was exploring that, if it
10 would be necessary at one point.

11 754 Q. The substantial purpose of the meeting
12 was the commencement of this litigation; correct?

13 A. Of that particular meeting?

14 755 Q. Yes.

15 A. It was more exploring and trying to
16 understand what everything was. That's what I
17 recall from the meeting at that moment.

18 756 Q. And when you say:

19 "At no point during this meeting was
20 any confidential privileged information
21 provided to Roberto or Jorge. Rather,
22 they were the ones providing information
23 to me and my lawyers," I take it you want
24 to change your sworn statement here now

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1 information provided to my lawyers"?

2 MR. LEON: No, that's you're missing.

3 That's not what she said and that's not what that
4 says. She says, "They were providing information
5 to me and my lawyer."

6 BY MR. MANDERVILLE:

7 757 Q. None of which was confidential or
8 privileged?

9 MR. LEON: She says that she "...that no
10 confidential privileged information was provided to
11 Roberto or Jorge."

12 As I read that, she wasn't giving any
13 information that she had as a director of Xela or
14 otherwise. She was receiving information.

15 MR. MANDERVILLE: I see the point you're
16 making, Mr. Leon.

17 MR. LEON: Sorry, I don't mean to
18 interfere, but you whenever you crossexamine on
19 something when I was there, I know.

20 BY MR. MANDERVILLE:

21 758 Q. Ms. Castillo, is it your evidence that
22 it was merely one of the items discussed about
23 considering the possibility of commencing
24 litigation, or was a substantial purpose of this

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1 A. No, it was not about commencement of
2 litigation. It was one of the items.

3 759 Q. I will renew my request for notes, and
4 I accept that they may be subject to redaction.

5 MR. LEON: Well, I'll maintain my refusal,
6 but I will take a look at them. If I change my
7 position, I'll let you know.

8 REFUSAL

9 BY MR. MANDERVILLE:

10 760 Q. And in addition to Mr. Leon's notes, I
11 would also request Mr. Woycheshyn's notes.

12 MR. LEON: I'm pretty sure I don't have any
13 notes.

14 MR. MANDERVILLE: I had assumed that was
15 going to be the answer.

16 MR. LEON: And if I did, you wouldn't want
17 them anyway. I understand your request from
18 Bennett Jones.

19 MR. MANDERVILLE: Yes.

20 MR. LEON: Okay.

21 BY MR. MANDERVILLE:

22 761 Q. Now, Ms. Castillo, your nephew, Roberto
23 Barillas, is not a lawyer, is he?

24 A. No, he's not.

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1 information provided to him; correct?

2 MR. LEON: She said she didn't provide him
3 with any information.

4 BY MR. MANDERVILLE:

5 763 Q. Did Mr. Barillas take any notes at this
6 meeting, bring any papers?

7 A. That I don't remember.

8 764 Q. Are you still in contact with Mr.
9 Barillas?

10 A. Yes.

11 765 Q. I'd like an undertaking for you to
12 obtain all notes and papers of his arising from
13 this meeting, please?

14 MR. LEON: No, I don't think she's her
15 obligation extends that far in the context of a
16 crossexamination on an affidavit.

17 REFUSAL

18 BY MR. MANDERVILLE:

19 766 Q. Turning to paragraphs 33 and 34 of your
20 affidavit, I would ask you to read through it,
21 please.

22 A. Sorry, 33 and 34?

23 767 Q. Yes.

24 A. I have reviewed that.

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1 are deposing to some of what occurred at a second
2 meeting at Bennett Jones' offices?

3 A. Yes.

4 769 Q. This one was held on December 10, 2009?

5 A. Yes, that's what I remember.

6 770 Q. At that time you are still a director
7 of Xela?

8 A. Yes, I was.

9 771 Q. And in addition to your husband
10 Ricardo, Roberto Barillas, Jorge Porras and
11 yourself, presumably Mr. Leon and Mr. Woycheshyn, a
12 lawyer by the name of Katherine Kay from Stikeman
13 Elliott was present at that meeting; correct?

14 MR. LEON: She was there for part of the
15 meeting.

16 THE DEPONENT: Yes.

17 BY MR. MANDERVILLE:

18 772 Q. And during the first part of the
19 meeting, Ms. Kay advised that she could not act for
20 Roberto Barillas or Jorge Porras because she was
21 retained by your cousins?

22 A. That's the way I understand, but more
23 that it's separate, two separate statements.
24 First, I say I understand that she was present

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1 that they she could not represent them in
2 Canada. Don't know exactly the reason for that,
3 but then after she mentioned that she was in the
4 past had been retained by my cousins.

5 773 Q. Where does it say here it was in the
6 past?

7 A. Well, I added "in the past" right now.
8 But she had been retained by my cousins. I don't
9 know when.

10 774 Q. And this is where Ms. Kay advises you
11 and those present in the room that your cousins
12 understood you were becoming frustrated with Xela
13 and were willing to be supportive of your attempts
14 to resolve your concerns whether through litigation
15 or otherwise; correct?

16 A. Yes, that's what it says there.

17 775 Q. Ms. Castillo, do you have any
18 knowledge, information or belief about why Mr.
19 Barillas and Mr. Porras felt they should obtain
20 separate legal representation in Canada?

21 A. No, I don't know.

22 776 Q. Were Mr. Barillas' concerns that you
23 were meeting about, did they go anywhere beyond the
24 socalled Boucheron situation in Guatemala?

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1 the question actually?

2 777 Q. Sure. Mr. Barillas' concerns that he
3 was meeting with you and your lawyers about, did
4 they, to your knowledge, go anywhere beyond the
5 socalled Boucheron situation that you referenced?

6 MR. LEON: Sorry, I don't understand your
7 question either, whether you are asking about
8 are you asking does she know sorry, are you
9 asking whether Mr. Barillas disclosed concerns
10 beyond Boucheron or are you I'm just not sure
11 what you're getting at.

12 MR. MANDERVILLE: Fair enough. Those are
13 the best sorts of questions.

14 BY MR. MANDERVILLE:

15 778 Q. You've told me previously that Mr.
16 Barillas and Mr. Porras had attended in Toronto, at
17 whose behest you don't know, to explain the
18 Boucheron situation to your lawyers; correct?

19 A. I have said that; correct.

20 779 Q. And to your knowledge, did Mr.
21 Barillas' attendance in Toronto go to any reason
22 beyond explaining the Boucheron situation?

23 A. No idea. I don't know that.

24 780 Q. You don't know whether or not that is

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1 A. Well, besides coming to talk to us
2 about this, he came to visit my family, my cousins.

3 781 Q. Other than a social visit, the only
4 business reason that you know of was the Boucheron
5 situation?

6 A. Yes, that's what I remember knowing at
7 the time.

8 782 Q. And, similarly, Mr. Porras attended for
9 the express purpose of discussing the Boucheron
10 situation?

11 A. That's what I remember.

12 783 Q. You're not aware of any other business
13 reason, legal reason for Mr. Barillas or Mr. Porras
14 to be attending in Toronto?

15 A. No, I don't know exactly if they had
16 any other reasons besides those.

17 784 Q. How long was Ms. Kay at this meeting?

18 A. I don't remember the exact time but it
19 was very short. If I remember correctly, it was
20 short.

21 785 Q. How long did the meeting last?

22 A. I don't know. I think you have asked
23 me about the meetings, and I don't have a
24 recollection of time.

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1 informative in telling me the board of directors
2 meeting of Xela typically lasted all day long.

3 A. No, those were scheduled that way.
4 Other things are just depending how it goes. I
5 don't know exactly how long in minutes or hours it
6 lasted.

7 787 Q. Well, this December 10th meeting which
8 involved a number of people and you deposed that
9 after Ms. Kay left you had two consultants from
10 Navigant join the meeting. Did the meeting last
11 all day, half day? What do you recall?

12 A. I already answered you that I don't
13 recall how long it took, the meeting.

14 788 Q. You stated at the end of paragraph 34
15 of your affidavit:

16 "To my knowledge, Jorge wanted to be
17 present at the meeting so that he could
18 disclose what he and Roberto thought
19 was illegal activity of Xela."

20 That's what you swore to?

21 A. Yes, that's what I said in my
22 affidavit.

23 789 Q. And this suggestion of illegal activity
24 would be illegal activity concerning the Boucheron

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1 A. I don't remember exactly the time, but
2 it was a lot about Boucheron.

3 790 Q. Was there anything else you recall?

4 A. I don't remember.

5 791 Q. Did Ms. Kay take any notes of the
6 meeting?

7 A. That I don't remember.

8 792 Q. Were any notes of the meeting made
9 while Ms. Kay was in attendance at the meeting?

10 A. That I don't remember.

11 793 Q. Counsel, again I'd ask you to produce
12 your notes made of the meeting during the time that
13 Kay was in attendance. There would be no privilege
14 during the time that she was there.

15 MR. LEON: No, I'm going to refuse, but as
16 I told you, I will take a look and let you know my
17 answer.

18 REFUSAL

19 BY MR. MANDERVILLE:

20 794 Q. At the moment, your refusal is based on
21 what assertion?

22 MR. LEON: I'll make it based on relevance.

23 MR. MANDERVILLE: And just so there's
24 not

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1 I don't know what's in those notes, and so to the
2 extent that there may be material in those notes
3 that I consider privileged, then I'm not going to
4 produce them.

5 And part of the problem may be figuring out
6 what whether she was in the room, but without
7 looking at the notes, I don't know that. So without
8 looking at them, I can't properly answer your
9 question.

10 BY MR. MANDERVILLE:

11 795 Q. Will you undertake to ask Ms. Kay to
12 forward you her notes of that meeting?

13 MR. LEON: No.

14 REFUSAL

15 MR. MANDERVILLE: That would at least
16 enable you to look at them.

17 MR. LEON: I'm not going to give that
18 undertaking.

19 BY MR. MANDERVILLE:

20 796 Q. And your refusal is based on what?

21 MR. LEON: I don't think in a
22 crossexamination I have the obligation to go to
23 somebody who I have no control over to ask them to
24 produce notes. I don't think even on a discovery I

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1 crossexamination.

2 BY MR. MANDERVILLE:

3 797 Q. Now, Ms. Castillo, you swear here
4 that

5 MR. LEON: I mean well, I don't want to
6 get into giving evidence, so I'll just leave it.

7 BY MR. MANDERVILLE:

8 798 Q. Sorry, Mr. Leon?

9 MR. LEON: Sorry, I was going to say
10 something, but I don't want to be seen as giving
11 evidence, so I'll just stay out of it and let you
12 ask your questions.

13 BY MR. MANDERVILLE:

14 799 Q. You state in the last sentence of
15 paragraph 34, to your knowledge "Jorge wanted to be
16 present at the meetings so that he could disclose
17 what he and Roberto thought was illegal activity of
18 Xela"? Correct?

19 A. Yes, that's what I wrote in my
20 affidavit.

21 800 Q. This concern you never brought to the
22 attention of the board?

23 A. Not that I recall it.

24 801 Q. You never brought it to the attention

NETWORK REPORTING & MEDIATION (416) 3590305

April 17th, 2012

Margarita Castillo

1 A. Not that I remember that I can
2 remember.

3 802 Q. Did you ever bring it to the attention
4 of your brother Juan?

5 A. No, I did not talk to Juan about it.

6 803 Q. I propose we stop for the day, Mr.
7 Leon.

8 MR. LEON: Yes.

9 Whereupon the Examination was adjourned at 4:04 p.m.

10

11 I hereby certify that the foregoing
12 is a true and accurate transcription of
13 my notes to the best of my skill and ability.

14

15

16 _____
 Mary Jane Corcoran, C.S.R.

17 ComputerAided Transcription

18

19

20 Reproductions of this transcript are in direct
21 violation of O.R. 587/91 Administration of Justice Act

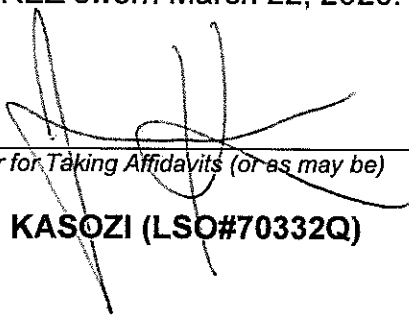
22 January 1, 1990 and are not certified without the
23 original signature of the Court Reporter

24

NETWORK REPORTING & MEDIATION (416) 3590305

EXHIBIT F

This is Exhibit "F" referred to in the Affidavit of JUAN GUILLERMO GUTIERREZ sworn March 22, 2020.



Commissioner for Taking Affidavits (or as may be)

N. JOAN KASOZI (LSO#70332Q)

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

**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 GUTIÉRREZ
and JUAN ARTURO GUTIÉRREZ**

Respondents

SECOND REPLY APPLICATION RECORD

Date: September 9, 2011

BENNETT JONES LLP

Barristers & Solicitors
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Suite 3400, P.O. Box 130
Toronto, Ontario
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Lawyers for the Respondents,
Xela Enterprises Ltd., Tropic International Limited,
Fresh Quest, Inc., 696096 Alberta Ltd.,
Juan Guillermo Gutierrez, and Juan Arturo Guiterrez

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Age group	Percentage of respondents
18-24	10
25-34	25
35-44	45
45-54	65
55-64	80
65+	88

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

**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 GUTIÉRREZ and
JUAN ARTURO GUTIÉRREZ**

Respondents

**SECOND REPLY AFFIDAVIT OF MARGARITA CASTILLO
(Sworn September 9, 2011)**

I, Margarita Castillo, of the City of Toronto, in the Province of Ontario, MAKE OATH
AND SAY:

Introduction

1. I am the applicant in this proceeding, a shareholder and director of Tropic International Limited ("Tropic"), a shareholder of 696096 Alberta Ltd. ("Alberta Co.") and a former director of Xela Enterprises Ltd. ("Xela"). As such, I have knowledge of the matters contained in this affidavit either from my personal knowledge, or where indicated, from information provided to me by others, which in all cases I believe to be true.

2. I swear this affidavit in support of my application, which seeks to have my shares in Tropic and Alberta Co. bought out. I swore my principal affidavit on this application on

January 17, 2011 (my "January Affidavit") and a reply affidavit on July 29, 2011 (my "Reply Affidavit").

3. I swear this further affidavit in reply to the supplemental affidavits of:

- (a) Mark Korol ("Korol"), Chief Financial Officer of Xela, sworn August 11, 2011;
- (b) My father, Juan Arturo Gutiérrez ("Arturo"), sworn August 11, 2011; and
- (c) My brother, Juan Guillermo Gutiérrez ("Juan"), sworn August 12, 2011 (collectively, the "Supplemental Affidavits").

4. The core of my evidence on this application is set out in my January Affidavit and my Reply Affidavit. I will not repeat that evidence here. I have not attempted to respond to every point raised in the Supplemental Affidavits. Rather, I have only responded to specific matters. As such, where I do not respond to a particular matter, any non-response should not be interpreted as my agreement with evidence in the Supplemental Affidavits.

The value of my Tropic Shares

5. Korol's supplemental affidavit attaches a copy of a valuation with respect to the "Fresh Quest/Tropic Inc. companies", which Xela obtained from Michael Badham on September 15, 2010 (the "Badham Valuation"). I do not know why this valuation report was not previously put into evidence in this proceeding. While I understand that a copy had been produced to Farley Cohen of Cohen Hamilton Steger LLP ("Mr. Cohen"), I had not previously received a copy. In fact, Xela's consistent position as shown in letters from their lawyers (see Exhibit "Q" of my January Affidavit) was that this valuation information was "proprietary to Xela".

6. I note that the Badham Valuation states that, "[s]hareholders should perform their own due diligence review of the business and should not rely on these calculations as evidence of a thorough business review". This is precisely what I have been trying to do since 2010, and the reason why I retained Mr. Cohen to provide an independent valuation of my Tropic shares. For almost a year, Juan and Arturo had access to the Badham Valuation and I did not.

7. As of the date of this affidavit, Mr. Cohen's valuation is not yet complete.

8. I note that paragraphs 2 and 3 of Korol's supplemental affidavit refer to the Badham Valuation being with respect to the "Fresh Quest/Tropic Inc. companies". The specific companies are not identified.

9. In paragraph 8 of Juan's supplemental affidavit, with respect to our personal financial statements, Juan states that we "must have been using the rough approximate values of the Fresh Quest Group of companies which we estimated and would have been at the time in the approximate range of \$20,000,000 to \$25,000,000 range based upon Fyffe's approach in 2008". I do not know what difference, if any, there is between the "Fresh Quest/Tropic Inc. companies" used in the Badham Valuation and the "Fresh Quest Group of companies" used in Fyffe's approach. I note that Fyffe's approach from 2008 would not explain the values given to my Tropic shares in the 2007 personal financial statements (included in Exhibit "D" to my Reply Affidavit).

10. Further, if Juan's statement at paragraph 8 of his supplemental affidavit that the "family collectively looked at the group for the purposes of banking" is correct, this means that both of us were misrepresenting the value of our Tropic shares to the International Finance Bank. In my case, I did not know about this misrepresentation because, as stated in my January Affidavit and

Reply Affidavit, I relied on Xela management in determining what the value of my Tropic shares were when I prepared my personal financial statements.

11. In terms of the preparation of my personal financial statements, I note that Korol's supplementary affidavit does not respond to the specific points in my Reply Affidavit, including Exhibits "B", "C" and "D", which show that Xela management (specifically Jim O'Connell) prepared the valuation data in my personal financial statements. Juan's supplemental affidavit at paragraph 8 states that "far too much is being made of this issue" and that he does not have a copy of his personal financial statement "handy". Juan does not indicate what efforts, if any, he made to try and locate copies of his personal financial statements.

February 2010 Board Meeting

12. At paragraphs 2 to 4 of his supplemental affidavit, Arturo gives evidence with respect to the February 2010 Xela Board meeting. During the time that I was present at the meeting, there was no mention whatsoever of Roberto Barillas ("Roberto") and Xela proceeding with a criminal complaint against him. In reviewing the Minutes of that Board meeting (attached as Exhibit "B" to Arturo's supplemental affidavit), I note that Roberto's company, BPA, is not mentioned until the end of the document. This suggests that the topic was not raised until the end of the meeting. As indicated in my prior affidavits, I was not present for the entire Board meeting.

13. In response to paragraph 3 of Arturo's supplemental affidavit, when I had discussions with my father regarding my resignation from the Xela Board of Directors, there was never any mention that it was due to "the conflict with Barillas". Rather, the focus of our discussions, as described in my January Affidavit, was on my requests for information regarding the value of my Tropic shares and the proposed sale of those shares to Xela. Arturo told me that he was not

going to provide me with any information on the valuation of Tropic or provide me with any of Tropic's financial statements (both of which I requested). He then said it would be "more elegant" for me to resign from the Board.

14. In response to paragraph 4 of Arturo's supplemental affidavit, it is true that I spoke with my father on the telephone approximately one day before the April 29th Board Meeting. It is also true that my father asked if I was going to resign. When I told him that I was not going to resign, Arturo demanded that I not attend the April 29th Board meeting. I had no prior notice of this meeting. As the Minutes of the February Board meeting (Exhibit "B" to Arturo's supplemental affidavit) indicate, the date for the next Board meeting was not discussed until the end of meeting. Again, I was not present for the entire February Board meeting.

My Removal as a Director of Tropic

15. Paragraph 5 of Arturo's supplemental affidavit refers to a Special Meeting of Shareholders of Tropic dated April 29, 2010. I had no notice of this meeting. In fact, I did not even know such a meeting happened until I read Arturo's supplemental affidavit. The Minutes of this "Special Shareholder Meeting" (attached as Exhibit "C" to Arturo's supplemental affidavit) indicate that I did not attend the meeting, but do not state whether I was provided notice of the meeting.

16. I note that Arturo's supplemental affidavit does not state when these Minutes were drafted, nor does he attach any shareholders' resolution. Further, Arturo does not explain why, as of July 29, 2011, I was still listed as a Tropic director according to the Provincial Corporate Registry. I note that the Corporate Registry does show that I was removed as an officer of

Tropic on or about May 18, 2010. A copy of these corporate searches was included at Exhibit "M" to my January Affidavit.

The payments I received from Xela

17. At paragraphs 6 to 7 of Arturo's supplemental affidavit (dated August 11, 2011), he appears to be responding to paragraph 28 of my January Affidavit (despite the fact that he was ordered by the court to provide any such reply evidence by June 20, 2011). Arturo's statement at paragraph 6 that "my children never loaned anything to the company" ignores the fact that in November 2004 my husband and I took out a mortgage on our Muskoka cottage with Scotiabank for \$1,275,000. Attached as **Exhibit "A"** is a copy of the Charge/Mortgage of Land. Ricardo and I gave the mortgaged funds to Xela. At the time, Arturo promised Ricardo and me that Xela would repay the entire mortgage.

18. Attached to this affidavit as **Exhibit "B"** is a copy of our annual mortgage statement dated December 31, 2010. It shows that the amount owing on this mortgage as of that date was \$546,628.09. Up until late April 2011, Xela had been making payments on this mortgage. It has since stopped making any payments. Attached as **Exhibit "C"** is a copy of our monthly account statement dated May 20, 2011, which shows that Xela's last payment on this mortgage was made on April 28, 2011.

19. In addition to the mortgage on our cottage, approximately 7 years ago, my husband and I both took out loans against our life insurance policies for more than \$100,000 and paid those funds to Xela.

20. At paragraph 7 of Arturo's supplemental affidavit, he states that before Xela stopped making monthly payments to me, Ricardo and I were receiving "about twice as much" as Juan.

In making this statement, Arturo includes the amounts Ricardo received from Digalta. Since 2008, Digalta has not been affiliated with Xela. I have no idea how my father would know how much money Ricardo was receiving from Digalta during this period. Further, I note that Arturo's evidence is inconsistent with evidence of Xela's Chief Financial Officer. Paragraph 26 of Korol's affidavit dated June 15, 2011, states that "coincidentally the amount paid to Juan Guillermo Gutierrez...is roughly equivalent to the amounts received by the Castillos for the same time period when the net income of Digalta of Ricardo and the director's fees of Margarita are considered".

21. Despite these inconsistencies and inaccuracies, given that Digalta was a company that Ricardo was running on his own, I do not understand why any salary he received from Digalta is relevant to my application.

My Alleged Involvement in an Arrangement between Xela Management and Roberto

22. As described in more detail at paragraphs 39 to 48 of my Reply Affidavit, after Xela and Roberto had negotiated an arrangement for the payment of BPA's account and the return of certain accounting papers, Arturo asked me to get involved to help transfer the monies to Roberto.

23. Juan's supplementary affidavit attaches selected versions of email exchanges between us in September and October 2009. I note that these do not appear to be official translations. Attached to my affidavit as Exhibits "D", "E", "F" and "G" are copies of email exchanges between Juan and me from October 5, 2009 to October 9, 2009. All of these emails have been translated by All Languages Ltd.

24. I note that the emails that are attached as Exhibits "A" and "B" to Juan's supplemental affidavit pre-date the email from October 26, 2009, in which Juan informed me that Roberto had substantially complied with his obligations and I was to give the funds to Roberto. This email was attached as Exhibit "E" to my Reply Affidavit.

25. Contrary to paragraph 6 of Juan's supplemental affidavit, I never ensured that the \$100,000 would be returned to Xela. Whenever I spoke to Juan about this issue, I told him what Roberto had told me – that Juan should speak directly with Roberto about the issue. This is consistent with my email to Juan dated January 29, 2010, which was attached as Exhibit "C" to Juan's supplemental affidavit. At no point did I provide an "undertaking", a "commitment" or any other type of promise to get this money back for Xela. I was what my father had asked me to be – a mediator.

Power of Attorney

26. At paragraphs 9 and 10 of Arturo's supplemental affidavit, he refers to a power of attorney that I signed on April 22, 2010 in favour of my nephew, Roberto. I did grant Roberto this Power of Attorney so that he could assist me with obtaining a private loan from a Guatemalan bank. Contrary to Arturo's statement that this confirms his suspicions that my cousins in Guatemala have been paying me to bring this application, this is not true. Arturo's nephews (my cousins) have never "paid me" anything to bring this application. Rather, I was forced to bring this application to protect my financial interests and the financial security of my children.

December 2009 meeting with BPA

27. The supplemental affidavits of Juan and Arturo refer to meetings that occurred in December 2009. The source of this information is my former lawyer and Roberto's former business partner, Jorge Porras ("Jorge"). I note that Jorge, who is a resident of Guatemala, has not sworn an affidavit in this application.

28. By December 2009, I had become increasingly frustrated with:

- (a) Juan's management of Xela's business (as described at paragraph 56 of my January Affidavit);
- (b) Juan and his family receiving a disproportionate amount of monies from Xela (as described at paragraph 60 of my January Affidavit);
- (c) Juan increasing his focus and attention on running for president in Guatemala (as described at paragraph 63 of my January Affidavit);
- (d) Xela's money being redirected to various political causes in Guatemala (as described in paragraphs 65 to 78 of my January Affidavit); and
- (e) Juan and Arturo refusing to provide me with information that I (and my advisors) needed in order to value my Tropic shares (as described in paragraph 84 of my January Affidavit).

29. Further, as discussed in both my Reply Affidavit and Juan's supplemental affidavit, in the Fall of 2009 there was an ongoing dispute between Xela and BPA. During the time that I was attempting to mediate this dispute, Roberto indicated to me that the amount of money that Xela

was using for political contributions was substantial (much more than I had understood to be the case).

30. It is in this context that I wanted Roberto to meet with me and my lawyer to explain the Boucheron situation. Given the fact that Arturo and Juan were denying me access to information, I felt it was important for me to independently investigate the allegations Roberto was making with respect to Boucheron. It was my obligation as a director of Xela to determine whether the company was involved in any illegal activity or other misconduct. Because I was not in a position to independently confirm Roberto's allegations, I retained the services of Peter McFarlane and Navigant Consulting Inc. to investigate the matter.

31. There were two meetings that took place in December 2009; one on December 8 and the other on December 10. Below is a summary of those meetings. In providing this summary, it is not my intention to waive any solicitor and client privilege.

32. On December 8, 2009, Ricardo, Roberto, Jorge and I met with my lawyers at Bennett Jones. At this point, I was seeking advice on my obligations as a director of Xela with respect to the Boucheron activity. This included exploring whether I would find it necessary to start a legal proceeding against Xela or Juan. With that in mind, I had Roberto and Jorge explain the Boucheron situation to my lawyers. Contrary to the allegation at paragraph 11 of Arturo's supplemental affidavit, at no point during this meeting was any confidential privileged information provided to Roberto or Jorge. Rather, they were the ones providing information to me and my lawyers. Based on that information, my lawyers made certain recommendations of forensic accounting firms that would be able to investigate the Boucheron allegations that Roberto and Jorge were making.

33. This led to a second meeting on December 10, 2009. At the beginning of the meeting Ricardo, Roberto, Jorge, myself, my lawyers from Bennett Jones and Katherine Kay were present. My understanding was that Ms. Kay was present at the initial part of the meeting because Roberto and Jorge had approached her to represent them in Canada.

34. During the first part of this December 10th meeting, Ms. Kay indicated that she was not in a position to act for Roberto or Jorge. Ms. Kay also indicated that she had been retained by my cousins in Guatemala. My cousins understood I was becoming frustrated with Xela and were willing to be supportive of my attempts to resolve my concerns whether through litigation or otherwise. After providing this information, Ms. Kay left the meeting and Peter McFarlane and Anthony Long (both from Navigant Consulting Inc.) joined the meeting. For the remainder of the meeting, Roberto and Jorge explained the Boucheron background and allegations to Mr. McFarlane and Mr. Long. Both Roberto and Jorge were anxious to explain the Boucheron activity. To my knowledge Jorge wanted to be present at the meeting so that he could disclose what he and Roberto thought was illegal activity of Xela.

35. As with the December 8th meeting, at no point during the December 10th meeting did I disclose any confidential or privileged information about Xela. The sole sources of information were Roberto and Jorge.

36. At no point during either December meeting did Jorge ever suggest that he was "Xela's lawyer". To the contrary, given the work that BPA had done for me and Ricardo, I understood that Jorge was present strictly as a business partner of BPA who was providing information to me in my capacity as a director of Xela and Tropic.

37. Contrary to paragraph 11(a) of Juan's supplemental affidavit, no decision about any sort of "financial aid" was made at the December 2009 meetings. As stated, at that point my focus was trying to determine whether Xela and any of its officers or directors were engaged in any unlawful actions (including any actions that I was not aware of that may be oppressive to me as a director or shareholder).

The Financing Required to Protect My Interests

38. In early 2010, around the same time that Arturo removed me from the Board of Xela and stopped my monthly draws (all of which is described in my January Affidavit), I was seriously considering taking legal action against Xela, Juan and Arturo. However, I knew I was not in a financial position to personally pay the professional fees necessary to pursue a legal action. I asked my cousins in Guatemala if they could assist in arranging financing. They did so by arranging for me to obtain a line of credit to finance my application. I am fully obligated to repay all amounts I draw down from this line of credit. This financial arrangement has nothing to do with the ongoing litigation between my cousins and the Xela subsidiary, Lisa.

39. Even after I had the financing in place, I had not decided whether I was prepared to start a lawsuit against Xela, Arturo or Juan. I still believed that we could resolve our issues without litigation. This is why I participated in a without prejudice process with Xela in the Fall of 2010. Unfortunately, that process failed. It was not until January 6, 2011, when Xela's U.S. lawyer wrote to my lawyers and falsely accused me of disclosing confidential information to Roberto (as described in paragraphs 125 to 132 of my January Affidavit) that I knew I had no choice but to start my application. I note that this was approximately eight months after I had the financing in place, which ultimately enabled me to start the application.

40. Contrary to the allegation at paragraph 12 of Arturo's supplemental affidavit and paragraph 11(b) of Juan's supplemental affidavit, my cousins have not paid me \$2,500,000, or any amount, to bring this application. As indicated, I draw down on the line of credit to the extent necessary to finance the fees associated with this application and to replace the income that I no longer receive from Xela (which my family had received every month for over 25 years).

41. Since 2009, I have met with my cousins in Guatemala on two occasions: once, in the fall of 2009 and a second time in the winter of 2010. My cousins have had no input whatsoever into the conduct of my application. This is a matter that is solely determined by me and my lawyers. I have not disclosed any confidential information with respect to Xela or Tropic either while I served as a director or since my removal. At all times, I have been aware of and complied with the obligations I owed to Xela and Tropic.

42. I have no knowledge whether Jorge was a "paid informant" of my cousins as alleged at paragraph 11(e) of Juan's supplemental affidavit. There is no reason why I would have any knowledge of this.

Disputed Facts and Issues

43. The Supplemental Affidavits attempt to raise a number of allegations, all of which have nothing to do with my application. These include the December 2009 meetings with my lawyers and BPA and the financing of my application. These allegations are being raised solely in an artificial attempt to tie together my application with the Respondents' Action and make it appear as though there are significant facts in dispute between me and the Respondents, when there are not.

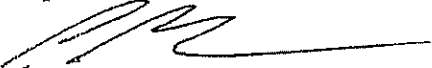
44. My application remains focused on four areas:

- (a) My ownership of Tropic shares;
- (b) The fair value of my Tropic shares;
- (c) My ability to receive the fair value of my Tropic shares; and
- (d) My ability to receive the fixed value of my beneficial interest in Xela, which is held through Alberta Co.

45. These issues continue to be unrelated to the issues raised in the Respondents' Action and my cousins in Guatemala. I have never been part of any conspiracy, nor have I ever attempted to prejudice Xela's position in the Avicola litigation with my cousins. All I have attempted to do is to protect my shareholder interests in Tropic and Xela.

46. I swear this affidavit in further support of my application.

SWORN before me, at the City of Toronto,)
in the Province of Ontario this 9th day of)
September, 2011.)

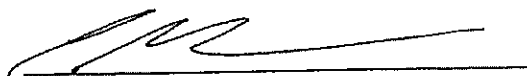


Christopher McKenna
Commissioner for Taking Affidavits in and
for the Province of Ontario



MARGARITA CASTILLO

THIS IS EXHIBIT "A" REFERRED TO IN THE
AFFIDAVIT OF MARGARITA CASTILLO SWORN
BEFORE ME THIS 9TH DAY OF SEPTEMBER, 2011

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke, positioned above a solid horizontal line.

A commissioner for taking affidavits
in and for the Province of Ontario



Province
of
Ontario

Charge/Mortgage of Land

Form 2 - Land Registration Reform Act

DMSL
03/97

B

FOR OFFICE USE ONLY	(1) Registry <input checked="" type="checkbox"/> Land Titles <input type="checkbox"/>		(2) Page 1 of 2 pages	
	(3) Property Identifier(s)		Block	Property
	Additional: See Schedule <input type="checkbox"/>			
	(4) Principal Amount Up to a maximum of ONE MILLION TWO HUNDRED SEVENTY-FIVE THOUSAND AND XX / 100 Dollars \$ 1,275,000.00			
	(5) Description Part of Lot 5, Concession 14, being Part 1, Plan 35R-15054, Township of Medora, now Township of Muskoka Lakes, in the District Municipality of Muskoka As in Deed No. 262945 and more particularly described in schedule attached Township of Muskoka Lakes District Municipality of Muskoka Land Registry Division of Muskoka (No.35) at Bracebridge			
New Property Identifiers		Additional: See Schedule <input type="checkbox"/>		
Executions		Additional: See Schedule <input type="checkbox"/>		
(6) This Document Contains:		(a) Redescription New Easement Plan/Sketch <input type="checkbox"/>		(b) Schedule for Description <input checked="" type="checkbox"/> Additional Parties <input type="checkbox"/> Other <input type="checkbox"/>
(7) Interest/Estate Charged Fee Simple				
(8) Standard Charge Terms - The parties agree to be bound by the provisions in Standard Charge Terms filed as number 9816 and the Chagor(s) hereby acknowledge(s) receipt of a copy of these terms.				
(9) Payment Provisions				
(a) Principal Amount \$ 1,275,000.00		(b) Interest Rate ***** % per annum		(c) Calculation Period *****
(d) Adjustment Date	Y M D *****	(e) Date and Period	On Demand	
(f) First Payment Date	Y M D *****	(g) Last Payment Date	***** Dollars \$ *****	
(h) Amount of Each Payment	*****	(i) Balance Due Date	*****	
(j) Insurance	see Standard Charge Terms - 9816 Dollars \$ *****			
(10) Additional Provisions				
Continued on Schedule <input type="checkbox"/>				
(11) Chagor(s) The chagor hereby charges the land to the chargee and certifies that the chagor is at least eighteen years old and that We Roberto Ricardo Castillo and Margarita Castillo are spouses of one another.				
The chagor(s) acknowledge(s) receipt of true copy of this charge.		Date of Signature		
Name(s)	Signature(s)	Y	M	D
CASTILLO, Roberto Ricardo	X	2004	11	09
CASTILLO, Margarita	X	2004	11	05
(12) Spouse(s) of Chagor(s) I hereby consent to this transaction.				
Name(s)	Signature(s)	Y	M	D
(13) Chagor(s) Address for Service 1086 Murphy Rd., Muskoka, Ontario				
(14) Chargee(s) THE BANK OF NOVA SCOTIA				
(15) Chargee(s) Address for Service 10 Wright Blvd., Stratford, Ontario, NSA 7X9				



THIS IS EXHIBIT "B" REFERRED TO IN THE
AFFIDAVIT OF MARGARITA CASTILLO SWORN
BEFORE ME THIS 9TH DAY OF SEPTEMBER, 2011



A commissioner for taking affidavits
in and for the Province of Ontario

THE BANK OF NOVA SCOTIA 47852
7600 WESTON ROAD, UNIT #3
WOODBRIDGE ONTARIO L4L 8B7 905-850-1805

SBRA512100_2971679_019 E 0 47852 10563

MR R. RICARDO CASTILLO
MRS MARGARITA CASTILLO
135 GORDON ROAD
TORONTO, ON M2P 1E6

Page 1 of 2

Your **Scotia Total Equity**
Plan number: 304473433
Property Address:
PRTL5CON14PRT1PLAN35R-150-54
1086 MURPHY ROAD
MUSKOKA LAKES TOWNSHIP ON
Questions about your Scotia Total
Equity Plan statement?
Call us at 1-877-268-4228

Your STEP Credit Limit is the total amount of credit available within your plan that can be allocated to different borrowing solutions. If you have available credit, you can save money by converting higher cost borrowing into your STEP.

The Amounts You Owe reported on this statement only include transactions that have been applied to your accounts at December 31st. It is possible that you have made transactions that do not yet appear and have not been deducted from your Available Credit.

The Scotiabank Group Privacy Agreement has been revised. Please refer to the Scotiabank website at www.scotiabank.com.

Please turn over for your mortgage statement

Your annual statement

on December 31, 2010

Overview of your Scotia Total Equity® Plan

Your overall STEP credit limit **\$840,000.00**
Minus amounts you owe:

Mortgages (see over)	\$546,628.09
Loans	\$0.00
Lines of credit	\$183,950.91
Credit cards	\$0.00
Overdraft Protection	\$0.00

Total Amount you've borrowed **\$730,579.00**
Total credit available to you on December 31, 2010 **\$109,421.00**

How you're using your Scotia Total Equity Plan

Account type and number	Account credit limit (\$)	Amount you owe (\$)	Available credit (\$)
Mortgages			
Scotia Mortgage 1364106		\$546,628.09	
Loans			
You do not hold this account type in your STEP			
Lines of credit			
ScotiaLine® Personal Line of Credit *0955	\$204,000.00	\$183,950.91	\$20,049.09
Credit cards			
You do not hold this account type in your STEP			
Overdraft Protection			
You do not hold this account type in your STEP			
Total		\$730,579.00	\$20,049.09
Plus additional credit available by contacting your branch			\$89,371.91
Total credit available to you on December 31, 2010			\$109,421.00

Simple tips that can help you pay off your mortgage faster.

1. Choose the shortest amortization period and the largest payment amount you can afford.
2. Take advantage of Scotiabank's 15% + 15%[®] prepayment privileges.
3. Match-a-Payment[®].

Visit your nearest branch or www.scotiabank.com for more information.

Your mortgage number: 136410-6
 Type of Mortgage: Variable Rate*
 Term: 5 years
 Renewal date: May 1, 2012
 Your annual interest rates on:
 January 1, 2010 1.50000%
 December 31, 2010 2.25000%

Property Address:
 PT LT 5 CON 14 PT 1
 1086 MURPHY RD
 MUSKOKA LAKES TOWNSHIP, ON
 Questions about your mortgage?
 Call us at 1-877-268-4228.

Save thousands on your mortgage.

Simply switch from monthly payments to weekly or bi-weekly payments and you could save thousands of dollars in interest costs plus pay your mortgage off sooner. For details, visit www.scotiabank.com/mortgages.

Protect your family and your mortgage.

A Protection Plan from Scotiabank FinancialTM helps pay your family's mortgage in the event of an illness, disability or the unexpected. Contact your branch.

Important Information

Please keep this statement if needed, for income tax purposes. Please review your statement carefully and call us if you have any questions.

The Scotiabank Group Privacy Agreement has been revised. Please refer to the Scotiabank website at www.scotiabank.com.

All borrowing parties with retail borrowing products may now elect to receive separate cost of borrowing disclosure documents such as monthly or annual statements. For further information, please contact your branch.

MR R RICARDO CASTILLO, MRS MARGARITA CASTILLO

Your annual mortgage statement

from January 1 to December 31, 2010.

Your mortgage balance

Principal balance on January 1, 2010	\$575,167.08
Minus: Regular principal payments you made	\$28,538.99
Principal balance on December 31, 2010	\$546,628.09

Mortgage payments you made in 2010

Total principal you paid	\$28,538.99
Total interest you paid	\$9,659.58
Total amount you paid in 2010	\$38,198.57


Your regular mortgage payments

Your payment frequency	Monthly
Principal and interest payment	\$3,316.18
Property tax payment	\$0.00
Your total regular mortgage payment	\$3,316.18

Your property tax balance

Our records indicate you pay your property taxes directly to the taxing authority. If you wish us to administer your property taxes, your Servicing Branch will be pleased to make the necessary arrangements.

THIS IS EXHIBIT "C" REFERRED TO IN THE
AFFIDAVIT OF MARGARITA CASTILLO SWORN
BEFORE ME THIS 9TH DAY OF SEPTEMBER, 2011

A handwritten signature in black ink, consisting of a stylized 'P' followed by a horizontal line and a small flourish.

A commissioner for taking affidavits
in and for the Province of Ontario



Scotiabank®

47852
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MR R. RICARDO CASTILLO
135 GORDON ROAD
TORONTO ON
M2P 1E6

Your account number:
91132 01696 84

Questions?
Call **1 800.4-SCOTIA**
(1 800 472-6842)

For online account access:
www.scotiabank.com

Your Powerchequing account summary

Opening Balance on April 21, 2011	\$31,572.09
Minus total withdrawals	\$3,327.18
Plus total deposits	\$4,000.25
Closing Balance on May 20, 2011	\$32,245.16

Important

Please review your statement promptly to check and verify the entries. If there are any errors or omissions, you must tell us in writing within 30 days of your statement date.

Here's what happened in your account this statement period

Date	Transactions	Amounts withdrawn (\$)	Amounts deposited (\$)	Balance (\$)
Apr 21	Opening Balance			31,572.09
Apr 28	Credit memo Wire Payment Xela Enterprises Ltd.		4,000.00	35,572.09
Apr 28	Service charge	10.00		35,562.09
May 2	Mortgage payment #136410-6	3,316.18		32,245.91
May 20	Interest		0.25	32,246.16
May 20	Service charge - Record Keeping Fees	1.00		32,245.16
May 20	Closing Balance			\$32,245.16

Accelerate your savings with the *Scotia Power Savings Account (SPSA)*. Open an SPSA today, get a high interest rate, and put more savings in your pocket.. For more information, please visit www.scotiabank.com/spsa. Minimum balance required.

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A handwritten signature in dark ink, consisting of several loops and a long horizontal stroke at the end, positioned above a solid horizontal line.

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Page 1 of 1

Subject: Re: Xela - BPA issue
From: Juan Gutierrez (Jgutierrez@xela.com)
To: marcas@rogers.com
Date: Monday, October 5, 2009 11:56:44 AM

Hi Margarita,

Given daddy's health situation, I haven't brought up the subject. He gets very agitated about these things, so I'll be sending you a reply on the subject during the day.

Regards

>>> Margarita Castillo <marcas@rogers.com 05/10/2009 11:06 am>>>
Hi dad, hi Juan,

I haven't received any reply from you regarding my last two emails.

On my part, I had a conversation with Roberto, and BPA will carry on with its cooperation with Grant T... this week. In the message I sent you last week there are other points which I think it's convenient to discuss in order to reach the best agreement for both parties.

I await your reply,

Regards,
Margarita

Subject: Re: Asunto Xela - BPA
From: Juan Gutierrez (Jgutierrez@xela.com)
To: marcas@rogers.com;
Date: Monday, October 5, 2009 11:55:44 AM

Hola Margarita,

Por la situacion con la salud del papi no le he tocado el tema. El se altera mucho con estos temas. Por esto, yo te estare respondiendo sobre esto durante el dia de hoy.

Saludos

>>>> Margarita Castillo <marcas@rogers.com> 05/10/2009 11:06 am >>>>
Hola Papi y Juan,

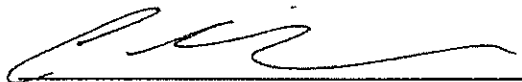
No he recibido ningun comentario de parte de ustedes referente a mi ultimo dos email.

Yo por mi parte tuve una conversacion con Roberto y BPA procedera con la colaboracion con Grant T... esta semana. En lo que les envie la semana pasada se mencionan otros puntos, los cuales creo que sera bueno hablar de ellos para llegar al mejor acuerdo para ambas partes.

Que a la espera de respuesta de parte de ustedes.

Saludos
Margarita

THIS IS EXHIBIT "E" REFERRED TO IN THE
AFFIDAVIT OF MARGARITA CASTILLO SWORN
BEFORE ME THIS 9TH DAY OF SEPTEMBER, 2011

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke, positioned above a solid horizontal line.

A commissioner for taking affidavits
in and for the Province of Ontario

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Page 1 of 3

Subject: RE: Fw: Account Statements and Agreement with Xela
From: Juan Rodriguez (Jrodriguez@crgplaw.com)
To: jgutierrez@xela.com, marcas@rogers.com, Arturo@xela.com
Date: Thursday, October 8, 2009 2:52:29 PM

[content of the e-mail in English]

-----Original Message-----

From: Juan Gutierrez [mailto:jgutierrez@xela.com]
Sent: Thursday, October 08, 2009 1:52 PM
To: Margarita Castillo; Arturo Gutierrez
Subject: Re: Fw: Account Statements and Agreement with Xela
Importance: High

****High Priority****

Hi,

See my reply in the attached letter.

Regards,

Juan G

[e-mail browser link]

31/08/2011

Print

Page 2 of 3

>>> Margarita Castillo <marcas@rogers.com> 9/30/2009 11:41 AM >>>

Daddy, Juan,

Here is what I got from Roberto yesterday. I await your comments and hope that this matter can be concluded in the best and fastest way possible.

Regards,

Margarita

-----Forwarded Message-----

From: Roberto Barillas <rbarillas@bpa.com.gt>
To: Margarita Castillo <marcas@rogers.com>
Cc: R Castillo <rcastillo@rogers.com>; Anibal Arellano <aarellano@bpa.com.gt>; jporras <jporras@bpa.com.gt>
Sent: Tuesday, September 29, 2009 6:19:06 PM
Subject: Account Statements and Agreement with Xela

Auntie,

In order to confirm what we talked about today, we are 95% ready to receive Grant Thornton's auditors as soon as you confirm that Xela/J.A. Gutierrez-J.G. Gutierrez have fulfilled the requirement of delivering the cashier/certified cheques for pending fees, based on the updated account statement that I send in the file named "General Status of the BPA Relationship", attached. I'm also sending you the UNSIGNED letters of Jorge and Ricardo Weber regarding the subject of commissions arising from the promotion and sale of shares in Marco Polo. In a separate e-mail, I'll forward you the messages that Jorge and Ricardo sent me, to confirm the origin of their letters.

I then look forward to hearing from you in order to coordinate all the review process. In the case of our fees for audit review, they should give you an amount equal to 50% of what we estimate. Once you confirm the delivery of the respective cheques, we will get in touch with Sergio Pineda in order to confirm the meeting at our offices.

Sincerely,

Roberto Barillas
Partner - Director

Tel.: (502) 2360-9265 - 75
Fax: (502) 2360-9285

[confidentiality message in Spanish and English]
[e-mail browser link]

31/08/2011

1
2
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4
5

6

Subject: RE: Fw: Status de Cuentas y Acuerdo con Xela
From: Juan Rodriguez (jrodriguez@crgplaw.com)
To: jgutierrez@xela.com; marcas@rogers.com; Arturo@xela.com;
Date: Thursday, October 8, 2009 2:52:29 PM

I approve of the letter. JJR

Juan J. Rodriguez, Esq.
jrodriguez@crgplaw.com

1395 Brickell Avenue Suite 700
Miami, FL 33131
Phone (305) 372-7474
Fax (305) 372-7475
<http://www.crgplaw.com>

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-----Original Message-----

From: Juan Gutierrez [mailto:jgutierrez@xela.com]
Sent: Thursday, October 08, 2009 1:52 PM
To: Margarita Castillo; Arturo Gutierrez
Subject: Re: Fw: Status de Cuentas y Acuerdo con Xela
Importance: High

**** High Priority ****

Hola,

Te respondo mediate carta attached.

Saludos,

Juan G

<http://ca.mg206.mail.yahoo.com/neo/launch?.partner=rogers-ac&.rand=1cppr1ollo3od>

31/08/2011

>>> Margarita Castillo <marcas@rogers.com> 9/30/2009 11:41 AM >>>

Papi y Juan,

aquí les estoy enviando lo que recibí de Roberto ayer. Espero sus comentarios y que esto termine de la mejor forma y lo más pronto posible.

Saludos

Margarita

----- Forwarded Message -----

From: roberto Barillas <rbarillas@bpa.com.gt>

To: Margarita Castillo <marcas@rogers.com>

Cc: R Castillo <rcastillo@rogers.com>; Anibal Arellano <aarellano@bpa.com.gt>; jporras jporras <jporras@bpa.com.gt>

Sent: Tuesday, September 29, 2009 6:19:06 PM

Subject: Status de Cuentas y Acuerdo con Xela

Tía,

Para confirmar lo platicado el día de hoy, estamos al 95% listos para atender a los auditores de Grant Thornton al momento que se confirme de tu parte que Xela/ J.A. Gutierrez-J.G. Gutierrez han cumplido con entregarte los cheques de caja/certificados de los honorarios pendientes, con base en el estado de cuenta actualizado que te hago llegar en el documento denominado "Status General de la Relación BPA, adjunto. Así también estoy enviando las cartas NO firmadas de Jorge y Ricardo Wever con relación al tema de la comisión, por la promoción y venta de acciones de Marco Polo. En otro e-mail aparte a este te haré llegar los forwards de los e-mails de Jorge y Ricardo enviados a mí, para confirmar el origen de sus cartas.

Quedo entonces a la espera de tus noticias para coordinar todo el proceso de revisión. En el caso de nuestros honorarios para la revisión de los auditores, deberían de entregarte el monto equivalente al 50% de lo estimado por nosotros. una vez sea confirmado por ti, la entrega de los cheques respectivos, nos comunicaremos con el Lic. Sergio Pineda, para confirmar la reunión en nuestras oficinas.

Saludos cordiales,

Roberto Barillas

Socio - Director

Tel: (502) 2360-9265 - 75

Fax: (502) 2360-9285

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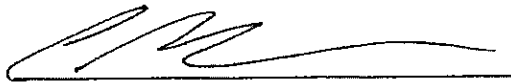
Confidential Information

<http://ca.mg206.mail.yahoo.com/neo/launch?.partner=rogers-ac&.rand=1cppl1ollo3od>

31/08/2011

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BEFORE ME THIS 9TH DAY OF SEPTEMBER, 2011

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke, positioned above a solid horizontal line.

A commissioner for taking affidavits
in and for the Province of Ontario

October 7, 2009

Dear Margarita,

As you know, the following was agreed at the September 9, 2009 meeting in Toronto:

- a) That Roberto Barillas, of the BPA - Soluciones Integrales de Negocios S.A. accounting and auditing firm would give us back the accounting books and supporting documentation for the following companies, the accounting of which had been assigned to them:

1. PAHULA, S.A

- a. Accounting books updated as at December 31st, 2008:
 - i. General ledger
 - ii. Daily ledger
 - iii. General accounts book
 - iv. Inventory book
 - v. Purchase and sale book
- b. Returns for all taxes paid to SAT during 2008
- c. Book of SAT-approved invoices

2. SERVICIOS MARFIL, S.A

- a. Accounting books updated as at to December 31st, 2008:
 - i. General ledger
 - ii. Daily ledger
 - iii. General accounts book
 - iv. Inventory book
 - v. Purchase and sale book
- b. Returns for all taxes paid to SAT during 2008

3. FRUTA MUNDIAL, S.A. & AGROEXPORTADORA NOBLEZA, S.A.

- a. Unlimited access to the auditor's working papers granted to Grant Thornton's auditors, as well as the willingness to cooperate fully with Grant Thornton so that it may successfully audit Fruta Mundial and Nobleza.
- b. Certified deeds of land purchase-sale agreements signed by Fruta Mundial, bearing the corresponding revenue stamps.

4. MAYACROPS, S.A. & LA FLORESTA, S.A.

- a. Unlimited access to the auditor's working papers granted to Grant Thornton's auditors, as well as the willingness to cooperate fully with Grant Thornton so that it may successfully audit Mayacrops and La Floresta.

5. METROBOWL

- a. Final auditor's report as at December 31st, 2008. To date, only a draft has been submitted.

- b) You would be given a cheque for \$23,386.00, to guard until it is given to Mr. Barillas as payment to BPA for its professional services, at the time he delivers the abovementioned information. The receipt for all surrendered documents would be signed by the following persons: Anibal Arellano, Jorge Porras, Eduardo San Juan and Claudio Riedel. Said cheque was handed to you on September 15, 2005, as previously agreed.

The thing is that, contrary to what Roberto himself agreed at the September 9, 2009 meeting, to this date he has refused to submit the agreed documents. Independent of the agreement, he now asks for the payment of fees arising from the organization of said information prior to its submission. He was asked to indicate his cost per hour for said service (fees which we were willing to pay in good faith although they were not included in our previous agreement).

In any case, Roberto made no submission until last Wednesday, September 30, 2008. During our meeting of September 9, 2009, and in other messages, we stated that it was urgent that we receive the documents Roberto and BPA agreed to submit due to the close timing. During the September 9 meeting I clearly explained to them the consequences that not having the requested information as soon as possible would have for Fruta Mundial's business, given that the audit process must be completed before the end of September.

The time for that process has gone and Roberto and BPA's fees proposal has been delivered too late.

Regarding the two BPA invoices attached to your e-mail of September 30, 2009, these invoices belong to the 2009 accounting services. They are not acceptable given that the services they refer to were completed as at December 31st, 2008, so Roberto is sending invoices for services that were not requested nor provided.

In your e-mail of September 30, 2009, Roberto asks for the payment of a commission for the sale of Marco Polo S.A. Neither BPA nor Roberto Barillas were hired at any time to sell that company. At the September 9, 2009 meeting, we clearly challenged the statements that Roberto made regarding that negotiation. I remind you that the agreement we reached on September 9, 2009, did not include said subject or the sum of \$100,000.00 owned by our company that Roberto has improperly retained since the end of 2008.

In view of Mr. Barillas' refusal to act as agreed, we kindly ask you to return the abovementioned cheque. We appreciate the help you provided as custodian of that cheque as well as the part that your husband Ricardo played so that this negotiation was carried out. Sadly, in view of Roberto's failure to comply, it is impossible to uphold that agreement.

We will see how to solve the issue of the undue withholding of the companies' books. The worst consequence of said withholding is our incapacity to file audited statements

at the banks so we can maintain our line of credit. We could be looking at million-dollar damages.

Regards,

Juan Guillermo

7 de octubre de 2009

Querida Margarita,

Como es de tu conocimiento, en reunión de fecha 9 de septiembre 2009 en Toronto, se acordó:

- a) Que el Lic. Roberto Barillas, de la firma de contadores y Auditores BPA – Soluciones Integrales de Negocios S.A., nos entregaría de vuelta los libros contables y documentación de soporte de las siguientes entidades, cuya contabilidad se había encargado a dicha firma:

1. PAHULA, S.A.

- a. Libros contables – actualizados al 31 de diciembre 2008:
- i. Libro Mayor
 - ii. Libro Diario
 - iii. Libro de Balances Generales
 - iv. Libro de Inventarios
 - v. Libro de Compras y Ventas.
- b. Declaraciones de todos los impuestos presentados ante la SAT durante el año 2008.
- c. Talonario de facturas autorizadas por la SAT.

2. SERVICIOS MARFIL, S.A.

- a. Libros contables – actualizados al 31 de diciembre 2008:
- i. Libro Mayor
 - ii. Libro Diario
 - iii. Libro de Balances Generales
 - iv. Libro de Inventarios
 - v. Libro de Compras y Ventas.
- b. Declaraciones de todos los impuestos presentados ante la SAT durante el año 2008.

3. FRUTA MUNDIAL, S.A. & AGROEXPORTADORA NOBLEZA, S.A.

- a. Acceso sin restricciones a los papeles de trabajo del auditor a favor de los auditores representantes de Grant Thornton, así como disposición de cooperar con Grant Thornton en lo necesario para que estos puedan concluir satisfactoriamente la auditoría de Fruta Mundial, así como de Nobleza.
- b. Testimonios de las escrituras de compra venta de terrenos por parte de Fruta Mundial con los timbres correspondientes.

4. MAYACROPS, S.A. & LA FLORESTA, S.A.

- a. Acceso sin restricciones a los papeles de trabajo del auditor a favor de los auditores representantes de Grant Thornton, así como disposición de cooperar con Grant Thornton en lo

necesario para que estos puedan concluir satisfactoriamente la auditoría de Mayacrops, así como de La Floresta.

5. METROBOWL

- a. Informe final de auditoría al 31 de diciembre 2008. Hasta el momento solo ha sido entregado en borrador.
- b) Se te entregaría a tí un cheque por la suma de \$23,386.00 en custodia, a ser entregado al Lic. Barillas como pago a BPA por sus servicios profesionales, en el momento que él te hiciera entrega de la documentación relacionada anteriormente. El recibo de la documentación entregada sería firmado por las siguientes personas: Lic. Aníbal Arellano, Lic. Jorge Porras, Sr. Eduardo San Juan y Sr. Claudio Riedel. Dicho cheque te fue entregado con fecha 15 de septiembre 2009 en cumplimiento de lo acordado.

Es el caso que contrario a lo acordado por el mismo Roberto en la reunión de fecha 9 de septiembre 2009 él hasta ahora se ha negado a entregar la documentación acordada. Fuera del acuerdo, ahora ha solicitado se le pague un honorario por organizar dicha información para hacer entrega de la misma. Se le solicitó que nos diera un costo por hora por dicho servicio (lo cual nosotros en buena fe estábamos dispuestos a aceptar pagar esos honorarios, a pesar de estar fuera de lo ya convenido).

En todo caso, Roberto no presentó sino hasta el pasado miércoles 30 de septiembre 2008. Durante nuestra reunión del 9 de septiembre 2009, así como en otras comunicaciones, expresamos la urgencia de la entrega de los documentos acordados por Roberto y BPA debido a la sensibilidad de las fechas. Claramente les expliqué durante la reunión del 9 de septiembre las consecuencias para el negocio de Fruta Mundial de no recibir la información a la brevedad debido a que la auditoría debe estar completa antes del fin de septiembre.

El tiempo para esto ya ha concluido y la propuesta de honorarios de Roberto y BPA ha sido entregada demasiado tarde.

En cuanto a las dos facturas de BPA adjuntas a tu email de 30 de septiembre 2009, corresponden a servicios contables durante el año 2009. Estas facturas no son aceptables debido a que los servicios en cuestión fueron concluidos al 31 de diciembre 2008, por lo que Roberto esta enviando facturas por servicios que no fueron requeridos y provistos.

En tu email de 30 septiembre 2009, Roberto reclama una comisión por la venta de Marco Polo S.A., en ningún momento BPA o Roberto Barillas fueron contratados para vender esa empresa. En la reunión del 9 de septiembre 2009 claramente rechazamos las aseveraciones de Roberto respecto a esta negociación. Te recuerdo que el acuerdo al que llegamos el 9 de septiembre 2009 dejó fuera tanto este tema

como los \$100,000.00 propiedad de nuestra empresa que Roberto tiene indebidamente retenidos desde fines del 2008.

Ante la negativa del Lic. Barillas de cumplir con su palabra, te rogamos nos devuelvas el cheque en cuestión. Te agradecemos tu apoyo en servir como custodio de ese cheque, así como la intervención de tu esposo Ricardo para que ésta negociación se llevara a cabo. Desafortunadamente, ante el incumplimiento de Roberto, es imposible continuar con dicho acuerdo.

Veremos como solventar la situación de ésta retención indebida de los libros de las empresas cuya principal consecuencia negativa es la imposibilidad de presentar estados auditados a los bancos para continuar con nuestra línea de crédito. Los daños pueden ser millonarios.

Un abrazo,

Juan Guillermo

THIS IS EXHIBIT "G" REFERRED TO IN THE
AFFIDAVIT OF MARGARITA CASTILLO SWORN
BEFORE ME THIS 9TH DAY OF SEPTEMBER, 2011

A handwritten signature in black ink, consisting of stylized, flowing letters, positioned above a horizontal line.

A commissioner for taking affidavits
in and for the Province of Ontario

Print

Page 1 of 1

Subject: Xela - BPA issue
From: Margarita Castillo (marcas@rogers.com)
To: jgutierrez@xela.com;
Bcc: Arturo @xela.com;
Date: Friday, October 9, 2009 10:50:05 AM

October 8, 2009

Dear Juan,

This afternoon I received your October 7 letter in which you refer to several items of the agreement reached with BPA.

The e-mail I sent you on September 30 included an e-mail that Roberto had sent me previously, but I had not sent it to you because I was giving BPA the time to prepare the paperwork for our cooperation with Grant Thornton's people.

BPA's people are ready to receive them next week. If there was a misunderstanding, let's leave it behind and conclude this as best and as fast we can, without pointing fingers at each other.

Regarding the money, we will settle that issue later. I'll fix it.

So, please let our people in Guatemala know, so that they can tell Grant Thornton to get in touch with BPA.

Regards,

Margarita

P.S.: In another message I will answer your letter point by point so that everything is in order.

[e-mail browser link]

31/08/2011

Subject: - Asunto XELA - BPA
From: Margarita Castillo (marcas@rogers.com)
To: jgutierrez@xela.com;
Bcc: arturo@xela.com;
Date: Friday, October 9, 2009 10:50:05 AM

8 de octubre de 2009

Querido Juan,

Hoy por la tarde recibí tu carta del 7 de octubre, en donde haces referencia de varios puntos del acuerdo con BPA.

- El email que te envié el 30 de septiembre contenía un email que Roberto me había enviado anteriormente, pero yo no se los había echo llegar ya que le estaba dando tiempo a BPA para que prepararan los papeles para la colaboración con los señores de Grant Thornton.

En BPA ya estan listos para recibirlos la próxima semana. Si hubo un mal entendido pues dejémoslo atrás y terminemos esto de la mejor forma lo más rapido possible, sin estar señalando a la otra parte.

Referente al dinero lo arreglaremos después, yo me encargare de arreglarlo.

Asi es que por favor avísale a nuestra gente en Guatemala para que le den la orden a Grant Thornton de ponerse en contacto con BPA.

Un abrazo,

Margarita

PD En otra carta te aclararé punto por punto de tu carta para que quede todo en orden.

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

**SECOND REPLY AFFIDAVIT OF
MARGARITA CASTILLO**
(Sworn on September 9, 2011)

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-and-

XELA ENTERPRISES LTD. ET AL.
Respondents

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SECOND REPLY APPLICATION RECORD

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PROCEEDING COMMENCED AT
TORONTO

RESPONDING MOTION RECORD

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