



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

**October 17, 2019**

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

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

**MARGARITA CASTILLO****Applicant****- And -**

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

**Respondents**

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

**OCTOBER 17, 2019**

## **1.0 Introduction**

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

5. In response to Margarita's application, the Company filed an application for protection under the *Companies' Creditors Arrangement Act* ("CCAA") on June 17, 2019.
6. On July 5, 2019, the Court dismissed the CCAA application and appointed KSV as Receiver. A copy of the receivership order is attached as Appendix "A" (the "Receivership Order").
7. The Company is the parent company of more than two dozen subsidiaries, located predominantly in Central America, that carry or carried on business in the food and agricultural sectors. Most of these businesses have been discontinued, are no longer operating or, as discussed in this report ("Report"), were conveyed to the ARTCARM Trust (the "Trust"), a Barbados domiciled trust, the beneficiaries of which are Juan Guillermo's children. The Trustee of the Trust is Alexandria Trust Corporation ("ATC").
8. Presently, the Company's most significant asset is its indirect one-third interest in a group of successful family-owned vertically integrated poultry businesses operating in Central America referred to as the "Avicola Group". The Company's interest in the Avicola Group is held as follows:
  - a) 25% through its wholly owned indirect subsidiary, Lisa, S.A. ("Lisa"), a Panamanian holding company; and
  - b) 8.3% through Villamorey S.A. ("Villamorey"), a Panamanian holding company<sup>1</sup>.

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

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

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

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

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

## **1.1 Purposes of this Report**

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

## **1.2 Currency**

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

### 1.3 Restrictions

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

### 1.4 Receivership Materials

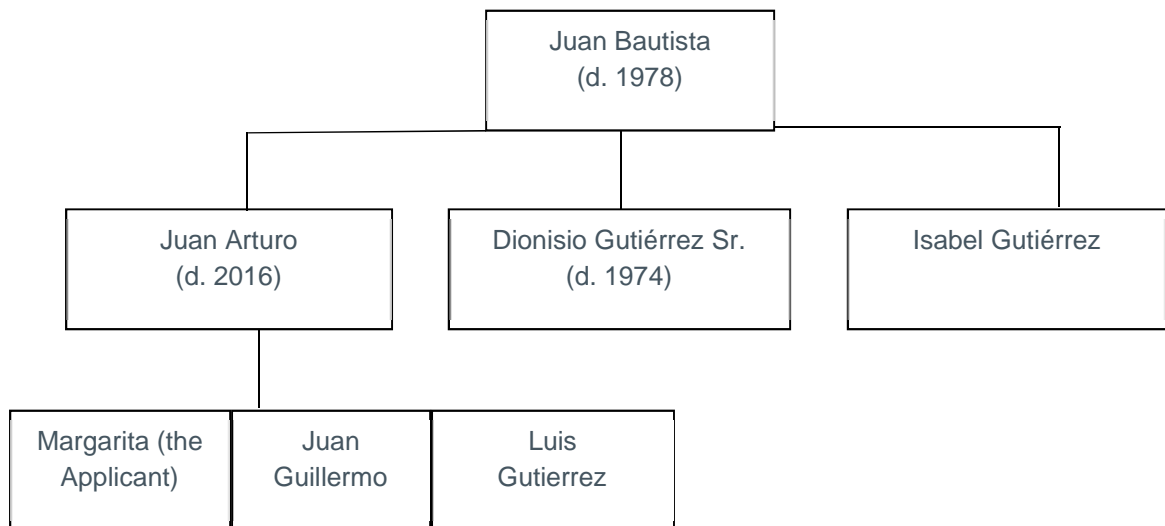
1. All materials filed in the receivership proceedings are available on the Receiver’s website at: <https://www.ksvadvisory.com/insolvency-cases/case/xela-enterprises-ltd>.

## 2.0 Executive Summary

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

## 3.0 Background

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



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

### 3.1 The Company

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

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

<sup>3</sup> Paragraph 121 of the Examination.

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



3. The Company's most recent financial statements were prepared as of May 31, 2018. A summary of the Company's unaudited and unconsolidated<sup>5</sup> balance sheet as of that date is provided below<sup>6</sup>:

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

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

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

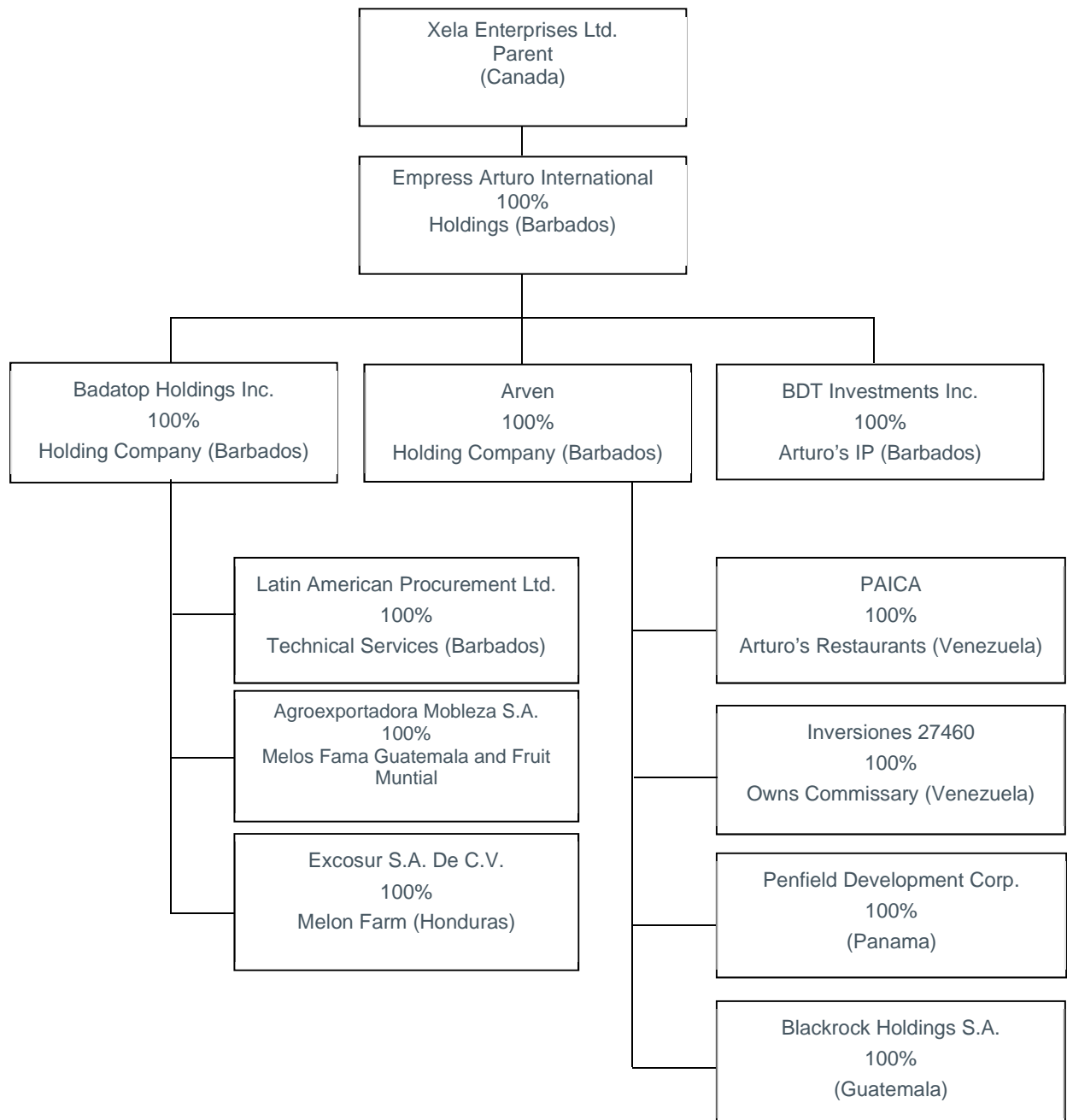
<sup>5</sup> The Company has not provided consolidated financial statements.

<sup>6</sup> The Company's financial statements exclude the debt owing to Margarita.

## 4.0 EAI Transaction and Assignment Transaction

### 4.1 EAI Transaction

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



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

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

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

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

9. Juan Guillermo provided the Receiver with valuations of BDT and PAICA<sup>8</sup> (the “Valuations”) in the context of the EAI Transaction. Copies of the Valuations are attached hereto as Confidential Appendix “1”. The Receiver’s concerns with the Valuations are provided in Confidential Appendix “2”.
10. The Receiver has the following additional concerns with respect to the EAI Transaction:
  - a) BDT, Arven and PAICA have advanced tens of millions of dollars to Lisa to fund its costs (and the Receiver understands that they continue to fund, or are prepared to continue to fund, Lisa’s litigation); however, it is unclear to the Receiver why EAI decided not to use the cash flow generated by these entities to repay the amounts EAI owed to Juan Arturo. This could have been done through payment of a dividend from some or all EAI’s subsidiaries to EAI; and
  - b) it is unclear how the Boards of Directors of each of the Company and EAI satisfied themselves as to the value of BDT and Arven, including the receivables owing from Lisa. It is also unclear whether the Boards of the Company and EAI had separate legal counsel when completing the EAI Transaction, and the extent of Juan Guillermo’s participation in the EAI Transaction.
11. Based on the foregoing, the Receiver requires additional information from each of BDT, Arven, and ATC to further investigate the EAI Transaction<sup>9</sup>. The Receiver recommends that the Court issue an order requiring these and any other party with information concerning the EAI Transaction to provide all such information to the Receiver forthwith, so that the Receiver can complete its review of the transaction.
12. In the interim, as EAI is incorporated in Barbados, the Receiver has engaged local counsel in Barbados.

## 4.2 Assignment Transaction

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

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

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

2. The effect of the Assignment Transaction is to transfer further recoveries from the Avicola Litigation to BDT. At the time of the Assignment Transaction, Lisa owed BDT approximately \$47 million. The Receiver understands that the amounts advanced from BDT to Lisa since the date of the Assignment Agreement are insignificant<sup>10</sup>. Accordingly, it is unclear whether Lisa received any consideration for entering into the Assignment Agreement. If the litigation is settled in the near term, BDT will receive a windfall despite making no material additional advances to Lisa to fund the Avicola Litigation since the date of the Assignment Agreement.
3. The Receiver is concerned, again, that Juan Guillermo is conflicted as President of the Company, a director of the Company and the father of the beneficiaries of the Trust (who stand to benefit from the Assignment Transaction).

#### **4.3 Confidential Appendices**

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

### **5.0 Receivership Order – Clarification re Paragraph 4**

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

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

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

## 6.0 Professional Fees

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

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

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

## 7.0 Overview of Receiver's Activities

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

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

## 8.0 Conclusion and Recommendation

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

\* \* \*

All of which is respectfully submitted,



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

## **Appendix “A”**



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

THE HONOURABLE

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**FRIDAY**, THE **5<sup>th</sup>**

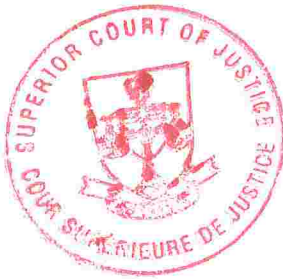
JUSTICE

**MCEWEN**

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DAY OF **July**, 2019

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**MARGARITA CASTILLO**

Applicant

- and -

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

Respondents

**ORDER**  
**(appointing Receiver)**

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

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

**SERVICE**

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

**APPOINTMENT**

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

**RECEIVER'S POWERS**

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

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

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

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

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

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

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

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

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

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

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

**DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

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

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

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

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

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

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

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

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

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

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

#### **NO INTERFERENCE WITH THE RECEIVER**

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

#### **CONTINUATION OF SERVICES**

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

#### **RECEIVER TO HOLD FUNDS**

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



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

#### **EMPLOYEES**

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

#### **PIPEDA**

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

#### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

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

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

#### **LIMITATION ON THE RECEIVER'S LIABILITY**

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

#### **RECEIVER'S ACCOUNTS**

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

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

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

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

#### **FUNDING OF THE RECEIVERSHIP**

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

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

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

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

#### **TERMINATION OF RECEIVERSHIP**

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

#### **SERVICE AND NOTICE**

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

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

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

#### **GENERAL**

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

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

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

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

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

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

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

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

JUL 05 2019

PER / PAR: 

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

## SCHEDULE "A"

### RECEIVER CERTIFICATE

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

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

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

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

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

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

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

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

DATED the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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

Per: \_\_\_\_\_

Name:

Title:



**MARGARITA CASTILLO**  
Moving Party

-and-

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

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(Commercial List)**

Proceeding commenced at Toronto

**ORDER**

**BENNETT JONES LLP**  
3400 One First Canadian Place  
P.O. Box 130  
Toronto, ON M5X 1A4

**Jeffrey S. Leon (#18855L)**  
Email: leonj@bennettjones.com

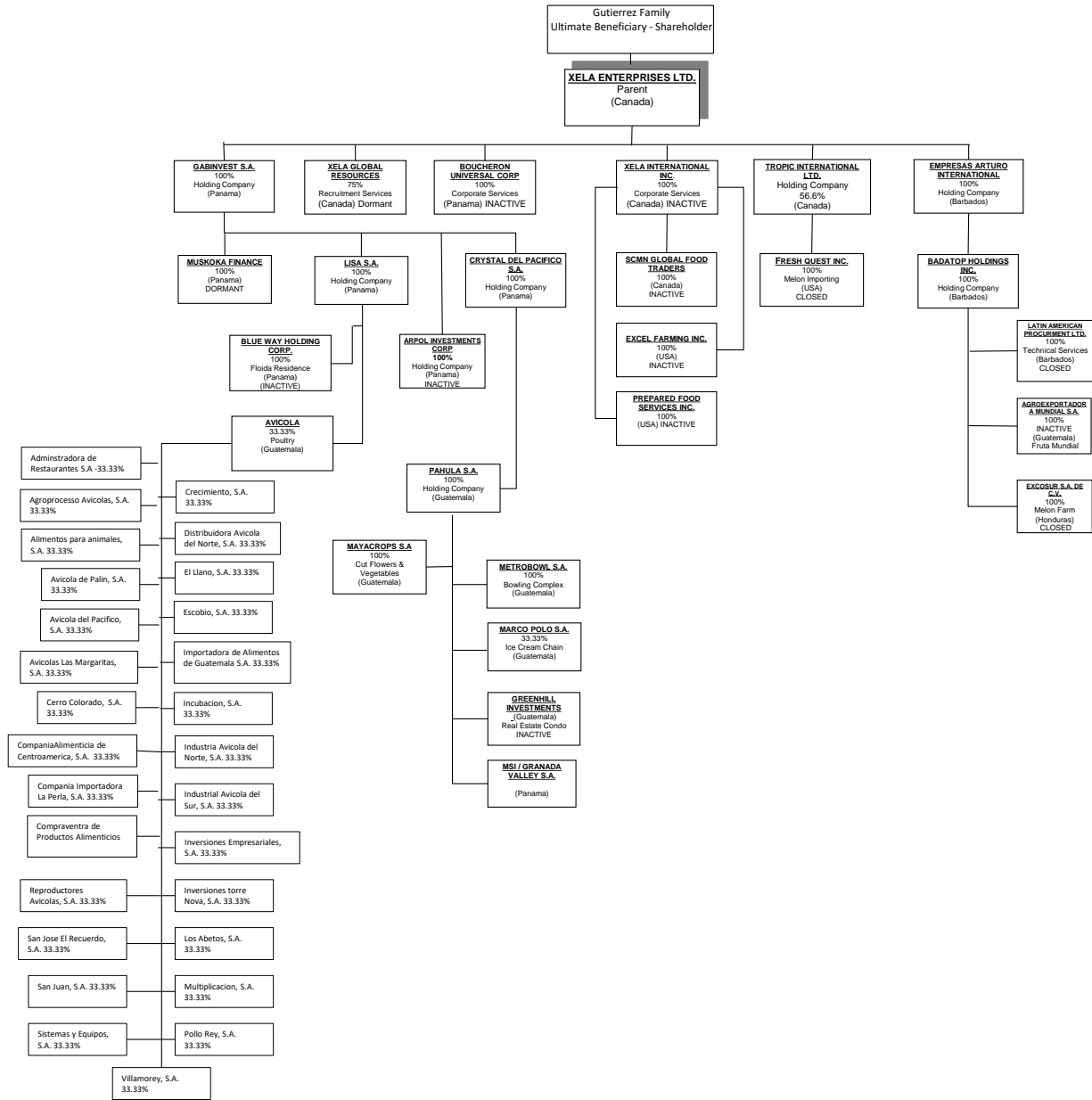
**Jason Woycheshyn (#53318A)**  
Email: woycheshynj@bennettjones.com

**William A. Bortolin (#65426V)**  
Email: bortolinw@bennettjones.com

Telephone: (416) 863-1200  
Fax: (416) 863-1716

Lawyers for the moving party, Margarita Castillo

## **Appendix “B”**



## **Appendix “C”**

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Court File No.

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

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

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

Applicant

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

JASON WOYCHESHYN ) Solicitors for Margarita Castillo  
WILLIAM BORTOLIN )

JEREMY OPOLSKY ) Solicitors for Xela Enterprises Ltd  
STEFAN CASE )

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<p style="text-align: right;">Page 2</p> <p style="text-align: center;">INDEX OF PROCEEDINGS</p> <p>DESCRIPTION PAGE NO.</p> <p>JUAN GUTIERREZ, Sworn .....5</p> <p>EXAMINATION BY MR. WOYCHESHYN: .....5</p> <p>RE-EXAMINATION BY MR. OPOLSKY: .....142</p> <p>CONTINUED EXAMINATION BY MR. WOYCHESHYN: .....142</p> <p style="text-align: center;">INDEX OF EXHIBITS</p> <p>--- EXHIBIT NO. A: Letter to Torsys LLP and Notice of Examination... 10</p> <p>--- EXHIBIT NO. B: Corporate profile search for Xela dated June 26, 2019 ..... 21</p> <p>--- EXHIBIT NO. C: Undertakings from Mr. Korol ..... 67</p> <p>--- EXHIBIT NO. D: Xela Creditor List prepared June 1st, 2019..... 86</p> <p>--- EXHIBIT NO. E: Answers to undertakings of Cal Shields..... 92</p> <p>--- EXHIBIT NO. F: Corporate search for 10357235 Canada Ltd..... 107</p>	<p style="text-align: right;">Page 4</p> <p>--- UNDER ADVISEMENT NO. 9 .....75</p> <p>--- UNDER ADVISEMENT NO. 10 .....78</p> <p>--- UNDER ADVISEMENT NO. 11 .....79</p> <p>--- UNDER ADVISEMENT NO. 12 .....81</p> <p>--- UNDER ADVISEMENT NO. 13 .....83</p> <p>--- UNDER ADVISEMENT NO. 14 .....83</p> <p>--- UNDER ADVISEMENT NO. 15 .....106</p> <p>--- UNDER ADVISEMENT NO. 16 .....109</p> <p style="text-align: center;">INDEX OF REFUSALS</p> <p>REFERENCE NO. PAGE NO.</p> <p>--- REFUSAL NO. 1 .....49</p> <p>--- REFUSAL NO. 2 .....51</p> <p>--- REFUSAL NO. 3 .....114</p> <p>--- REFUSAL NO. 4 .....121</p> <p>--- REFUSAL NO. 5 .....124</p> <p>--- REFUSAL NO. 6 .....124</p> <p>--- REFUSAL NO. 7 .....125</p>
<p style="text-align: right;">Page 3</p> <p style="text-align: center;">INDEX OF UNDERTAKINGS</p> <p>REFERENCE NO. PAGE NO.</p> <p>--- UNDERTAKING NO. 1 .....17</p> <p>--- UNDERTAKING NO. 2 .....26</p> <p>--- UNDERTAKING NO. 3 .....37</p> <p>--- UNDERTAKING NO. 4 .....68</p> <p>--- UNDERTAKING NO. 5 .....74</p> <p>--- UNDERTAKING NO. 6 .....80</p> <p>--- UNDERTAKING NO. 7 .....88</p> <p>--- UNDERTAKING NO. 8 .....89</p> <p>--- UNDERTAKING NO. 9 .....93</p> <p>--- UNDERTAKING NO. 10 .....93</p> <p>--- UNDERTAKING NO. 11 .....95</p> <p style="text-align: center;">INDEX OF UNDER ADVISEMENTS</p> <p>REFERENCE NO. PAGE NO.</p> <p>--- UNDER ADVISEMENT NO. 1 .....20</p> <p>--- UNDER ADVISEMENT NO. 2 .....25</p> <p>--- UNDER ADVISEMENT NO. 3 .....26</p> <p>--- UNDER ADVISEMENT NO. 4 .....36</p> <p>--- UNDER ADVISEMENT NO. 5 .....44</p> <p>--- UNDER ADVISEMENT NO. 6 .....45</p> <p>--- UNDER ADVISEMENT NO. 7 .....71</p> <p>--- UNDER ADVISEMENT NO. 8 .....72</p>	<p style="text-align: right;">Page 5</p> <p>1 --- UPON COMMENCING AT 12:35 P.M.</p> <p>2 JUAN GUTIERREZ, Sworn</p> <p>3 EXAMINATION BY MR. WOYCHESHYN:</p> <p>4 1. Q. You are Juan Guillermo Gutierrez?</p> <p>5 A. Yes.</p> <p>6 2. Q. You acknowledge you're under oath?</p> <p>7 A. Sorry?</p> <p>8 3. Q. You acknowledge you're under oath, sir?</p> <p>9 A. Yes, I know.</p> <p>10 4. Q. You swore an affidavit in this</p> <p>11 proceeding on June 17th, 2019. Do you have a copy of</p> <p>12 that affidavit?</p> <p>13 A. Yes.</p> <p>14 5. Q. I understand, sir, you swore the</p> <p>15 affidavit in support of Xela's application made under</p> <p>16 the Companies' Creditors Arrangement Act?</p> <p>17 A. Correct.</p> <p>18 6. Q. For the purposes of the examination,</p> <p>19 I'll refer to that act as the CCAA; and when I do</p> <p>20 that, you'll understand what I'm referring to?</p> <p>21 A. Yes.</p> <p>22 7. Q. You also swore your affidavit, sir, in</p> <p>23 opposition to Margarita Castillo's motion to have a</p> <p>24 receiver appointed over Xela?</p> <p>25 MR. OPOLSKY: He did not. He swore in</p>

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<p>1 support of this affidavit and the CCAA application.</p> <p>2 BY MR. WOYCHESHYN:</p> <p>3 8. Q. All right. Sir, just so I'm clear,</p> <p>4 your affidavit is not in opposition to Margarita's</p> <p>5 motion for a receiver?</p> <p>6 MR. OPOLSKY: The affidavit is sworn in</p> <p>7 support of the CCAA proceedings.</p> <p>8 MR. WOYCHESHYN: Will it be relied on in</p> <p>9 submissions in opposition to Margarita's motion for a</p> <p>10 receivership?</p> <p>11 MR. OPOLSKY: We understand that those</p> <p>12 motions are being heard together --</p> <p>13 MR. WOYCHESHYN: Yes.</p> <p>14 MR. OPOLSKY: -- and that they are</p> <p>15 alternatives to each other. But nonetheless, this</p> <p>16 affidavit was sworn in support of the CCAA</p> <p>17 application.</p> <p>18 BY MR. WOYCHESHYN:</p> <p>19 9. Q. I take it, sir, that does Xela does</p> <p>20 Margarita Castillo's motion to have a receiver</p> <p>21 appointed?</p> <p>22 A. Xela, or Xela, what it's supporting is</p> <p>23 going to a CCAA as the best alternative to protect the</p> <p>24 rights of all creditors and stockholders.</p> <p>25 10. Q. And the CCAA proceeding being planned</p>	<p>1 17. Q. In preparing for today's cross-</p> <p>2 examination, you reviewed your affidavit again?</p> <p>3 A. Yes.</p> <p>4 18. Q. Did you identify any errors during that</p> <p>5 review?</p> <p>6 MR. OPOLSKY: We have one numerical</p> <p>7 correction and perhaps I will speak to that because</p> <p>8 that would facilitate it.</p> <p>9 MR. WOYCHESHYN: Sure.</p> <p>10 MR. OPOLSKY: I don't believe that it's</p> <p>11 material. But for completeness, at Paragraph 66 of</p> <p>12 the affidavit, the paragraph refers to amounts owing</p> <p>13 from Xela subsidiaries both in 2018 and in 2014.</p> <p>14 Those totals appear in the financial statements but</p> <p>15 are a misreading of the total amount. If I can direct</p> <p>16 your attention to Page 126 of the record, which is at</p> <p>17 Tab E.</p> <p>18 MR. WOYCHESHYN: These are the notes to the</p> <p>19 non-consolidated financial statements for Xela</p> <p>20 Enterprises Ltd for the period ending May 31st, 2015?</p> <p>21 MR. OPOLSKY: That's correct. You'll see</p> <p>22 that on this page it references the approximately</p> <p>23 \$25,000,000.00 figure halfway down the page.</p> <p>24 MR. WOYCHESHYN: Yes.</p> <p>25 MR. OPOLSKY: That figure is not the full</p>
Page 7	Page 9
<p>1 to be in preference to the appointment of a receiver?</p> <p>2 A. It is because -- it is our preference</p> <p>3 in the sense that it's the most fair and appropriate</p> <p>4 way to be finding a solution that is equitable and</p> <p>5 reasonable for all creditors without exception,</p> <p>6 including Margarita Castillo, and also to protect the</p> <p>7 rights of stockholders.</p> <p>8 11. Q. I didn't ask you why you prefer one</p> <p>9 method over the other, I just asked whether you prefer</p> <p>10 a CCAA over the receiver. I take your answer as being</p> <p>11 yes. Do I have that right?</p> <p>12 A. Yes, it is.</p> <p>13 12. Q. Do you prefer Xela or Xela?</p> <p>14 A. Either way. It's no preference.</p> <p>15 13. Q. You have a copy of your affidavit in</p> <p>16 front of you, sir?</p> <p>17 A. Yes, I do.</p> <p>18 14. Q. I take it before you swore your</p> <p>19 affidavit you reviewed it carefully?</p> <p>20 A. Yes.</p> <p>21 15. Q. You wanted to make sure it was accurate</p> <p>22 --</p> <p>23 A. Yes.</p> <p>24 16. Q. -- and truthful?</p> <p>25 A. Yes.</p>	<p>1 total, which should be at the bottom of the page,</p> <p>2 which is 38.8 million.</p> <p>3 MR. WOYCHESHYN: Right.</p> <p>4 MR. OPOLSKY: Similarly, in 2018, if I can</p> <p>5 direct you to Page 142 of the record.</p> <p>6 MR. WOYCHESHYN: These are the notes to the</p> <p>7 non-consolidated statements of operations for Xela</p> <p>8 Enterprises for the period ending May 31st, 2018?</p> <p>9 MR. OPOLSKY: That's correct. You'll see on</p> <p>10 Page 142 of the record the figure of approximately</p> <p>11 \$8,000,000.00 near the end of the page?</p> <p>12 MR. WOYCHESHYN: Yes.</p> <p>13 MR. OPOLSKY: Again, that figure omitted</p> <p>14 some of the other line items and should be, if you</p> <p>15 flip over the page to Page 143, approximately</p> <p>16 \$22,000,000.00. I don't believe that this materially</p> <p>17 changes the content of the affidavit. But if you</p> <p>18 would like a revised affidavit, we'd be happy to</p> <p>19 provide it.</p> <p>20 BY MR. WOYCHESHYN:</p> <p>21 19. Q. No, that's fine. You adopt those</p> <p>22 corrections that your counsel just stated on the</p> <p>23 record, Mr. Gutierrez?</p> <p>24 A. Yes.</p> <p>25 20. Q. Other than those changes, no other</p>

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<p>1 changes to your affidavit, sir?</p> <p>2 A. Not that I'm aware of.</p> <p>3 21. Q. So as far as you're aware, your</p> <p>4 affidavit remains accurate and truthful?</p> <p>5 A. Yes.</p> <p>6 22. Q. Your affidavit starts by listing your</p> <p>7 name and says that you live in the city of Toronto.</p> <p>8 Is that correct, sir?</p> <p>9 A. That's correct.</p> <p>10 23. Q. What's your address?</p> <p>11 A. It's 47 York Mills Road, Unit 212,</p> <p>12 Toronto.</p> <p>13 24. Q. I'm showing you, sir, a letter and a</p> <p>14 notice of examination from my office to one of your</p> <p>15 counsel at Torys LLP. The letter is dated June 25,</p> <p>16 2009 and attaches a notice of examination for today's</p> <p>17 date. Do you see that?</p> <p>18 A. Yes.</p> <p>19 25. Q. Have you seen this document before?</p> <p>20 A. This page, yes.</p> <p>21 MR. WOYCHESHYN: If we can mark that as the</p> <p>22 first exhibit.</p> <p>23 --- EXHIBIT NO. A: Letter to Torys LLP and Notice of</p> <p>24 Examination</p> <p>25 BY MR. WOYCHESHYN:</p>	<p>1 BY MR. WOYCHESHYN:</p> <p>2 27. Q. Thank you. Mr. Gutierrez, just to</p> <p>3 clear up some nomenclature for today's examination.</p> <p>4 We already talked about Xela. And when I'm referring</p> <p>5 to Xela, I'm referring to Xela Enterprises Ltd, and</p> <p>6 you're comfortable with that?</p> <p>7 A. Sorry?</p> <p>8 28. Q. When I refer to Xela Enterprises Ltd</p> <p>9 today, I'm going to call it Xela.</p> <p>10 A. Yes. That's okay.</p> <p>11 29. Q. You're comfortable with that?</p> <p>12 A. Yes.</p> <p>13 30. Q. When I refer to Lisa -- L-I-S-A,</p> <p>14 capital S period, capital A period -- I'll just refer</p> <p>15 to it as Lisa, and you're comfortable with that?</p> <p>16 A. Yes.</p> <p>17 31. Q. If you could turn, please, sir, to</p> <p>18 exhibit ---</p> <p>19 MR. OPOLSKY: Before we do that, can we go</p> <p>20 off the record to discuss keeping track of the</p> <p>21 exhibits?</p> <p>22 MR. WOYCHESHYN: Sure.</p> <p>23 --- OFF THE RECORD (12:45 P.M.) ---</p> <p>24 --- UPON RESUMING (12:45 P.M.) ---</p> <p>25 BY MR. WOYCHESHYN:</p>
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<p>1 26. Q. I take it you have not brought any</p> <p>2 documents with you today, sir?</p> <p>3 MR. OPOLSKY: Counsel, the request -- Mr.</p> <p>4 Gutierrez has not brought any documents with him.</p> <p>5 MR. WOYCHESHYN: I take it in support of the</p> <p>6 application that Xela is making, the evidence will be</p> <p>7 the affidavit of Mr. Gutierrez, the attachments</p> <p>8 thereto and the transcript from this cross-</p> <p>9 examination?</p> <p>10 MR. OPOLSKY: That's our understanding,</p> <p>11 subject to, of course, any report that the proposed</p> <p>12 monitor puts in.</p> <p>13 MR. WOYCHESHYN: Do you anticipate such a</p> <p>14 report coming up pre the hearing?</p> <p>15 MR. OPOLSKY: That's our understanding, but</p> <p>16 we don't control the monitor and that will be up to</p> <p>17 the monitor.</p> <p>18 MR. WOYCHESHYN: Well, the report won't come</p> <p>19 pre filing the application, right?</p> <p>20 MR. OPOLSKY: The application has been</p> <p>21 filed, but there will be a -- I anticipate that there</p> <p>22 will be a report of the proposed monitor in support of</p> <p>23 the CCAA filing, which is custom. However, I'm not</p> <p>24 the monitor nor am I counsel to the monitor, so your</p> <p>25 questions are best posed to those parties.</p>	<p>1 32. Q. If you could turn to Exhibit M as in</p> <p>2 Mary of your affidavit, sir. This is, as I understand</p> <p>3 it, the current organizational chart of Xela, is that</p> <p>4 right?</p> <p>5 A. It is right.</p> <p>6 33. Q. So if we look on the left-hand side of</p> <p>7 Exhibit M, this is Page 231 of the application record,</p> <p>8 we see at the very top the Gutierrez family ultimate</p> <p>9 beneficiary dash shareholders of Xela and then towards</p> <p>10 the left, one of the subsidiaries of Xela is a company</p> <p>11 called Gabinvest S.A., G-A-B-I-N-V-E-S-T?</p> <p>12 A. That's correct.</p> <p>13 34. Q. Xela owns 100 percent of Gabinvest?</p> <p>14 A. That's correct.</p> <p>15 35. Q. And one of, if we follow the lines, one</p> <p>16 of the subsidiaries of Gabinvest is Lisa, the company</p> <p>17 we just mentioned before, right?</p> <p>18 A. That's correct.</p> <p>19 36. Q. Gabinvest owns 100 percent of Lisa's</p> <p>20 shares?</p> <p>21 A. Correct.</p> <p>22 37. Q. Then Lisa in turn holds a 33.33 percent</p> <p>23 interest in Avicola?</p> <p>24 A. Yes. It's a group of companies.</p> <p>25 38. Q. Right. So for today's examination,</p>



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<p>1 when I refer to Avicola, I will be referring to each 2 of those group of companies. Is that acceptable to 3 you? 4 A. To each of them or to all of them? 5 39. Q. Collectively. Collectively to all of 6 them. 7 A. Okay. 8 40. Q. Is that fair? 9 A. That's correct. That's a group. 10 41. Q. Your affidavit makes references in a 11 number of instances to the Cousins -- capital C 12 Cousins, spelled like the family. I just want to be 13 sure that I know which individuals you're referring 14 to. So I take it that when you say Cousins in your 15 affidavit, you're referring to four individuals: Juan 16 Luis Bosch Gutierrez, Felipe Antonio Bosch Gutierrez, 17 Dionisio Gutierrez Mayorga and Juan Jose Gutierrez 18 Mayorga? 19 A. Mainly them, yes. 20 42. Q. Who else is included in the Cousins 21 when you use it? 22 A. Well, they all have siblings and there 23 is also an aunt and they all form the same group. So 24 but the four you mentioned are the controlling parties 25 of this issue.</p>	<p>1 52. Q. And in best interest of Xela? 2 A. Correct. 3 53. Q. I take it at all times you did your 4 best and do your best, sir, to meet those duties? 5 A. That's correct. 6 54. Q. Xela has two directors right now, is 7 that right? 8 A. That's correct. 9 55. Q. You're one director? 10 A. Yes. 11 56. Q. Calvin Shields is the other director? 12 A. Correct. 13 57. Q. Mr. Shields is about 88 years old? 14 A. I don't know his exact age, but it's 15 probably around there. 16 58. Q. You know him to be in his eighties for 17 sure? 18 A. Absolutely. Yeah. 19 59. Q. He lives in Florida? 20 A. Correct. 21 60. Q. Does Xela hold any board meetings? 22 A. We haven't had one for a while. 23 Recently had one. 24 61. Q. I understood that prior to the last six 25 months, Xela's last board meeting was in 2016. Does</p>
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<p>1 43. Q. The aunt that you mentioned in your 2 last response, sir, that's Isabelle Gutierrez De 3 Bosch? 4 A. Correct. 5 44. Q. When you use the word Cousins, it's 6 those five individuals plus their sibling relatives? 7 A. Correct. 8 45. Q. Let's talk, sir, about your role with 9 Xela. You're the president of Xela? 10 A. That's correct. 11 46. Q. You've had that role since 2000? 12 A. Correct. 13 47. Q. You've been a director of Xela 14 throughout that period as well? 15 A. Yes. 16 48. Q. As president of Xela I take it you 17 understand you have various duties that you owe to the 18 company? 19 A. Yes, I do. 20 49. Q. You have a duty to act honestly? 21 A. Pardon? 22 50. Q. You have a duty to act honestly? 23 A. Of course. 24 51. Q. In good faith? 25 A. Yes.</p>	<p>1 that sound right? 2 A. I don't recall exactly when that may 3 have been. 4 62. Q. When was the most recent board meeting 5 of Xela? 6 A. I don't remember the exact date, but it 7 was a week or two weeks ago. 8 63. Q. Was that a face to face meeting with 9 you and Mr. Shields? 10 A. It was done over the telephone 11 conference. 12 64. Q. Are there any minutes from that 13 meeting? 14 A. There is one, yes. 15 MR. WOYCHESHYN: Subject to any claims for 16 privilege, which I'm sure you'll let me know, Counsel, 17 can we get a copy of the minutes? 18 MR. OPOLSKY: Yes. 19 --- UNDERTAKING NO. 1 20 BY MR. WOYCHESHYN: 21 65. Q. Leaving aside the two directors, I take 22 it your evidence, sir, is you're the only officer of 23 Xela? 24 A. Correct. 25 66. Q. If you could turn up Paragraph 42 of</p>

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<p>1 your affidavit, sir? This is Page 11 of your</p> <p>2 affidavit, Page 20 of the application record.</p> <p>3 A. Page 20?</p> <p>4 67. Q. Yes. Paragraph 42.</p> <p>5 A. Forty-two.</p> <p>6 68. Q. You state, "In my role as president, I</p> <p>7 am the only current member of Xela's executive</p> <p>8 management team." I just want to make sure that we're</p> <p>9 using similar language. When you say you're the only</p> <p>10 current member of Xela's executive management team,</p> <p>11 are you saying that you're Xela's only officer?</p> <p>12 A. I'm the only officer, the only</p> <p>13 executive, the only employee. There's nobody else</p> <p>14 working at Xela.</p> <p>15 69. Q. Are you an employee of Xela?</p> <p>16 A. I don't know if technically yes because</p> <p>17 I haven't been paid in years, but I am representing</p> <p>18 Xela. I'm the only one there.</p> <p>19 70. Q. You say that's been for years?</p> <p>20 A. Correct.</p> <p>21 71. Q. You know who Juan Jose Rodriguez is?</p> <p>22 A. Yes, I do.</p> <p>23 72. Q. He is a U.S. attorney with the law firm</p> <p>24 Carey Rodriguez?</p> <p>25 A. Correct.</p>	<p>1 78. Q. Then if we go to Page 3 of this</p> <p>2 document, we see your name as a director and officer</p> <p>3 since 19 -- as a director since 1998 and an officer</p> <p>4 since 2000 and then on Page 4 it lists Juan Jose</p> <p>5 Rodriguez as an officer. Do you see that?</p> <p>6 A. Yes.</p> <p>7 79. Q. According to this, it says he was an</p> <p>8 officer starting in April 2012. I take it your</p> <p>9 evidence, sir, is he is no longer an officer?</p> <p>10 A. He's no longer.</p> <p>11 80. Q. When did that cease to be the case?</p> <p>12 A. I don't recall. I don't. It's a long</p> <p>13 time ago.</p> <p>14 81. Q. Can I get an undertaking for the date</p> <p>15 of his resignation or removal as an officer, please?</p> <p>16 MR. OPOLSKY: I'll take that under</p> <p>17 advisement.</p> <p>18 --- UNDER ADVISEMENT NO. 1</p> <p>19 BY MR. WOYCHESHYN:</p> <p>20 82. Q. So your evidence, sir, is this</p> <p>21 corporate profile report just hasn't been updated?</p> <p>22 A. Obviously not because he's not a</p> <p>23 director anymore.</p> <p>24 83. Q. Sorry, just to be clear, it doesn't</p> <p>25 list him as a director. It lists him as an officer.</p>
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<p>1 73. Q. That's based in Miami?</p> <p>2 A. Correct.</p> <p>3 74. Q. I understand that he has been</p> <p>4 representing Xela's interest in the Avicola litigation</p> <p>5 in the U.S., is that right?</p> <p>6 A. Xela hasn't been involved in the</p> <p>7 Avicola litigation directly. It's always been Lisa</p> <p>8 who is the one that holds those shares.</p> <p>9 75. Q. But with respect to Lisa, Juan</p> <p>10 Rodriguez is the advisor to Lisa in the U.S.?</p> <p>11 MR. OPOLSKY: You can answer whether he's on</p> <p>12 the record, but I would counsel you to not discuss</p> <p>13 anything that relates to advice he's given you or any</p> <p>14 communications you've had with him.</p> <p>15 THE DEPONENT: Yeah. He has been in the</p> <p>16 record.</p> <p>17 BY MR. WOYCHESHYN:</p> <p>18 76. Q. I'm showing you a corporate profile</p> <p>19 search for Xela today, pulled today. Sorry. You see</p> <p>20 at the top right-hand corner it says June 26, 2019?</p> <p>21 A. Yes.</p> <p>22 77. Q. Then the registered office is 2225</p> <p>23 Sheppard Avenue East. We can agree that that's the</p> <p>24 old address of Xela?</p> <p>25 A. That's correct.</p>	<p>1 A. Or an officer. Sorry, I meant an</p> <p>2 officer. He's never been a director.</p> <p>3 MR. WOYCHESHYN: We'll mark that as the next</p> <p>4 exhibit, please.</p> <p>5 --- EXHIBIT NO. B: Corporate profile search for Xela</p> <p>6 dated June 26, 2019</p> <p>7 BY MR. WOYCHESHYN:</p> <p>8 84. Q. Back to Exhibit M as in Mary, sir, of</p> <p>9 your affidavit, Page 231 on the application record. I</p> <p>10 know we talked about Gabinvest and Lisa on the left-</p> <p>11 hand side of the diagram, but if we turn to the right-</p> <p>12 hand side, we also see that there's a subsidiary</p> <p>13 called -- and pardon my Spanish -- but Empresas Arturo</p> <p>14 International?</p> <p>15 A. That's correct.</p> <p>16 85. Q. That's a hundred percent -- Xela owns</p> <p>17 100 percent of Empresas Arturo International?</p> <p>18 A. That's correct.</p> <p>19 86. Q. That's a Barbadian company?</p> <p>20 A. Yes.</p> <p>21 87. Q. I take it it has held that interest in</p> <p>22 Empresas Arturo International for a number of years?</p> <p>23 A. Yes.</p> <p>24 88. Q. I take it that the Arturo name comes</p> <p>25 from your father?</p>

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<p>1 A. That's correct.</p> <p>2 89. Q. Then moving to the left on Page 231,</p> <p>3 Exhibit M of your affidavit, it lists Tropic</p> <p>4 International Ltd that Xela holds a 56.6 percent</p> <p>5 interest in that company. Do you see that?</p> <p>6 A. Yes.</p> <p>7 90. Q. You acknowledge, sir, that Margarita</p> <p>8 Castillo owns the other 44.4 percent?</p> <p>9 A. Yes, that's correct.</p> <p>10 91. Q. Then underneath Tropic is Fresh Quest</p> <p>11 Inc. and, according to this, it says it's closed. Did</p> <p>12 I see that right?</p> <p>13 A. That's correct.</p> <p>14 92. Q. And do I have it right that as of in</p> <p>15 late 2015 is when all the assets of Fresh Quest were</p> <p>16 sold?</p> <p>17 A. Fresh Quest, yes, it closed then.</p> <p>18 Fresh Question didn't have any assets, just an office.</p> <p>19 93. Q. Let me rephrase. The only asset that</p> <p>20 Tropic had was its interest in Fresh Quest, right?</p> <p>21 A. That's correct.</p> <p>22 94. Q. So with the closing of Fresh Quest,</p> <p>23 Tropic has no assets, right?</p> <p>24 A. That's correct.</p> <p>25 95. Q. Back to the left-hand side of the</p>	<p>1 101. Q. I take it that no independent valuation</p> <p>2 has been conducted by a business valuer of the Avicola</p> <p>3 shares?</p> <p>4 A. There's been several valuations done,</p> <p>5 but they have been all done by people related to us.</p> <p>6 Yes.</p> <p>7 102. Q. So no independent valuer has valued the</p> <p>8 Avicola shares?</p> <p>9 A. Independ -- in the past it was. Not</p> <p>10 recently.</p> <p>11 103. Q. When you say ---</p> <p>12 A. But it was -- it was done twice in the</p> <p>13 past.</p> <p>14 104. Q. In the past five years has a valuation</p> <p>15 been done?</p> <p>16 A. No. It's farther than that.</p> <p>17 105. Q. At Exhibit B to your affidavit, B as in</p> <p>18 Bob, you include a slide deck from Eduardo San Juan.</p> <p>19 A. Yes.</p> <p>20 106. Q. Mr. San Juan, he is an employee of one</p> <p>21 of Xela's subsidiaries?</p> <p>22 A. It was.</p> <p>23 107. Q. He was?</p> <p>24 A. It was. Yeah. He's not currently</p> <p>25 working for Xela or its direct subsidiaries.</p>
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<p>1 diagram and talking about Lisa's interest in Avicola.</p> <p>2 We went through the sequence, but we can agree that</p> <p>3 Lisa is the indirectly wholly owned subsidiary of</p> <p>4 Xela?</p> <p>5 A. Correct.</p> <p>6 96. Q. When I use the phrase Avicola shares,</p> <p>7 can we agree that what I'm referring to is Lisa's</p> <p>8 interest in the Avicola group?</p> <p>9 A. Can you repeat the question?</p> <p>10 97. Q. Sure. When I use the phrase the</p> <p>11 Avicola or the Avicola shares, what I'm referring to</p> <p>12 is Lisa's one-third interest in the Avicola group. Is</p> <p>13 that acceptable to you?</p> <p>14 A. Yes.</p> <p>15 98. Q. We can agree, sir, that the Avicola</p> <p>16 shares are by far the most valuable asset of any asset</p> <p>17 that is owned by Xela or any of its subsidiaries?</p> <p>18 A. Yes.</p> <p>19 99. Q. I take it we can agree that other than</p> <p>20 the Avicola shares, there is no realizable value in</p> <p>21 any of Xela's direct or indirect subsidiaries?</p> <p>22 A. That's correct.</p> <p>23 100. Q. And the value of the Avicola shares is</p> <p>24 potentially hundreds of millions of dollars?</p> <p>25 A. Correct.</p>	<p>1 108. Q. Okay. But he had ---</p> <p>2 MR. OPOLSKY: I'm sorry, Counsel. Was your</p> <p>3 question at the time that he did this valuation or is</p> <p>4 your question did he ever work for Xela?</p> <p>5 BY MR. WOYCHESHYN:</p> <p>6 109. Q. The question is he is an employee of a</p> <p>7 Xela subsidiary and the answer was he's no longer an</p> <p>8 employee --</p> <p>9 A. Correct.</p> <p>10 110. Q. -- of Xela or any of its subsidiaries.</p> <p>11 When did he stop being an employee?</p> <p>12 A. I don't -- I don't know for exact date.</p> <p>13 I would have to check, but I don't know.</p> <p>14 111. Q. Can you advise me of that, please?</p> <p>15 MR. OPOLSKY: I will take it under</p> <p>16 advisement.</p> <p>17 --- UNDER ADVISEMENT NO. 2</p> <p>18 BY MR. WOYCHESHYN:</p> <p>19 112. Q. The slide deck that you provided is in</p> <p>20 Spanish, and Footnote 1 of your affidavit says that a</p> <p>21 translation is underway and will be provided in a</p> <p>22 supplementary affidavit. We don't have a</p> <p>23 supplementary affidavit. Do you have a translation of</p> <p>24 this slide deck, sir?</p> <p>25 MR. OPOLSKY: We're in the process of</p>

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<p>1 getting that to you. We have a version of the</p> <p>2 translation. We need to put it in a sworn affidavit</p> <p>3 and we will get it to you.</p> <p>4 --- UNDERTAKING NO. 2</p> <p>5 BY MR. WOYCHESHYN:</p> <p>6 113. Q. Thank you. We can agree, though, that</p> <p>7 to your knowledge, Mr. Gutierrez, that Eduardo San</p> <p>8 Juan is not a chartered business valuer?</p> <p>9 A. I don't know for sure if he has a</p> <p>10 chartered or not. But he's an expert finance guy and</p> <p>11 he's done many valuations.</p> <p>12 114. Q. Do you still have communications with</p> <p>13 him?</p> <p>14 A. Yes. I can communicate with him.</p> <p>15 115. Q. Can you ask him whether he is a</p> <p>16 chartered or certified business valuer?</p> <p>17 MR. OPOLSKY: We'll take that under</p> <p>18 advisement.</p> <p>19 --- UNDER ADVISEMENT NO. 3</p> <p>20 BY MR. WOYCHESHYN:</p> <p>21 116. Q. In your affidavit, sir, you mention</p> <p>22 that practically the only buyer of the Avicola shares</p> <p>23 is the Cousins, do I have that right?</p> <p>24 A. That's correct.</p> <p>25 117. Q. Has Xela ever tried to market the</p>	<p>1 understand we're getting a translated copy. But Mr.</p> <p>2 San Juan's evidence, according to you, in the slide</p> <p>3 deck, is that the share value of the Avicola shares is</p> <p>4 approximately U.S. 550,000,000, I have that right?</p> <p>5 A. Yes. That's correct.</p> <p>6 124. Q. I take it you adopt that as, from your</p> <p>7 perspective, a fair amount in terms of the amount that</p> <p>8 they're worth?</p> <p>9 A. It's an amount sustained by the</p> <p>10 valuation and the information available for doing it.</p> <p>11 125. Q. Right. But what I'm curious is, do you</p> <p>12 support that evidence or do you say that the value is</p> <p>13 actually lower than 550,000,000?</p> <p>14 A. I think the value is likely to be</p> <p>15 higher than that.</p> <p>16 126. Q. So at a minimum it's 550,000,000 U.S.?</p> <p>17 A. Correct.</p> <p>18 127. Q. We can agree that Xela is not an</p> <p>19 operating business?</p> <p>20 A. That's correct.</p> <p>21 128. Q. We can agree that Xela is in liquidity</p> <p>22 crisis?</p> <p>23 A. Yes.</p> <p>24 129. Q. Xela is insolvent?</p> <p>25 A. I think so.</p>
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<p>1 Avicola shares to someone outside the family?</p> <p>2 A. We have attempted to find potential</p> <p>3 buyers unsuccessfully.</p> <p>4 118. Q. When is the last time you tried that?</p> <p>5 A. I don't recall. But it's -- I don't</p> <p>6 remember. I can't tell you a date because I don't</p> <p>7 remember the date.</p> <p>8 119. Q. Fair enough that it's been over five</p> <p>9 years?</p> <p>10 A. Yes.</p> <p>11 120. Q. I take it that your evidence and</p> <p>12 certainly your belief is that the value of the Avicola</p> <p>13 shares would certainly be greater than Xela's</p> <p>14 liabilities?</p> <p>15 A. Absolutely.</p> <p>16 121. Q. I think based on your affidavit you say</p> <p>17 that the -- you believe the unpaid dividends owing to</p> <p>18 Lisa to be approximately 360,000,000 U.S.?</p> <p>19 A. Yes.</p> <p>20 122. Q. And that's just for the unpaid</p> <p>21 dividends? That's not the share value?</p> <p>22 A. That amount is on paid dividends plus</p> <p>23 interests.</p> <p>24 123. Q. Then if we look at Paragraph 13 of your</p> <p>25 affidavit, you refer to the slide deck, which I</p>	<p>1 130. Q. Well, let's look at Paragraph 38 of</p> <p>2 your affidavit.</p> <p>3 A. Sorry, what paragraph?</p> <p>4 131. Q. Thirty-eight, pardon me.</p> <p>5 A. Thirty-eight.</p> <p>6 132. Q. You say in your second sentence, "As</p> <p>7 described below, Xela has no active operations and is</p> <p>8 insolvent." You see that?</p> <p>9 A. Yes.</p> <p>10 133. Q. Then turn over to Paragraph 47 of your</p> <p>11 affidavit. Page 21 of the record you start Paragraph</p> <p>12 47 with, "Xela is insolvent," right?</p> <p>13 A. Yes.</p> <p>14 134. Q. So we can agree that Xela is insolvent?</p> <p>15 A. Yes, I did. I did already agree.</p> <p>16 135. Q. Just so we're using that term in the</p> <p>17 same fashion, sir, when you use the word insolvent, is</p> <p>18 it fair to say that what you mean by that is Xela is</p> <p>19 unable to pay its liabilities as they become due?</p> <p>20 MR. OPOLSKY: I think that's a legal</p> <p>21 question and he's referring to ---</p> <p>22 MR. WOYCHESHYN: No, it's not. He used the</p> <p>23 word. I'm trying to understand what he means by it.</p> <p>24 MR. OPOLSKY: Well, nonetheless, it's a</p> <p>25 defined term under the CCAA and there are several</p>

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<p>1 criteria under it and it is ---</p> <p>2 MR. WOYCHESHYN: Counsel, I don't need to</p> <p>3 know what the legal definition is. I don't need to</p> <p>4 know what the CCAA says. Your client used the word</p> <p>5 twice in his affidavit and I'm entitled to understand</p> <p>6 what he meant by that. So I'm putting to him a</p> <p>7 proposition that's a definition and if he accepts it,</p> <p>8 fine; if he doesn't and has a different definition,</p> <p>9 that's fine.</p> <p>10 MR. OPOLSKY: Nonetheless, it is a legal</p> <p>11 term and he's invoking the legal term with respect to</p> <p>12 the CCAA and it is ---</p> <p>13 MR. WOYCHESHYN: Sorry, let him answer that.</p> <p>14 I don't need you to answer that. It's his affidavit,</p> <p>15 his words. I'm cross-examining him.</p> <p>16 MR. OPOLSKY: I understand that. But you're</p> <p>17 cross-examining him on ---</p> <p>18 MR. WOYCHESHYN: On the word that he used.</p> <p>19 MR. OPOLSKY: Nonetheless, you're cross-</p> <p>20 examining him on ---</p> <p>21 MR. WOYCHESHYN: To ask him the definition</p> <p>22 of the word that he used, his understanding of the</p> <p>23 word. There is nothing improper about the question.</p> <p>24 MR. OPOLSKY: You're doing it in reference</p> <p>25 to the legal standard.</p>	<p>1 ask the question and he will answer.</p> <p>2 BY MR. WOYCHESHYN:</p> <p>3 136. Q. Yes. When you used the word insolvent,</p> <p>4 sir, what you mean is Xela is unable to pay its</p> <p>5 liabilities as they become due, right?</p> <p>6 A. What I mean is that at the current</p> <p>7 state Xela is not in a position to do so, but it will</p> <p>8 ---</p> <p>9 137. Q. To pay its liabilities as they become</p> <p>10 due, right?</p> <p>11 A. At this current moment and the current</p> <p>12 state, but that -- that can be changed any moment.</p> <p>13 138. Q. Understood. But in that current state,</p> <p>14 we can agree that Xela has been insolvent since 2015?</p> <p>15 A. I don't know if exactly that date</p> <p>16 applies.</p> <p>17 139. Q. So let's look. Stay with Paragraph 48</p> <p>18 of your affidavit. The last sentence: "Since 2015</p> <p>19 Xela has maintained a deficit of liabilities in excess</p> <p>20 of assets totalling more than \$50,000,000.00." Do you</p> <p>21 see that?</p> <p>22 A. Yes.</p> <p>23 140. Q. So can we agree that Xela has been</p> <p>24 insolvent since 2015?</p> <p>25 A. Xela has been having difficulties</p>
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<p>1 MR. WOYCHESHYN: And if he has a different</p> <p>2 understanding, he can tell me. All I want to know is</p> <p>3 what he understood when he used that word.</p> <p>4 MR. OPOLSKY: Well, then you -- then ask</p> <p>5 him. But instead of you putting to him a defined term</p> <p>6 in the CCAA ---</p> <p>7 MR. WOYCHESHYN: No. So what's your</p> <p>8 objection?</p> <p>9 MR. OPOLSKY: My objection is that's a legal</p> <p>10 question. The answer is -- Xela's legal position is</p> <p>11 that all the criteria of the CCAA are...</p> <p>12 MR. WOYCHESHYN: Your objection is that my</p> <p>13 question about what I purport that he meant when he</p> <p>14 used a word is a legal question?</p> <p>15 MR. OPOLSKY: My objection is that he's not</p> <p>16 a lawyer.</p> <p>17 MR. WOYCHESHYN: I know he's not a lawyer</p> <p>18 and that's why I'm asking him what he meant by the</p> <p>19 word.</p> <p>20 MR. OPOLSKY: Well, you're putting to him a</p> <p>21 legal standard for the CCAA without identifying it as</p> <p>22 such.</p> <p>23 MR. WOYCHESHYN: He can agree with it or he</p> <p>24 can disagree with it. It's not a legal question.</p> <p>25 MR. OPOLSKY: Okay. Well then can you re-</p>	<p>1 paying bills for a while. It's in a more difficult</p> <p>2 situation today than it was before.</p> <p>3 141. Q. Okay. So you used the word insolvent,</p> <p>4 sir, and you said we agreed that Xela is currently</p> <p>5 insolvent. On your evidence, when did Xela become</p> <p>6 insolvent?</p> <p>7 MR. OPOLSKY: Hold on. Again, my objection</p> <p>8 is --</p> <p>9 MR. WOYCHESHYN: On his --</p> <p>10 MR. OPOLSKY: -- that you're ask ---</p> <p>11 MR. WOYCHESHYN: -- understanding of the</p> <p>12 term.</p> <p>13 MR. OPOLSKY: But you're using a legally</p> <p>14 defined term and asking him for a legal conclusion.</p> <p>15 MR. WOYCHESHYN: No, I'm not. I'm using the</p> <p>16 definition that he adopted and I'm asking him when</p> <p>17 Xela became insolvent. There is absolutely nothing</p> <p>18 improper with that question.</p> <p>19 MR. OPOLSKY: Well, you're again -- the word</p> <p>20 insolvent --</p> <p>21 MR. WOYCHESHYN: You can object.</p> <p>22 MR. OPOLSKY: -- is ---</p> <p>23 MR. WOYCHESHYN: If you have an objection,</p> <p>24 state it. But we're not going to go through this all</p> <p>25 day. So if you're not letting him answer the</p>

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<p>1 question, refuse it and I'll move on.</p> <p>2 MR. OPOLSKY: I'm objecting to your use of</p> <p>3 the word insolvent. Please ask your question in a</p> <p>4 different way and he can answer the question.</p> <p>5 BY MR. WOYCHESHYN:</p> <p>6 142. Q. Okay. At Paragraph 47 of your</p> <p>7 affidavit, sir, Xela is insolvent. You see that?</p> <p>8 A. Yes.</p> <p>9 143. Q. That is the current state of affairs,</p> <p>10 right?</p> <p>11 A. Correct.</p> <p>12 144. Q. When did Xela become insolvent --</p> <p>13 MR. OPOLSKY: Sorry. That's ---</p> <p>14 BY MR. WOYCHESHYN:</p> <p>15 145. Q. -- based on your use of that word?</p> <p>16 A. It's not -- it's not an exact date. I</p> <p>17 cannot tell you an exact date because there's not an</p> <p>18 exact date. It is insolvent as we're speaking, as</p> <p>19 this document was drafted.</p> <p>20 146. Q. So you're the president and director of</p> <p>21 Xela and you have no idea when Xela became insolvent?</p> <p>22 Is that your evidence?</p> <p>23 MR. OPOLSKY: I'm going to object to that</p> <p>24 question again. Don't answer that question.</p> <p>25 MR. WOYCHESHYN: On what grounds?</p>	<p>1 147. Q. Are you able to answer that by way of</p> <p>2 undertaking?</p> <p>3 MR. OPOLSKY: We will take it under</p> <p>4 advisement.</p> <p>5 --- UNDER ADVISEMENT NO. 4</p> <p>6 BY MR. WOYCHESHYN:</p> <p>7 148. Q. Can we agree that how you use the term</p> <p>8 insolvent in Paragraph 47 of your affidavit that Xela</p> <p>9 has been insolvent within that meaning since at least</p> <p>10 January of 2017?</p> <p>11 A. Since January 2017?</p> <p>12 149. Q. Correct.</p> <p>13 A. I don't recall the exact dates when --</p> <p>14 when the bank accounts were seized, or frozen -- I</p> <p>15 don't know the term -- but that would be the moment</p> <p>16 when -- when that would be.</p> <p>17 150. Q. Sometime in 2017?</p> <p>18 A. I think that's correct.</p> <p>19 151. Q. If you have a different recollection,</p> <p>20 you'll let me know by way of undertaking?</p> <p>21 A. I'm not certain about the year.</p> <p>22 MR. OPOLSKY: He asked for an undertaking.</p> <p>23 We'll take that -- just to clarify, your request is if</p> <p>24 Mr. Gutierrez has a different understanding of when</p> <p>25 those events came to pass that he would let you know?</p>
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<p>1 MR. OPOLSKY: On the grounds that you're</p> <p>2 asking him for a legal conclusion. The word insolvent</p> <p>3 is defined with three criteria in the CCAA. You're</p> <p>4 asking him for a legal conclusion.</p> <p>5 MR. WOYCHESHYN: Counsel, you're interfering</p> <p>6 with the cross. I'm asking him repeatedly for his</p> <p>7 understanding of the word insolvent; he has given that</p> <p>8 to me. Now I'm trying to understand when Xela</p> <p>9 insolvent based on how he understands that term.</p> <p>10 There is nothing legal about that at all.</p> <p>11 MR. OPOLSKY: Is your question -- so I</p> <p>12 understand it -- based on solely that definition that</p> <p>13 he gave you?</p> <p>14 MR. WOYCHESHYN: Yes. When it became</p> <p>15 insolvent.</p> <p>16 MR. OPOLSKY: Which is that they couldn't</p> <p>17 meet their ongoing liabilities when they become</p> <p>18 insolvent?</p> <p>19 MR. WOYCHESHYN: Correct.</p> <p>20 MR. OPOLSKY: Can you answer that question?</p> <p>21 THE DEPONENT: Yeah. There's not -- not a</p> <p>22 very specific date. It's been a gradual process</p> <p>23 caused by multiple situations, including the fact that</p> <p>24 all Xela's bank accounts were frozen.</p> <p>25 BY MR. WOYCHESHYN:</p>	<p>1 MR. WOYCHESHYN: Yes. If it's a year other</p> <p>2 than 2017.</p> <p>3 MR. OPOLSKY: We will give you that</p> <p>4 undertaking.</p> <p>5 --- UNDERTAKING NO. 3</p> <p>6 BY MR. WOYCHESHYN:</p> <p>7 152. Q. Back to your Affidavit, sir. Paragraph</p> <p>8 7. The last sentence at Paragraph 7, which is Page 12</p> <p>9 of the record, "Under the supervision of this court</p> <p>10 and the monitor, Xela will use the stability provided</p> <p>11 by the CCAA to continue its involvement in ongoing</p> <p>12 litigation with a view toward proposing a CCAA plan to</p> <p>13 its creditors that is consistent with the terms of the</p> <p>14 restructuring support agreement." You see that, sir?</p> <p>15 A. Yes.</p> <p>16 153. Q. I read that correctly?</p> <p>17 A. Yes.</p> <p>18 154. Q. I'm correct that no CCAA plan has yet</p> <p>19 been proposed?</p> <p>20 A. That's correct.</p> <p>21 155. Q. I'm correct that the -- it's</p> <p>22 anticipated that no CCAA plan will be proposed until</p> <p>23 monies are recovered in the Lisa versus BDT lawsuit</p> <p>24 currently underway in Florida?</p> <p>25 MR. OPOLSKY: You can answer the question.</p>

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<p>1 THE DEPONENT: Can you ask the question</p> <p>2 again?</p> <p>3 BY MR. WOYCHESHYN:</p> <p>4 156. Q. Yes. Based on the current state of</p> <p>5 affairs, it's anticipated that no CCAA plan will be</p> <p>6 proposed until monies are recovered in the Lisa and</p> <p>7 BDT lawsuit currently underway in Florida?</p> <p>8 A. That's partially correct. Because that</p> <p>9 would be the case if -- but there is a possibility in</p> <p>10 some of the other actions that it could materialize</p> <p>11 sooner.</p> <p>12 157. Q. Just so we're clear, when we refer to</p> <p>13 the Lisa and BDT lawsuit that's currently underway in</p> <p>14 Florida, you refer to that in your affidavit as the</p> <p>15 Florida litigation?</p> <p>16 A. Correct.</p> <p>17 158. Q. There is no other Florida litigation,</p> <p>18 right?</p> <p>19 A. No.</p> <p>20 159. Q. You agree with me?</p> <p>21 A. Yes.</p> <p>22 160. Q. Let's just look at Paragraph 8 of your</p> <p>23 affidavit, sir. You say, "The CCAA plan contemplates</p> <p>24 two things: first BDT, one of Xela's creditors and a</p> <p>25 company involved in the ongoing litigation, will</p>	<p>1 the specific funds are the ones in question.</p> <p>2 167. Q. I see.</p> <p>3 A. It's not if there isn't money that it</p> <p>4 owed. It's just that if the specific funds are the</p> <p>5 ones that corresponding and they will.</p> <p>6 168. Q. Okay. As you understand it, if BDT</p> <p>7 wins the Florida litigation then it will receive the</p> <p>8 \$14,000,000.00?</p> <p>9 A. That's correct.</p> <p>10 169. Q. And as you understand it, if it loses</p> <p>11 the Florida litigation, it will not receive the</p> <p>12 \$14,000,000.00?</p> <p>13 A. That is a possibility, but highly</p> <p>14 unlikely because of the evidence material proves the</p> <p>15 ownership of the money.</p> <p>16 MR. OPOLSKY: Can we clarify for the record</p> <p>17 that when we refer to \$14,000,000.00, we're speaking</p> <p>18 in U.S. currency?</p> <p>19 BY MR. WOYCHESHYN:</p> <p>20 170. Q. Correct. Yes. Thank you. That</p> <p>21 Florida litigation is scheduled for a trial I</p> <p>22 understand in November of 2019?</p> <p>23 A. November of this year. Yes.</p> <p>24 171. Q. Just so I'm clear then, based on what</p> <p>25 you last said, Paragraph 8 of your affidavit when you</p>
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<p>1 contribute \$6.3 million from proceeds received as a</p> <p>2 result of the litigation, which will be used to fund</p> <p>3 distributions to Xela's other creditors, including Ms.</p> <p>4 Castillo." The litigation you are referring to in</p> <p>5 that sentence, sir, is the Florida litigation, right?</p> <p>6 A. We're still in Paragraph 8?</p> <p>7 161. Q. Correct.</p> <p>8 A. Yes.</p> <p>9 162. Q. As I understand it, in the Florida</p> <p>10 litigation there is approximately \$13,000,000.00 U.S.</p> <p>11 garnished in a bank account, do I have that right?</p> <p>12 A. That's correct.</p> <p>13 163. Q. And the Florida litigation is to see</p> <p>14 how much of that \$13,000,000.00 BDT can recover, is</p> <p>15 that ---</p> <p>16 MR. OPOLSKY: Fourteen million.</p> <p>17 BY MR. WOYCHESHYN:</p> <p>18 164. Q. Fourteen million dollars.</p> <p>19 A. BDT -- BDT has a right to recover the</p> <p>20 full amount.</p> <p>21 165. Q. Okay. But that is what the litigation</p> <p>22 is about, right?</p> <p>23 A. There's a judgement for that already.</p> <p>24 166. Q. I know.</p> <p>25 A. The only litigation is to determine if</p>	<p>1 say that BDT will contribute \$6.3 million from</p> <p>2 proceeds received as a result of litigation, the</p> <p>3 sequence of events is that BDT first needs to recover</p> <p>4 at least that amount in the Florida litigation, right?</p> <p>5 A. Yes.</p> <p>6 172. Q. And only then will it contribute those</p> <p>7 proceeds to allow Xela to make distributions to the</p> <p>8 creditors, do I have that right?</p> <p>9 A. Yes. Even though there are other cases</p> <p>10 that are being litigated that could come on soon.</p> <p>11 173. Q. I'm only asking about the Florida</p> <p>12 litigation, sir, right now. So I'm clear, the 6.3</p> <p>13 million, I take it, referenced in Paragraph 8 of your</p> <p>14 affidavit, is in Canadian currency?</p> <p>15 A. Yes. Canadian currency. The 6.3.</p> <p>16 174. Q. Can we agree that if BDT loses the</p> <p>17 Florida litigation that there will be no distributions</p> <p>18 to the creditors under the current contemplated CCAA</p> <p>19 plan?</p> <p>20 A. I cannot say that because, as I said</p> <p>21 before, there are other -- other actions being</p> <p>22 litigated, there's other resolutions that are in --</p> <p>23 already in the favour of Lisa that would end up in</p> <p>24 BDT. So we cannot say that it will be the only way.</p> <p>25 It's other options.</p>

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<p>1 175. Q. We just confirmed a moment ago that the 2 6.3 million from BDT, that only relates to the Florida 3 litigation, right? 4 A. Whatever BDT collects on the dividends.</p> <p>5 176. Q. Correct. In the -- 6 A. Not necessarily ---</p> <p>7 177. Q. -- Florida -- in the Florida 8 litigation? 9 A. In the Florida litigation. But if 10 something else comes sooner, it would apply the same.</p> <p>11 178. Q. Is there a trial date set in any of the 12 other litigation matters? 13 A. There's another litigation that's just 14 pending on an appeal resolution.</p> <p>15 179. Q. Where is that? 16 A. In Panama.</p> <p>17 180. Q. What's the judgement? 18 A. That the court ordered that the 19 dividends withheld by Villamorey, which is the 20 Panamanian company that's part of the Avicola group, 21 that the dividends that Villamorey has been holding of 22 Lisa be paid immediately after netting an amount owed 23 by Lisa. That amount would be, according to the court 24 order, paid to the disposition of the different court, 25 which is the 12th District Court, or 12th Circuit --</p>	<p>1 but I can't speak about them because I don't know full 2 knowledge.</p> <p>3 185. Q. Do you know whether there is a trial 4 date currently scheduled in any of the Guatemala 5 proceedings? 6 A. I cannot answer that question with 7 certainty.</p> <p>8 186. Q. Can you answer by way of undertaking? 9 MR. OPOLSKY: We will take that under 10 advisement. 11 --- UNDER ADVISEMENT NO. 5 12 BY MR. WOYCHESHYN:</p> <p>13 187. Q. Does Xela or any of its subsidiaries, 14 including Lisa, currently have any judgements in any 15 of the litigation relating to the Avicola shares? 16 A. I cannot answer that question with 17 certainty because I don't know the details.</p> <p>18 188. Q. If you can answer it by way of 19 undertaking whether Xela or any of its subsidiaries 20 currently has any outstanding judgement anywhere in 21 the world in relation to the Avicola litigation? 22 MR. OPOLSKY: Can you agree, Counsel, that 23 that -- that this undertaking you're requesting 24 subsumes the previous one or are they two separate 25 requests?</p>
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<p>1 I'm not sure how it's called -- which is the one that 2 ruled in favour of BDT. So the funds will go to BDT 3 instead of Lisa.</p> <p>4 181. Q. How much are the dividends under that 5 Panamanian judgement? 6 A. Don't know the -- don't remember the 7 exact number, but if my memory doesn't fail me, it's 8 around \$18,000,000.00 U.S.</p> <p>9 182. Q. Perhaps I'm confused, sir, but I 10 thought that what happened in Florida was an 11 enforcement of that Panamanian decision and that the 12 Panamanian court found roughly \$19,000,000.00 in 13 dividends owing and that what is happening in Florida 14 is a recognition of that Panamanian decision. 15 A. It's part of it, yeah.</p> <p>16 183. Q. You're saying it's part of it. Is it 17 part of it or is it? 18 A. Well, if the Panamanian ruling is paid, 19 the Florida would be redundant, obviously. They're 20 both related.</p> <p>21 184. Q. Thank you. Other than the Panamanian 22 proceeding that you just referred to which is tied to 23 the Florida litigation, any other judgements in - 24 judgements or trials pending? 25 A. There are several ones in Guatemala,</p>	<p>1 MR. WOYCHESHYN: They are two separate 2 requests.</p> <p>3 MR. OPOLSKY: Can you clarify to me what 4 you're asking? 5 MR. WOYCHESHYN: Because one is a trial 6 date. One is a trial date, to see whether there's 7 trial dates; and this is to actually see if there's 8 any outstanding judgements.</p> <p>9 MR. OPOLSKY: Thank you. I'll take both -- 10 the same answer for both.</p> <p>11 MR. WOYCHESHYN: So that's under advisement 12 for both, right? 13 MR. OPOLSKY: Yes.</p> <p>14 --- UNDER ADVISEMENT NO. 6 15 BY MR. WOYCHESHYN:</p> <p>16 189. Q. When I refer to the Avicola litigation, 17 sir, what -- just so we're clear, what I'm referring 18 to is what you describe in Paragraph 7 of your 19 affidavit at Page 11, where you refer to Xela pursuing 20 the restoration of Lisa's shareholder rights and 21 payment of dividends. 22 MR. OPOLSKY: I'm sorry, you're referring to 23 -- 24 MR. WOYCHESHYN: Paragraph 7. 25 MR. OPOLSKY: -- Page 2 of his affidavit or</p>



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<p>1 Page ---</p> <p>2 BY MR. WOYCHESHYN:</p> <p>3 190. Q. Yes. Page 2 of his affidavit. Pardon</p> <p>4 me. You understand what I mean by Avicola</p> <p>5 litigation, sir?</p> <p>6 A. Yes, I do.</p> <p>7 191. Q. The Avicola litigation has been ongoing</p> <p>8 since 1998, do I have that right?</p> <p>9 A. 1999.</p> <p>10 192. Q. 1999. As you say in your affidavit --</p> <p>11 I'm happy to take you to it -- but it's over 100</p> <p>12 lawsuits, right?</p> <p>13 A. Yes.</p> <p>14 193. Q. In multiple jurisdictions?</p> <p>15 A. Correct.</p> <p>16 194. Q. Panama, you mentioned, right?</p> <p>17 A. Correct.</p> <p>18 195. Q. And Guatemala?</p> <p>19 A. Correct.</p> <p>20 196. Q. Canada?</p> <p>21 A. Correct.</p> <p>22 197. Q. And in Florida?</p> <p>23 A. Correct.</p> <p>24 198. Q. So we can agree that the Avicola</p> <p>25 litigation is now 20 years old?</p>	<p>1 exact number.</p> <p>2 MR. OPOLSKY: Counsel, does whether it's</p> <p>3 three or four million, does it really matter?</p> <p>4 MR. WOYCHESHYN: Well, he's not even</p> <p>5 committing to that it's in the ballpark.</p> <p>6 THE DEPONENT: It's in the ballpark.</p> <p>7 BY MR. WOYCHESHYN:</p> <p>8 202. Q. Okay. We can agree?</p> <p>9 A. Between three and four. Somewhere</p> <p>10 around there. I don't know the exact number. You</p> <p>11 asked me for exact number.</p> <p>12 MR. OPOLSKY: Are we satisfied?</p> <p>13 BY MR. WOYCHESHYN:</p> <p>14 203. Q. We're satisfied. That's in U.S. funds,</p> <p>15 right?</p> <p>16 A. Correct.</p> <p>17 204. Q. So no more than 4,000,000 U.S.?</p> <p>18 A. Not substantially more than four. It</p> <p>19 could be four and period, you know? I don't know the</p> <p>20 exact number.</p> <p>21 205. Q. In the past five years -- actually,</p> <p>22 just let me take a step back. That judgement from the</p> <p>23 Bermuda judgement was from 2008, does that sound</p> <p>24 right?</p> <p>25 A. That's correct.</p>
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<p>1 A. Correct.</p> <p>2 199. Q. I know this may be corrected by way of</p> <p>3 undertaking, but my last question with respect to</p> <p>4 judgement was any outstanding judgements that were</p> <p>5 owed to Xela or any of its subsidiaries related to the</p> <p>6 Avicola litigation. This question is a bit different.</p> <p>7 Other than the Bermuda's judgement which was in Xela's</p> <p>8 favour, have there been any other judgements that have</p> <p>9 been paid in Xela or any of its subsidiaries' favour</p> <p>10 in relation to the Avicola litigation?</p> <p>11 A. No other judgement -- no other final</p> <p>12 judgement has been issued other than the one we just</p> <p>13 spoke in Panama, which is under appeal.</p> <p>14 200. Q. The Bermuda judgement that we just</p> <p>15 referenced, we can agree that that was roughly</p> <p>16 \$3,000,000.00 U.S.?</p> <p>17 A. I don't recall the exact number. My</p> <p>18 memory tells me more like four.</p> <p>19 201. Q. I don't mean to be unfair, it's not a</p> <p>20 memory test. One second. Actually, why don't we do</p> <p>21 it this way: if your recollection is that the recovery</p> <p>22 on the Bermuda judgement is something greater than</p> <p>23 U.S. \$3,000,000.00 or was greater than U.S.</p> <p>24 \$3,000,000.00, you'll let me know?</p> <p>25 A. I'm not sure if I can tell you the</p>	<p>1 206. Q. Other than the Panama judgement that</p> <p>2 you referenced earlier, there's no other judgements</p> <p>3 that you can recall at this time?</p> <p>4 A. No final judgements.</p> <p>5 207. Q. In the past five years, has Xela</p> <p>6 received a monetary -- and when I Xela, I mean Xela</p> <p>7 and any of its subsidiaries -- received a monetary</p> <p>8 settlement offer to resolve all the Avicola</p> <p>9 litigation?</p> <p>10 MR. OPOLSKY: Hold on one second. I think</p> <p>11 that would be subject to settlement privilege.</p> <p>12 MR. WOYCHESHYN: No. If it has received an</p> <p>13 offer it wouldn't be privileged.</p> <p>14 MR. OPOLSKY: I think whether it has</p> <p>15 received or given an offer would be both be</p> <p>16 privileged.</p> <p>17 MR. WOYCHESHYN: Disagree.</p> <p>18 MR. OPOLSKY: Well, I'm going to instruct</p> <p>19 you not to answer the question.</p> <p>20 --- REFUSAL NO. 1</p> <p>21 BY MR. WOYCHESHYN:</p> <p>22 208. Q. In the past five years has Xela or any</p> <p>23 of its subsidiaries received an offer -- not telling</p> <p>24 me what the offer is, but have they received an offer</p> <p>25 to pay out any dividends owing to Lisa?</p>

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<p>1 MR. OPOLSKY: Sorry, just so I don't repeat</p> <p>2 my earlier objection, are you asking whether someone</p> <p>3 has come along and said, 'Here, have some money' and</p> <p>4 they've said no, or are you asking whether someone has</p> <p>5 come along and said, 'Here, have some money as long as</p> <p>6 you give up your other rights'? Because one is an</p> <p>7 offer of money and the second is a settlement offer.</p> <p>8 BY MR. WOYCHESHYN:</p> <p>9 209. Q. Either or. Has there been any offer,</p> <p>10 any monetary offer -- not telling me the amount --</p> <p>11 made to Xela with respect to either the Avicola</p> <p>12 litigation or the unpaid dividends?</p> <p>13 MR. OPOLSKY: I'll instruct you that if</p> <p>14 someone has offered Xela or any of its subsidiaries</p> <p>15 money without conditions or a settlement you can</p> <p>16 answer the question, but not to answer any questions</p> <p>17 about settlement offers that you've received.</p> <p>18 THE DEPONENT: Nobody has offered money</p> <p>19 without the condition.</p> <p>20 BY MR. WOYCHESHYN:</p> <p>21 210. Q. The offer with condition that you just</p> <p>22 referred to, again, I don't want to know any details</p> <p>23 about it, but has that been made in the past five</p> <p>24 years?</p> <p>25 MR. OPOLSKY: Hold on. It's the same thing.</p>	<p>1 215. Q. Your evidence is that you -- or you're</p> <p>2 instructed not to answer any questions regarding</p> <p>3 whether any settlement offers have been made in the</p> <p>4 Avicola litigation?</p> <p>5 MR. OPOLSKY: That's correct.</p> <p>6 MR. WOYCHESHYN: And whether there's been</p> <p>7 any offers or payments of future dividends?</p> <p>8 MR. OPOLSKY: If the offer is part of a</p> <p>9 settlement offer, my instructions are not to answer</p> <p>10 questions about the settlement offers received or</p> <p>11 settlement negotiations or any settlement process</p> <p>12 whatsoever.</p> <p>13 MR. WOYCHESHYN: Just for the record, given</p> <p>14 that your client has put those matters in issue in</p> <p>15 Paragraphs 7 and 86 of his affidavit, my position at</p> <p>16 the hearing before Justice McEwen will be that to the</p> <p>17 extent that there is any settlement privilege, that</p> <p>18 settlement privilege was waived when he put forward</p> <p>19 that evidence.</p> <p>20 MR. OPOLSKY: Let's pause for a moment while</p> <p>21 I look at the affidavit to see what you're referring</p> <p>22 to. That's fine, Counsel. We disagree and we'll</p> <p>23 disagree on the record saying that he'll receive the</p> <p>24 benefit of settlements does not waive his privilege</p> <p>25 over the substance or the essence of settlement</p>
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<p>1 I'm instructing him not to answer, which is he will</p> <p>2 not answer. Settlement privileged is a two-sided</p> <p>3 privilege. It is not his to waive alone. He will not</p> <p>4 answer any questions about settlement proposals that</p> <p>5 Xela or its subsidiaries has received.</p> <p>6 --- REFUSAL NO. 2</p> <p>7 BY MR. WOYCHESHYN:</p> <p>8 211. Q. Just so we're clear, I don't accept</p> <p>9 that. But I will move on. Your evidence, sir, is</p> <p>10 that Xela stands to obtain the benefit of judgements,</p> <p>11 settlements and payments of future dividends in the</p> <p>12 Avicola litigation, do I have that right?</p> <p>13 A. Through ---</p> <p>14 MR. OPOLSKY: Can you repeat that question?</p> <p>15 BY MR. WOYCHESHYN:</p> <p>16 212. Q. Yes. Xela stands to obtain the benefit</p> <p>17 of judgements, settlements and payments of future</p> <p>18 dividends in the Avicola litigation?</p> <p>19 A. Through its subsidiary Lisa.</p> <p>20 213. Q. So you agree with me?</p> <p>21 A. Yeah. Lisa gets the results.</p> <p>22 214. Q. Breaking that down, other than the</p> <p>23 Bermuda and Panama judgement, there's no other</p> <p>24 judgements that you know about?</p> <p>25 A. No final judgements that I'm aware of.</p>	<p>1 discussion through our office. I understand your</p> <p>2 position and I hope you understand mine.</p> <p>3 BY MR. WOYCHESHYN:</p> <p>4 216. Q. I do. Feel free, Mr. Gutierrez, to</p> <p>5 look at the wording that we just looked at. So at</p> <p>6 Paragraph 7 of your affidavit, top of Page 3 when you</p> <p>7 say, "Xela stands to obtain the benefit of judgements,</p> <p>8 settlements and the payment of future dividends that</p> <p>9 are capable of offering substantial recoveries to all</p> <p>10 of its creditors." Do you see that?</p> <p>11 A. Yes.</p> <p>12 217. Q. Would you agree with me, sir, that</p> <p>13 since the Avicola litigation started in 1999, Xela</p> <p>14 always stood to obtain the benefit of judgements,</p> <p>15 settlements and payment of future dividends?</p> <p>16 A. I don't understand what you mean with</p> <p>17 your question.</p> <p>18 218. Q. Well, your evidence, sir, is that</p> <p>19 sitting here today Xela stands to obtain the benefit</p> <p>20 of judgements, settlements and payment of future</p> <p>21 dividends and that would allow for recovery to the</p> <p>22 creditors. My proposition to you is that ever since</p> <p>23 Xela started the Avicola litigation in 1999 it was in</p> <p>24 that position.</p> <p>25 A. The litigation started in '99 precisely</p>

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<p>1 to recover those dividends that were withheld from</p> <p>2 Lisa and from Xela.</p> <p>3 219. Q. Right. So you can agree with me that</p> <p>4 in 1999 Xela stood to benefit from the judgement,</p> <p>5 settlements and payment of future dividends?</p> <p>6 A. I don't understand what you mean with</p> <p>7 the -- with your wording. But Xela started the</p> <p>8 litigation then looking to obtain that. There's a</p> <p>9 different situation then than now.</p> <p>10 220. Q. Right. But the hope, I take it, when</p> <p>11 Xela started the litigation in 1999 was to obtain</p> <p>12 either a judgement, a settlement or the payment of</p> <p>13 future dividends, right?</p> <p>14 A. It was to obtain and recover its rights</p> <p>15 as a shareholder and the dividends. That is correct.</p> <p>16 221. Q. That's always been what it's been</p> <p>17 seeking in the last 20 years of litigation, right?</p> <p>18 A. That has been what's been pursued with</p> <p>19 the litigation.</p> <p>20 222. Q. For 20 years?</p> <p>21 A. You're making it sound confusing for me</p> <p>22 because, yeah, it has been 20 years of litigation</p> <p>23 because the jurisdictions where this litigation is</p> <p>24 being held are very slow, it's a lot of procedural</p> <p>25 issues, a lot of recourses that are filed in all</p>	<p>1 Lisa's shareholder rights. Can we agree that the CCAA</p> <p>2 protection is only in response to Margarita's motion</p> <p>3 for a receiver?</p> <p>4 A. A CCAA -- CCAA is required and is the</p> <p>5 best option in order to be able to procure the best</p> <p>6 resolution for all creditors, including Margarita.</p> <p>7 Actually, in my text it says especially Ms. Castillo.</p> <p>8 So that the CCAA is required for improving the</p> <p>9 possibilities for everybody who is involved in this to</p> <p>10 be paid off.</p> <p>11 228. Q. Other than Ms. Castillo's motion to</p> <p>12 have a receiver appointed, what else has changed that</p> <p>13 necessitates, in your evidence, sir, the need for CCAA</p> <p>14 protection?</p> <p>15 A. The financial situation requires --</p> <p>16 requires the restructuring and the assistance of the</p> <p>17 protection of the CCAA in order to be able to protect</p> <p>18 the rights of all the creditors.</p> <p>19 229. Q. We can agree, sir, that there's no</p> <p>20 restructuring until there's recovery in the Florida</p> <p>21 litigation?</p> <p>22 A. That is probably the case, but that's</p> <p>23 why the monitor will be assisting in developing the</p> <p>24 proper plan.</p> <p>25 230. Q. Well, we spoke earlier that the plan</p>
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<p>1 directions that delay things. So being in litigation</p> <p>2 for 20 years wasn't our plan, but this is very normal,</p> <p>3 or very normal in that jurisdiction.</p> <p>4 223. Q. I don't mean to confuse you and</p> <p>5 certainly no one intends to be in litigation for 20</p> <p>6 years. But let me put it another way. The Avicola</p> <p>7 litigation, since its inception, has always been</p> <p>8 focused on Lisa enforcing its shareholder rights and</p> <p>9 trying to recover unpaid dividends at its core?</p> <p>10 A. That was the reason why the lawsuits</p> <p>11 were filed in the first place.</p> <p>12 224. Q. That's always been the focus of the</p> <p>13 litigation?</p> <p>14 A. That is the reason of litigation.</p> <p>15 225. Q. Staying with Paragraph 7. So you say</p> <p>16 Xela stands to obtain the benefit of judgement,</p> <p>17 settlements and payment of future dividends, and then</p> <p>18 you continue the next sentence: "That is why CCAA</p> <p>19 protection is necessary." Do you see that?</p> <p>20 A. What is exactly -- that's not exact</p> <p>21 wording? Oh, yes.</p> <p>22 226. Q. You see that?</p> <p>23 A. Yes.</p> <p>24 227. Q. But we just talked about that the</p> <p>25 Avicola litigation has always been about enforcing</p>	<p>1 won't even come out until there will be recovery in</p> <p>2 the Florida litigation, right?</p> <p>3 A. That's a possibility, but not the only</p> <p>4 option.</p> <p>5 231. Q. I'm going to put it to you, sir, that</p> <p>6 the only thing that has changed that necessitate, on</p> <p>7 your evidence, the need for CCAA protection is the</p> <p>8 commencement of my client's motion to have a receiver</p> <p>9 appointed. Do you agree or disagree with that?</p> <p>10 A. Can you repeat the question?</p> <p>11 MR. WOYCHESHYN: Madam Reporter, did you get</p> <p>12 it?</p> <p>13 THE REPORTER: Sorry. Can we go off for a</p> <p>14 second?</p> <p>15 --- OFF THE RECORD (1:38 P.M.) ---</p> <p>16 --- UPON RESUMING (1:38 P.M.) ---</p> <p>17 BY MR. WOYCHESHYN:</p> <p>18 232. Q. I put it to you, sir, that the only</p> <p>19 basis why Xela is seeking CCAA protection now is</p> <p>20 because of the commencement of Margarita Castillo's</p> <p>21 motion to have a receiver appointed.</p> <p>22 A. My position is that the CCAA is the</p> <p>23 best alternative to protect the rights of Margarita's</p> <p>24 interests as well as the other creditors and as well</p> <p>25 as the stockholders.</p>

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<p>1 233. Q. Xela could've brought a CCAA 2 application a year ago, right? 3 A. I guess it would be possible, but at 4 that point there wasn't -- it wasn't in our -- our 5 possibility at that moment.</p> <p>6 234. Q. Right. My proposition to you, sir, is 7 it was done in response to Margarita Castillo's motion 8 for a receiver. 9 A. It's one of the reasons. But the main 10 reason is because Xela needs to get the creditor 11 protection to protect the rights off all share -- all 12 the -- all of the creditors, including her, especially 13 her, and that's been established already in the 14 affidavit more than once.</p> <p>15 235. Q. One of your motivations in seeking CCAA 16 protection is protecting Margarita as a creditor? 17 A. Yes.</p> <p>18 236. Q. Can we agree that with respect to the 19 Avicola litigation that there is no predictable 20 deadline by which there will be a settlement? 21 A. I don't think there is a predictable 22 date for anything in litigation.</p> <p>23 237. Q. So you agree with me? 24 A. Well, I think it's no -- there's 25 nothing in life that is certain for sure in the</p>	<p>1 is several actions that are advancing that are 2 recovering the rights of Xela or Lisa -- actually Lisa 3 directly, Xela indirectly -- on those shares and 4 dividends.</p> <p>5 243. Q. But no monetary judgements other than 6 the ones we've talked about in Panama? 7 A. No. There is possibilities to get 8 monetary recoveries in Guatemala in the near future.</p> <p>9 244. Q. Right. But no judgement right now, 10 that's my point. 11 MR. OPOLSKY: Are you asking whether a 12 judgement exists right now? 13 BY MR. WOYCHESHYN:</p> <p>14 245. Q. Correct. 15 A. I think I already said clearly that 16 there is no final judgements. It's a lot of actions. 17 And as I explained to you, the litigation system, the 18 system in Latin America is different than here, 19 particularly in Guatemala there's a lot of recourses. 20 So there's a lot of resolutions that get all kinds of 21 different recourses that delays the outcome. That's 22 why it's been 20 years. But after 20 years we're 23 getting to the end of it. There is very few recourses 24 left.</p> <p>25 246. Q. How many outstanding pieces of</p>
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<p>1 future. So there is some high probabilities, but 2 certainty is never for anything.</p> <p>3 238. Q. Other than the pending Florida 4 litigation and Panama litigation, can we agree that 5 there's no predictable deadline by which Xela stands 6 to benefit from a judgement in the Avicola litigation? 7 A. You said Panama and Florida?</p> <p>8 239. Q. Yes. 9 A. There is also possibilities in 10 Guatemala. So it's not only in those two cases.</p> <p>11 240. Q. Right. But is there anything on the 12 horizon, that is within the next 12 months, 16 months, 13 18 months, 24 months? 14 A. There is very good possibilities, yes.</p> <p>15 241. Q. Tell me about those. 16 A. I cannot. I can't tell certain things 17 because first I'm not 100 percent aware of, I'm not 18 the lawyer, I'm not the expert in the matter. And 19 other is because there is litigation in Central 20 America that it's at the stage where things are not 21 public yet. It's a different system than here, so we 22 have to respect the rules.</p> <p>23 242. Q. Nothing else you can tell me about 24 that? 25 A. All I can tell you is there is -- there</p>	<p>1 litigation are there right now? 2 A. I don't know the exact number, but 3 there's over a 100.</p> <p>4 247. Q. Right now there's over 100 outstanding 5 pieces of litigation? 6 A. There's 28 companies. That's why each 7 case, multiply it by 28.</p> <p>8 248. Q. So over 100 pieces of litigation, sir, 9 and your evidence, just so I understand what you just 10 told me, is that you're getting close to the end? 11 A. In some instances, yes.</p> <p>12 249. Q. What do you mean by in some instances? 13 A. I cannot -- I don't know all the 14 details, I cannot answer for all in general. But I 15 can tell you there is several -- several actions that 16 are very close to get to the end.</p> <p>17 250. Q. Okay. Well, you need to tell me which 18 ones. 19 A. I will need to go through a list of 20 them and I don't have. But I can tell you that some 21 of the Avicola companies have recognized in court that 22 they owe dividends. But that's all I can tell you. 23 There's a lot -- as I said before, a lot of those 24 things I'm not privy of because they are handled by 25 lawyers.</p>

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<p>1 251. Q. Sitting here today there's nothing more 2 you can tell me about that? 3 A. On legal issues I am not that expert. 4 252. Q. Let's talk about BDT. That's capital 5 B, capital D, capital T. You referred to them at Page 6 5 of your affidavit, Paragraph -- starting at 7 Paragraph 16. 8 A. Yes. 9 253. Q. You say that there that BDT has agreed 10 to act as a plan sponsor in the present CCAA 11 application and then you say, "I understand that BDT 12 is a Barbados company that owns the intellectual 13 property of a chain of Venezuelan chicken 14 restaurants." You see that? 15 A. Yes. 16 254. Q. When you say you understand that that's 17 what BDT is, what's that understanding based on? 18 A. Well, that's what I know. 19 255. Q. But how do you know that? 20 A. I know it from the past. 21 256. Q. Why do you know that from the past? 22 A. I'm not part of BDT anymore. 23 257. Q. I know. That's not my question. 24 A. I cannot tell you what is it now 25 because I'm not part of it anymore.</p>	<p>1 A. No. 2 266. Q. You agree with me? 3 A. Yeah, it was not the case in the past. 4 267. Q. As recently as July 2017 BDT was a 5 wholly owned subsidiary of Empresas Arturo 6 International, right? 7 MR. OPOLSKY: What date? 8 THE DEPONENT: What was the date again? 9 BY MR. WOYCHESHYN: 10 268. Q. July 2017. 11 A. I don't believe so. I don't think so. 12 MR. OPOLSKY: Sorry, that's confusing. Are 13 you agreeing with him or are you disagreeing with him? 14 MR. WOYCHESHYN: On what? 15 MR. OPOLSKY: You asked the question in a 16 negative and he answered in a negative and I'm trying 17 to clarify. 18 MR. WOYCHESHYN: I said as recently as July 19 2017 BDT was a wholly owned subsidiary of Empresas 20 Arturo International and he said, no, I don't think 21 that's right. 22 MR. OPOLSKY: Okay. Thank you. 23 BY MR. WOYCHESHYN: 24 269. Q. I'm showing you Exhibit 11 from the 25 examination. It's the original Exhibit 11 from an</p>
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<p>1 258. Q. Okay. But there was a time when you 2 were, right? 3 A. When I was -- when I was related to it 4 indirectly, yes, that was the case. 5 259. Q. Well, it's not just indirectly, sir. 6 You were a former director of BDT? 7 A. Yeah. Well, at that time, yes, it was. 8 260. Q. We can agree that you were a director 9 of BDT between 2004 and 2009? 10 A. 2004 and 2009? 11 261. Q. Yes. 12 A. Yes. 13 262. Q. Then in your question there when you 14 say a chain of Venezuelan chicken restaurants, what 15 you're referring to there is Arturo's, right? 16 A. Correct. 17 263. Q. That's the chain of chicken restaurants 18 named after your father? 19 A. Correct. 20 264. Q. Then you say in Paragraph 17, "Neither 21 BDT or PAICA -- is that pronounced correct? PAICA? 22 A. Correct. 23 265. Q. So all capitals, P-A-I-C-A. You say, 24 "Neither BDT nor PAICA are Xela subsidiaries." That 25 wasn't always the case, was it, sir?</p>	<p>1 examination of you in July of 2017. Have a look at 2 it. It's a corporate diagram. And on the right-hand 3 side, you'll see that, according to that diagram, BDT 4 was a wholly owned subsidiary of Empresas Arturo 5 International. You see that? 6 A. Correct. 7 270. Q. Do you remember me examining you back 8 in 2017, sir? 9 A. Yes. 10 271. Q. Does that help your recollection as to 11 whether at that time BDT was a wholly owned 12 subsidiary? 13 A. At that time I was -- I thought so. 14 But you asked me that on a personal basis. I wasn't 15 representing Xela. On that time I was on a leave of 16 absence for -- since 2014 to 2017. 17 272. Q. Sorry, I missed the last part. So what 18 did you say the last -- 19 A. So at -- 20 273. Q. -- part? 24? 21 A. -- the time I wasn't aware. When this 22 happened, I wasn't aware of some changes that had 23 happened in the company while I was away. 24 MR. OPOLSKY: Sorry, you've put to him an 25 exhibit from cross-examination in July 2017?</p>

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<p>1 MR. WOYCHESHYN: Correct.</p> <p>2 MR. OPOLSKY: Other than being an exhibit on</p> <p>3 that cross-examination, did this exhibit come from an</p> <p>4 affidavit?</p> <p>5 BY MR. WOYCHESHYN:</p> <p>6 274. Q. No. You know who Mark Korol is, sir?</p> <p>7 A. Yes, I do.</p> <p>8 275. Q. He was the chief financial officer of</p> <p>9 Xela?</p> <p>10 A. He was, yes.</p> <p>11 276. Q. I'm showing you and your counsel</p> <p>12 undertakings from Mr. Korol in the proceeding that my</p> <p>13 client commenced against Xela and yourself. And if</p> <p>14 you look at undertaking 6, it asks Mr. Korol to</p> <p>15 produce an updated organization chart. The answer is</p> <p>16 see Tab 6. And then that was answered on December 7,</p> <p>17 2012. And then there's a chart that follows behind.</p> <p>18 And, again, in Mr. Korol's response as chief financial</p> <p>19 officer it shows that at least as of December 2012</p> <p>20 that BDT was a wholly owned subsidiary of Empresas</p> <p>21 Arturo International. Do you see that?</p> <p>22 A. Yes, as of 2012 that's correct.</p> <p>23 277. Q. You have no reason to doubt that as of</p> <p>24 December 2012, BDT was a wholly owned subsidiary of</p> <p>25 Xela? Or pardon me, of Empresas Arturo International?</p>	<p>1 282. Q. Are you on the board of Empresas Arturo</p> <p>2 International?</p> <p>3 A. I was in the past.</p> <p>4 283. Q. Do you know when you ceased to be on</p> <p>5 the board?</p> <p>6 A. I'm not sure. I will -- I have to</p> <p>7 check. I don't know. I don't recall.</p> <p>8 284. Q. Can you check your records and let me</p> <p>9 know by way of undertaking?</p> <p>10 MR. OPOLSKY: Yes.</p> <p>11 --- UNDERTAKING NO. 4</p> <p>12 BY MR. WOYCHESHYN:</p> <p>13 285. Q. Do you recall even at a high level what</p> <p>14 the nature of the transaction was that caused BDT to</p> <p>15 no longer be a wholly owned subsidiary of Empresas</p> <p>16 Arturo International?</p> <p>17 A. No, I don't know the details.</p> <p>18 286. Q. Then staying with the chart that we're</p> <p>19 looking at, which is Exhibit C, under another</p> <p>20 subsidiary of Empresas Arturo International is a</p> <p>21 company called Arven, A-R-V-E-N, which is a holding</p> <p>22 company in Barbados, and one of the wholly owned</p> <p>23 subsidiaries of that is PAICA. Do I have that</p> <p>24 correct?</p> <p>25 A. That's correct.</p>
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<p>1 A. As of December 2012, this is correct.</p> <p>2 MR. WOYCHESHYN: Thank you. Can we mark</p> <p>3 that as an exhibit, please?</p> <p>4 MR. OPOLSKY: What exhibit are we on?</p> <p>5 MR. BORTOLIN: C.</p> <p>6 --- EXHIBIT NO. C: Undertakings from Mr. Korol</p> <p>7 BY MR. WOYCHESHYN:</p> <p>8 278. Q. What's not shown on here, sir, is the</p> <p>9 jurisdiction that ---</p> <p>10 MR. OPOLSKY: Sorry, are you still on</p> <p>11 Exhibit C?</p> <p>12 BY MR. WOYCHESHYN:</p> <p>13 279. Q. Yes, sorry. Empresas Arturo</p> <p>14 International ---</p> <p>15 MR. OPOLSKY: Can you wait?</p> <p>16 BY MR. WOYCHESHYN:</p> <p>17 280. Q. Yes. For each of the companies on the</p> <p>18 diagram, and I think it's the same for exhibit -- ah,</p> <p>19 no. Let me rephrase. Just to be clear, Empresas</p> <p>20 Arturo International is a Barbados company?</p> <p>21 A. That's correct.</p> <p>22 281. Q. Do you know the date when BDT stopped</p> <p>23 being a wholly owned subsidiary of Empresas Arturo</p> <p>24 International?</p> <p>25 A. I do not know the exact date.</p>	<p>1 287. Q. So we can agree that as of December</p> <p>2 2012 PAICA was also an indirectly wholly owned</p> <p>3 subsidiary of Xela?</p> <p>4 A. As of December 2012, yes.</p> <p>5 288. Q. Do you know when PAICA stopped being a</p> <p>6 wholly owned indirect subsidiary of Xela?</p> <p>7 A. I don't know the exact date, but my</p> <p>8 understanding is that was at the same time as BDT.</p> <p>9 289. Q. What's that understanding based on?</p> <p>10 A. On information my father gave me a few</p> <p>11 days before he passed away.</p> <p>12 290. Q. He passed away in June 2016?</p> <p>13 A. Correct.</p> <p>14 291. Q. We're done with Exhibit C, sir. Back</p> <p>15 to your affidavit, Paragraph 17.</p> <p>16 MR. OPOLSKY: Seventeen.</p> <p>17 THE DEPONENT: Sorry.</p> <p>18 BY MR. WOYCHESHYN:</p> <p>19 292. Q. We're on Page 14 of the record.</p> <p>20 MR. OPOLSKY: Counsel, we've been at this</p> <p>21 for about an hour and a half. In the next ten minutes</p> <p>22 or so I'd like to take a break.</p> <p>23 MR. WOYCHESHYN: I think we can take it now,</p> <p>24 if that's fine with you?</p> <p>25 MR. OPOLSKY: That's works for me.</p>

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<p>1 --- OFF THE RECORD (1:54 P.M.) ---</p> <p>2 --- UPON RESUMING (2:06 P.M.) ---</p> <p>3 BY MR. WOYCHESHYN:</p> <p>4 293. Q. Mr. Gutierrez, you acknowledge you're</p> <p>5 still under oath?</p> <p>6 A. Yes.</p> <p>7 294. Q. Paragraph 17 of your affidavit's where</p> <p>8 you say you were advised by Patrick Doig, president of</p> <p>9 BDT, that both companies are owned by a trust of which</p> <p>10 members of my family are beneficiaries. The both</p> <p>11 companies you're referring to there are BDT and PAICA,</p> <p>12 right?</p> <p>13 A. BDT and Arven.</p> <p>14 295. Q. Arven. So BDT and Arven are owned by a</p> <p>15 trust. So Arven, A-R-V-E-N, is also no longer a</p> <p>16 subsidiary indirect of Xela, correct?</p> <p>17 A. Correct.</p> <p>18 296. Q. It ceased to be an indirect subsidiary</p> <p>19 around the same time that BDT and PAICA ceased to be,</p> <p>20 right?</p> <p>21 A. Yes.</p> <p>22 297. Q. They're all part of the same</p> <p>23 transaction?</p> <p>24 A. Yes.</p> <p>25 298. Q. So BDT and Arven are owned by a trust.</p>	<p>1 question.</p> <p>2 --- UNDER ADVISEMENT NO. 8</p> <p>3 BY MR. WOYCHESHYN:</p> <p>4 303. Q. Okay. The trustee is Alexandria Trust</p> <p>5 Corporation? I have that right?</p> <p>6 A. That's my understanding from what Mr.</p> <p>7 Doig told me.</p> <p>8 304. Q. You have no direct involvement with</p> <p>9 Alexandria Trust Corporation?</p> <p>10 A. None.</p> <p>11 305. Q. Turning over in your affidavit to Page</p> <p>12 6 of your affidavit, Page 15 of the record, Paragraph</p> <p>13 19 of your affidavit, you say BDT has already loaned</p> <p>14 substantial amounts to Lisa on a secured basis to fund</p> <p>15 the litigation surrounding Xela's indirect interest in</p> <p>16 Avicola. That's to fund the Avicola litigation,</p> <p>17 right? We're talking about the same thing?</p> <p>18 A. Avicola litigation, correct.</p> <p>19 306. Q. Then in Paragraph 21 you say, "In</p> <p>20 January 2018 BDT sought further security for the</p> <p>21 amounts that had continued to advance, which had</p> <p>22 increased to approximately U.S. \$46.8 million." Did I</p> <p>23 read that correctly?</p> <p>24 A. Where is that?</p> <p>25 307. Q. Paragraph 21.</p>
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<p>1 Is the name of the trust Alexandria trust?</p> <p>2 A. I don't know the name of the trust.</p> <p>3 Alexandria is the trustee.</p> <p>4 299. Q. Can you ask Mr. Doig what the name of</p> <p>5 the trust is?</p> <p>6 MR. OPOLSKY: We will take that under</p> <p>7 advisement.</p> <p>8 --- UNDER ADVISEMENT NO. 7</p> <p>9 BY MR. WOYCHESHYN:</p> <p>10 300. Q. You say that members of your family are</p> <p>11 beneficiaries of the trust. Which members of your</p> <p>12 family, sir?</p> <p>13 A. I don't know.</p> <p>14 301. Q. Are you a beneficiary of the trust?</p> <p>15 A. I don't -- I am not.</p> <p>16 302. Q. So if you could ask Mr. Doig who the</p> <p>17 beneficiaries of the trust are?</p> <p>18 MR. OPOLSKY: I'll take that under</p> <p>19 advisement.</p> <p>20 MR. WOYCHESHYN: If there's any refusal on</p> <p>21 that, as an alternative I'd like to know which family</p> <p>22 members are beneficiaries of the trust. Same under</p> <p>23 advisement?</p> <p>24 MR. OPOLSKY: Yes. I assume that was one</p> <p>25 question. But yes, I understand the alternative</p>	<p>1 A. Twenty-one. Yes.</p> <p>2 308. Q. Do I have it right that as of January</p> <p>3 2018 that BDT had loaned \$46.8 million U.S. to Lisa</p> <p>4 with respect to the Avicola litigation?</p> <p>5 A. Yes.</p> <p>6 309. Q. Those funds were used to pursue the</p> <p>7 Avicola litigation?</p> <p>8 A. That's correct.</p> <p>9 310. Q. I take it that that amount, given that</p> <p>10 we're in June of 2019, has increased?</p> <p>11 A. Ask me again the question. Sorry.</p> <p>12 311. Q. Since January 2018, BDT has loaned</p> <p>13 additional funds beyond the 46.8 million U.S. for the</p> <p>14 Avicola litigation, right?</p> <p>15 A. That is my understanding.</p> <p>16 312. Q. Can you confirm either sitting here</p> <p>17 right now or by way of undertaking that the amount</p> <p>18 advanced by BDT in support of the Avicola litigation</p> <p>19 is now over U.S. \$50,000,000.00?</p> <p>20 A. Fifty?</p> <p>21 313. Q. Fifty. Five-zero.</p> <p>22 A. I don't have knowledge. But I would</p> <p>23 assume so.</p> <p>24 314. Q. If it's less than 50 if you could let</p> <p>25 me know by undertaking?</p>

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<p>1 MR. OPOLSKY: We will undertake if he</p> <p>2 becomes aware that it's less than \$50,000,000.00.</p> <p>3 --- UNDERTAKING NO. 5</p> <p>4 BY MR. WOYCHESHYN:</p> <p>5 315. Q. Mr. Doig has told you, sir, that the</p> <p>6 monthly litigation spent is between \$80,000.00 and</p> <p>7 \$100,000.00?</p> <p>8 A. That's what he told me, yes.</p> <p>9 316. Q. That's in U.S. funds?</p> <p>10 A. Correct.</p> <p>11 317. Q. I take it you believe that to be true?</p> <p>12 A. Sorry?</p> <p>13 318. Q. You believe that to be true?</p> <p>14 A. That's what he told me. I don't know.</p> <p>15 I cannot judge his truthfulness, but he told me that.</p> <p>16 I asked the ---</p> <p>17 319. Q. You have no reason -- sorry. You have</p> <p>18 no reason to doubt what he told you?</p> <p>19 A. I don't have a reason to doubt him.</p> <p>20 320. Q. Do you know how BDT is funding that</p> <p>21 litigation?</p> <p>22 A. I don't know directly because I'm not</p> <p>23 part of BDT anymore.</p> <p>24 321. Q. Could you ask Mr. Doig?</p> <p>25 MR. OPOLSKY: I'll take it under advisement.</p>	<p>1 agreement that you attach as Exhibit G to your</p> <p>2 affidavit, do I have that right?</p> <p>3 A. What is that agreement?</p> <p>4 326. Q. Sure.</p> <p>5 MR. OPOLSKY: Exhibit G?</p> <p>6 BY MR. WOYCHESHYN:</p> <p>7 327. Q. Yes, Exhibit G. It's Page 150 of the</p> <p>8 record. The document is entitled ---</p> <p>9 A. Yes. That's my understanding.</p> <p>10 328. Q. Okay. So other than the pledge of the</p> <p>11 Villamorey shares as collateral and the security</p> <p>12 provided under Exhibit G, I take it, sir, you're not</p> <p>13 aware of any other security that BDT has on its loans</p> <p>14 that it's advanced to Lisa?</p> <p>15 A. I don't -- I have no information about</p> <p>16 it, so I don't know.</p> <p>17 329. Q. In Paragraph 21 of your affidavit you</p> <p>18 describe at the core what the assignment agreement is.</p> <p>19 I just want to be clear that I understand it and</p> <p>20 correct me if you have a different understanding, sir.</p> <p>21 But the way I understand it is that to the extent that</p> <p>22 Lisa recovers funds in the Avicola litigation, those</p> <p>23 funds will first be used to repay the loan that BDT</p> <p>24 has given to Lisa, right?</p> <p>25 MR. OPOLSKY: Counsel, you're asking about</p>
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<p>1 --- UNDER ADVISEMENT NO. 9</p> <p>2 MR. WOYCHESHYN: I would like to know from</p> <p>3 Mr. Doig how BDT is financing the eighty to one</p> <p>4 hundred thousand dollars U.S. per month in litigation</p> <p>5 expenditures, where that money is coming from. Under</p> <p>6 advisement?</p> <p>7 MR. OPOLSKY: Isn't that the same question?</p> <p>8 MR. WOYCHESHYN: Yes. I was clarifying.</p> <p>9 MR. OPOLSKY: I understand.</p> <p>10 BY MR. WOYCHESHYN:</p> <p>11 322. Q. I take it that we can agree that the</p> <p>12 BDT, PAICA, Arven transaction which caused those</p> <p>13 entities to no longer be indirectly wholly owned</p> <p>14 subsidiaries of Xela, that happened sometime between</p> <p>15 December 2012 and June 2016?</p> <p>16 A. Yes, in that range.</p> <p>17 323. Q. In Paragraph 20 you refer to security</p> <p>18 that BDT had previously for its loan to Lisa and that</p> <p>19 was the pledge of shares in Villamorey?</p> <p>20 A. That's correct.</p> <p>21 324. Q. V-I-L-L-M-O-R-E-Y. Are those shares</p> <p>22 still pledged as collateral in support of BDT's loan?</p> <p>23 A. That is my understanding.</p> <p>24 325. Q. So BDT has that as security plus it has</p> <p>25 the interest that it received under the assignment</p>	<p>1 Paragraph 21, which refers to Exhibit G?</p> <p>2 MR. WOYCHESHYN: Yes.</p> <p>3 MR. OPOLSKY: He should have the opportunity</p> <p>4 to refer to either of those.</p> <p>5 MR. WOYCHESHYN: Of course.</p> <p>6 MR. OPOLSKY: Sir, you can refer to Exhibit</p> <p>7 G, which is the assignment, or Paragraph 21 in your</p> <p>8 affidavit because I believe Counsel's question relates</p> <p>9 to both.</p> <p>10 MR. WOYCHESHYN: It does.</p> <p>11 MR. OPOLSKY: If you need a moment, I'm sure</p> <p>12 Counsel will permit that.</p> <p>13 THE DEPONENT: So what is the question?</p> <p>14 BY MR. WOYCHESHYN:</p> <p>15 330. Q. That to the extent that Lisa recovers</p> <p>16 any funds in the Avicola litigation that it first must</p> <p>17 repay the amounts loaned by BDT to Lisa?</p> <p>18 A. That is my understanding.</p> <p>19 331. Q. And then any recovery above that will</p> <p>20 be split on a 70/30 percent basis with 70 percent to</p> <p>21 BDT, 30 percent to Lisa? I have that right?</p> <p>22 A. That's what I understand from reading</p> <p>23 this document, which I was not part of when it was</p> <p>24 done. So I don't know the -- what the parties meant.</p> <p>25 But that's how I read it.</p>



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<p>1 332. Q. Can you ask Mr. Doig whether BDT has 2 any additional security on its loans advanced to Lisa 3 other than the security described at Paragraphs 20 and 4 21 of your affidavit? 5 MR. OPOLSKY: Hold on. Sorry, your question 6 is to -- your request is to ask Mr. Doig whether BDT 7 has any security over Lisa's assets other than 8 described at Paragraphs 20 and 21? 9 MR. WOYCHESHYN: Any security in support of 10 its loans to Lisa other than the security described in 11 Paragraph 20 and 21. 12 MR. OPOLSKY: Any security in support. I'll 13 take that under advisement. 14 --- UNDER ADVISEMENT NO. 10 15 BY MR. WOYCHESHYN: 16 333. Q. I take it, sir, that the BDT loan is 17 interest free? 18 A. The loan from -- that Lisa owes? 19 334. Q. Yes. 20 A. I'm not sure. I don't know. I believe 21 it has interest, but I don't know. Don't know the 22 details. 23 335. Q. Can you ask Mr. Doig whether interest 24 is being charged on the BDT loan to Lisa and if so, 25 what amount?</p>	<p>1 A. I know him. 2 341. Q. Am I right that Cal Shields is the 3 president of Lisa? 4 A. He was. 5 342. Q. When did that stop to be the case? 6 A. I'm not sure the exact date. But it 7 either was last year or early this year. But I'm not 8 sure of the date. 9 343. Q. Could you ask Mr. Shields or review 10 Xela's records to see when Mr. Shields ceased to be 11 the president of Lisa? 12 MR. OPOLSKY: Yes, we can do that. 13 --- UNDERTAKING NO. 6 14 BY MR. WOYCHESHYN: 15 344. Q. Mr. Gutierrez, do you know who was on 16 the board of directors of BDT as of January 24, 2018? 17 A. I don't know for sure. 18 345. Q. Can you ask Mr. Doig? 19 MR. OPOLSKY: I didn't hear the date. What 20 date? 21 MR. WOYCHESHYN: January 24, 2018, the day 22 of the assignment of causative action attached as 23 Exhibit G to the witness's affidavit. 24 MR. OPOLSKY: We'll take that under 25 advisement.</p>
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<p>1 MR. OPOLSKY: Same answer. 2 --- UNDER ADVISEMENT NO. 11 3 BY MR. WOYCHESHYN: 4 336. Q. Turn to Exhibit G, sir, of your 5 affidavit. We see that the assignment of causative 6 action is signed by Patrick Doig as president of BDT, 7 David Harry as treasurer of Lisa and Calvin Shields as 8 director of Xela. Were you involved in the 9 negotiation of this agreement, sir? 10 A. No, I was not. 11 337. Q. Certainly Mr. Shields would've spoken 12 to you before signing this? 13 A. Yes. We agreed on providing BDT the 14 necessary guarantees. 15 338. Q. Sorry, so you spoke to Mr. Shields 16 about this, but your evidence is that you didn't 17 review this before it was signed? 18 A. We had a conversation about it. 19 339. Q. You and Mr. Shields? 20 A. We agreed -- yes. We agreed on 21 providing BDT the necessary guarantees in order to 22 continue funding the litigation as the only source of 23 funding for the litigation. 24 340. Q. David Harry is a director and treasurer 25 of Lisa. You know him?</p>	<p>1 --- UNDER ADVISEMENT NO. 12 2 BY MR. WOYCHESHYN: 3 346. Q. Do you know, sir, what analysis -- 4 well, let me take a step back. How long has Mr. Doig, 5 to your knowledge, been involved with BDT? 6 A. I don't know for certain, but it's a 7 few years. 8 347. Q. What is BDT's business? Or what was 9 it? Let me start first with between 2004 and 2009 10 when you were a director, what was its business? 11 A. BDT is the owner of the intellectual 12 property and the technology and recipes that the 13 Arturo's restaurants in Venezuela operate under. 14 348. Q. At least when you were there it was a 15 holding company? 16 A. BDT? 17 349. Q. It held assets but had no operations of 18 its own. 19 A. BDT, it's never been nor a holding 20 company, nor an operation. It's been an owner of the 21 intellectual property. And the franchisor, the 22 relationship between BDT and PAICA is the relationship 23 of a franchisor/franchisee. 24 350. Q. To your knowledge, has that business 25 structure changed since you left as a director?</p>

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<p>1 A. Not that I know, but I don't know what 2 has happened for sure.</p> <p>3 351. Q. Are you aware of Lisa -- pardon me. 4 Are you aware of BDT ever loaning millions of dollars 5 to any other third party in support of litigation 6 besides Lisa?</p> <p>7 A. Beside Lisa? Not to my knowledge.</p> <p>8 352. Q. Certainly when you were there it wasn't 9 in the litigation-funding business?</p> <p>10 A. BDT wasn't in the litigation-funding 11 business, but it was helping Lisa on this particular 12 case.</p> <p>13 353. Q. If BDT holds IP, where does it obtain 14 revenue from or where did it obtain revenue from when 15 you were involved?</p> <p>16 A. When I was involved, it was through 17 technical assistance fees and royalties paid by PAICA 18 to BDT for the Arturo's technology, brand, recipes.</p> <p>19 354. Q. Other than PAICA was there any other 20 source of BDT from BDT -- for BDT?</p> <p>21 A. No, not when I was there.</p> <p>22 355. Q. Do you know what, before signing the 23 causative act -- assignment of causative action 24 agreement on or about January 24, 2018, do you know 25 what due diligence BDT did before it agreed to take a</p>	<p>1 A. It's no longer.</p> <p>2 359. Q. Just so I understand, at some point 3 prior to June 2016, on your evidence it ceased to be a 4 related party?</p> <p>5 A. I don't know the date. I understand 6 that that was before the date.</p> <p>7 360. Q. That would be the same for PAICA? Your 8 evidence would be that it was a related party, but 9 some point in or around 2016 it stopped being a 10 related party to Xela?</p> <p>11 A. Yes.</p> <p>12 361. Q. I'm showing you a copy of a creditor 13 list that I received through your counsel at Torgys. 14 There's two copies there. I received it this week. 15 It's entitled Xela Creditor List, prepared June 1st, 16 2019 and as of December 31st, 2018. Do you see that?</p> <p>17 A. Yes.</p> <p>18 362. Q. Have you seen this before, sir?</p> <p>19 A. Yes.</p> <p>20 363. Q. If we look at the bottom of the page it 21 says, "Due to related parties," and according to this 22 document, both BDT and PAICA are listed as related 23 parties. You see that, sir?</p> <p>24 A. Yes.</p> <p>25 364. Q. Are you saying that this document is</p>
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<p>1 percentage of the recovery in the Avicola litigation?</p> <p>2 A. I'm not aware of that.</p> <p>3 356. Q. Can you ask Mr. Doig that question?</p> <p>4 MR. OPOLSKY: I'll take it under advisement.</p> <p>5 --- UNDER ADVISEMENT NO. 13</p> <p>6 MR. WOYCHESHYN: To the extent that BDT 7 prepared any analysis or assessment of the probability 8 of recovery in the Avicola litigation that's not 9 protected by any privilege, I'd ask that you ask Mr. 10 Doig to provide that to us.</p> <p>11 MR. OPOLSKY: Sorry, I had difficulty 12 hearing that. Can you repeat it?</p> <p>13 MR. WOYCHESHYN: To the extent that BDT 14 engaged in any analysis with regards to the prospects 15 of recovery in the Avicola litigation, that analysis 16 or assessment was reduced into writing and is not 17 protected by any privilege, I'd like you to ask Mr. 18 Doig to provide that to you and you provide it to me.</p> <p>19 MR. OPOLSKY: Under advisement.</p> <p>20 --- UNDER ADVISEMENT NO. 14</p> <p>21 BY MR. WOYCHESHYN:</p> <p>22 357. Q. Would you agree, Mr. Gutierrez, that 23 BDT is a related party to Xela?</p> <p>24 A. BDT was a related party to Xela.</p> <p>25 358. Q. But is no longer a related party?</p>	<p>1 incorrect?</p> <p>2 A. I didn't prepare the document.</p> <p>3 365. Q. Do you know who did?</p> <p>4 A. I presume that somebody in the 5 accounting. Some accountant's been doing this. I'm 6 not an accountant, so I don't prepare documents like 7 this.</p> <p>8 366. Q. But you are the president of Xela, 9 right?</p> <p>10 A. I am the president of Xela.</p> <p>11 367. Q. And you are the only employee of Xela?</p> <p>12 A. Yes.</p> <p>13 368. Q. You can't tell me who prepared this?</p> <p>14 A. Well, there is an accountant that 15 assist me with it.</p> <p>16 369. Q. Who?</p> <p>17 A. His name is Thomas Lam.</p> <p>18 370. Q. L-A-M?</p> <p>19 A. Yes.</p> <p>20 371. Q. Mr. Lam didn't run this creditor list 21 by you for your approval?</p> <p>22 A. He prepared the document on -- he 23 prepared this document on the request because it was 24 needed to determine who the creditors were.</p> <p>25 372. Q. Sorry, are you saying you just didn't</p>

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<p>1 review it before it was sent over or you just didn't</p> <p>2 pick up that it lists both BDT and PAICA as related</p> <p>3 parties?</p> <p>4 A. Frankly, I reviewed the document. I'm</p> <p>5 not keen on the terminology like you are on this</p> <p>6 issue. Because as I am not a lawyer, I'm just not</p> <p>7 looking at those issues. I'm just looking what is</p> <p>8 owed and to whom and that's what I care, and this is</p> <p>9 what this documents tells.</p> <p>10 MR. WOYCHESHYN: If we can mark that as the</p> <p>11 next exhibit, please.</p> <p>12 --- EXHIBIT NO. D: Xela Creditor List prepared June 1st,</p> <p>13 2019</p> <p>14 BY MR. WOYCHESHYN:</p> <p>15 373. Q. To your knowledge, Mr. Gutierrez, is</p> <p>16 there an updated creditor list or is the most recent</p> <p>17 version that exists?</p> <p>18 A. This is the most recent I've seen.</p> <p>19 MR. OPOLSKY: This is the version that was</p> <p>20 sent to you yesterday?</p> <p>21 MR. WOYCHESHYN: Yes.</p> <p>22 MR. OPOLSKY: Two days ago?</p> <p>23 BY MR. WOYCHESHYN:</p> <p>24 374. Q. Yes. This week. I have a few more</p> <p>25 questions on the creditor list, sir, and I'm fine if</p>	<p>1 let me know?</p> <p>2 MR. OPOLSKY: Yes.</p> <p>3 THE DEPONENT: Yes.</p> <p>4 MR. OPOLSKY: We will let you know.</p> <p>5 --- UNDERTAKING NO. 7</p> <p>6 BY MR. WOYCHESHYN:</p> <p>7 378. Q. Have any of the creditors listed on</p> <p>8 Exhibit D started legal proceedings to collect the</p> <p>9 debt as against Xela to your knowledge?</p> <p>10 MR. OPOLSKY: You can answer.</p> <p>11 THE DEPONENT: Not to my knowledge.</p> <p>12 BY MR. WOYCHESHYN:</p> <p>13 379. Q. Now, on the right-hand side there's a</p> <p>14 note that says sort of middle of the page, these</p> <p>15 should in fact -- sorry, pardon me -- "These should be</p> <p>16 in fact netted out to zero or have a balance owing, in</p> <p>17 particular Amex Xela is in collections of \$80,000.00</p> <p>18 and owing." Do you know what that's in reference to,</p> <p>19 sir?</p> <p>20 A. I'm sorry?</p> <p>21 380. Q. Do you know what that's in reference</p> <p>22 to?</p> <p>23 A. Well, there is an American Express bill</p> <p>24 that not paid once Xela's accounts were frozen. So</p> <p>25 that is in a collections agency, but it's not a court</p>
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<p>1 you answer by way of undertaking. Just let me know</p> <p>2 what you can't answer sitting here. But the first</p> <p>3 question is whether any of the creditors listed on</p> <p>4 Exhibit D have a judgement currently against Xela?</p> <p>5 A. Of this list?</p> <p>6 375. Q. Yes.</p> <p>7 MR. OPOLSKY: We'll...</p> <p>8 MR. WOYCHESHYN: I'm fine to take it by way</p> <p>9 of undertaking.</p> <p>10 MR. OPOLSKY: We will advise you to the best</p> <p>11 of our knowledge whether any of -- the best of Mr.</p> <p>12 Gutierrez's knowledge as to whether any of the</p> <p>13 creditors on this list have a final judgement as</p> <p>14 opposed to a claim. Is that your question?</p> <p>15 MR. WOYCHESHYN: Yes. An actual judgement.</p> <p>16 MR. OPOLSKY: A court judgement?</p> <p>17 MR. WOYCHESHYN: Correct.</p> <p>18 THE DEPONENT: I'm not aware of any court</p> <p>19 judgement other than my sister's.</p> <p>20 BY MR. WOYCHESHYN:</p> <p>21 376. Q. If you'll learn something else, you'll</p> <p>22 let me know?</p> <p>23 A. Sorry.</p> <p>24 377. Q. If you learn that one of these</p> <p>25 creditors does have a judgement and you recall, you'll</p>	<p>1 ruling of any sort as far as I know.</p> <p>2 381. Q. As far as you know, no lawsuit has been</p> <p>3 started?</p> <p>4 A. As far as I know, no.</p> <p>5 382. Q. If you learn that there has been a</p> <p>6 lawsuit started by any of the creditors listed on the</p> <p>7 Exhibit D, will you let me know whether Xela has</p> <p>8 entered into tolling agreement with any of those</p> <p>9 creditors with respect to the debts allegedly owed to</p> <p>10 that creditor?</p> <p>11 A. If I learn about something, yes.</p> <p>12 MR. WOYCHESHYN: Let your counsel --</p> <p>13 Counsel, you're fine with that?</p> <p>14 MR. OPOLSKY: Yes. I'm fine with that.</p> <p>15 --- UNDERTAKING NO. 8</p> <p>16 THE DEPONENT: Sorry.</p> <p>17 BY MR. WOYCHESHYN:</p> <p>18 383. Q. On the top of the page, Exhibit D,</p> <p>19 there is the first accounts payable and accrued</p> <p>20 liabilities CRGO and there's four different CRGOs. I</p> <p>21 take that CRGO is a reference to Carey Rodriguez?</p> <p>22 A. That's correct.</p> <p>23 384. Q. That's Juan Rodriguez's law firm?</p> <p>24 A. That's correct.</p> <p>25 385. Q. Underneath that, immediately under CRGO</p>

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<p>1 agreement there is CKS Consulting. Do you see that?</p> <p>2 A. Correct.</p> <p>3 386. Q. I take it that's Cal Shields</p> <p>4 Consulting?</p> <p>5 A. Correct.</p> <p>6 387. Q. According to this document, he's owed</p> <p>7 roughly \$91,000.00 U.S.?</p> <p>8 A. That's correct.</p> <p>9 388. Q. I take it that those monies relate to</p> <p>10 services he provided as director, officer of Xela or</p> <p>11 one of its subsidiaries?</p> <p>12 A. I don't know the exact -- this detail</p> <p>13 of this particular amount, but he used to receive fees</p> <p>14 as a director -- no longer -- as well as over the</p> <p>15 years he provided some consulting services to the</p> <p>16 group. So I don't know exactly what's in that amount.</p> <p>17 389. Q. Do you know when last services he</p> <p>18 provided for which he sought a fee were provided?</p> <p>19 A. I don't know.</p> <p>20 390. Q. I'm showing you and your counsel, sir,</p> <p>21 some answers to undertakings from the examination of</p> <p>22 Calvin Shields as a corporate representative of Xela</p> <p>23 on July 27, 2017. We see on Page 3, Undertaking 35,</p> <p>24 there's an answer that Mr. Shields gave based on Mr.</p> <p>25 Korol's knowledge, but it attaches a list of creditors</p>	<p>1 394. Q. There's a listed debt there for over</p> <p>2 \$1,000,000.00. Do you see that?</p> <p>3 A. That's correct.</p> <p>4 395. Q. Did Mr. Zwann actually commence</p> <p>5 proceedings in Netherlands?</p> <p>6 A. I'm not aware of that.</p> <p>7 396. Q. And Fresh Quest has had no operations</p> <p>8 and has been effectively closed since 2015?</p> <p>9 A. Correct.</p> <p>10 MR. WOYCHESHYN: Can we mark this as Exhibit</p> <p>11 E? This is the answers to undertakings of Cal Shields</p> <p>12 --- EXHIBIT NO. E: Answers to undertakings of Cal Shields</p> <p>13 BY MR. WOYCHESHYN:</p> <p>14 397. Q. If we can go back to Exhibit D, sir,</p> <p>15 the creditor list from this week, the more updated</p> <p>16 creditor list. This may just be a typographical</p> <p>17 error, but under the third row for Carey Rodriguez re</p> <p>18 FQI, the U.S. amount is 35,000 and then when it's</p> <p>19 converted to Canadian it's 296,000. I suspect what</p> <p>20 happened is they the Quetzal's exchange rate rather</p> <p>21 than the Canadian/U.S. dollar exchange rate. But if</p> <p>22 you can speak to Mr. Lam and let me know what the -- I</p> <p>23 just need to know which is correct.</p> <p>24 MR. OPOLSKY: We will undertake to let you</p> <p>25 know which number is correct.</p>
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<p>1 and that was sometime in 2017. And if we turn a few</p> <p>2 more pages in, this is the fifth page of the document</p> <p>3 I've provided to you. There's a Xela creditor list</p> <p>4 prepared October 27, 2017, you see that?</p> <p>5 A. I see that.</p> <p>6 391. Q. On this creditor list there is CKS</p> <p>7 Consulting for \$91,000.00 U.S. and then there's an</p> <p>8 asterisk and it says the last invoice was May 31,</p> <p>9 2017. Do you see that?</p> <p>10 A. Where is that?</p> <p>11 MR. OPOLSKY: It's at the bottom of the</p> <p>12 writing below the double line.</p> <p>13 THE DEPONENT: That's what it says.</p> <p>14 BY MR. WOYCHESHYN:</p> <p>15 392. Q. I take it sitting here today, sir, you</p> <p>16 have no reason to doubt that all the services provided</p> <p>17 by Mr. Shields for which he seeks consulting fees were</p> <p>18 provided before May 31st, 2017?</p> <p>19 A. I have no reason to doubt anything he</p> <p>20 said.</p> <p>21 393. Q. The amount listed on both creditor</p> <p>22 lists for a Rijk, or Rijk -- R-I-J-K -- Zwann re FQI,</p> <p>23 the FQI, that's in reference to Fresh Quest</p> <p>24 International?</p> <p>25 A. That's correct.</p>	<p>1 --- UNDERTAKING NO. 9</p> <p>2 BY MR. WOYCHESHYN:</p> <p>3 398. Q. Thank you. Sticking with Exhibit D.</p> <p>4 If we go down to shareholders, there is an amount of</p> <p>5 \$395,432.00 to Carmen Gutierrez. Do you see that?</p> <p>6 A. I see that.</p> <p>7 399. Q. That's your mother?</p> <p>8 A. That's correct.</p> <p>9 400. Q. She was never personally a shareholder</p> <p>10 in Xela, was she?</p> <p>11 A. No, she wasn't.</p> <p>12 401. Q. So do you know what the \$395,000.00</p> <p>13 relates to?</p> <p>14 A. I'm not a hundred percent sure. I</p> <p>15 actually don't know the detail. It's been there for a</p> <p>16 long time.</p> <p>17 402. Q. Who would know the details on that?</p> <p>18 A. I'd have to ask. I'll ask Mr. Lam to</p> <p>19 check the numbers.</p> <p>20 403. Q. If you could ask Mr. Lam to advise what</p> <p>21 the \$395,432.00 listed on the Exhibit D in relation to</p> <p>22 Carmen Gutierrez relates to and advise?</p> <p>23 MR. OPOLSKY: Okay.</p> <p>24 --- UNDERTAKING NO. 10</p> <p>25 BY MR. WOYCHESHYN:</p>

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<p>1 404. Q. If you keep Exhibit D open and then if 2 we could turn back to your affidavit, Paragraph 75. 3 Seven-five. Page 26 of the record, Page 17 of your 4 affidavit at the bottom of the page you say at 5 Paragraph 75, "Regarding amounts due to shareholders, 6 part of the debt Xela owes to shareholders is secured. 7 The sum of \$276,162.00 is the subject of a registered 8 security interest under the Personal Property Security 9 Act, Ontario, that, as stated below, is in favour of 10 Arturo Gutierrez." Do you know what that debt relates 11 to, sir? 12 A. It's part of its shareholder loans. I 13 lent Xela a lot of money since its beginning and 14 that's been there for a very long time. This is just 15 the balance.</p> <p>16 405. Q. When I look at the creditor list marked 17 as Exhibit D, I see that there's a note payable to 18 J.A.G. and that's Juan Arturo Gutierrez, right? 19 A. Where are you looking at?</p> <p>20 406. Q. Sorry, Exhibit D. The creditor list. 21 A. J.A.G. is my father. Yes.</p> <p>22 407. Q. So there's a note payable for 261,745 23 and then there appears to be a debit for a promissory 24 note for 14,967. I just don't understand how the 25 276,162 figure is arrived at.</p>	<p>1 not. 2 413. Q. If we look at page -- Paragraph 28 on 3 Page 8 of your affidavit you start by saying, "I'm 4 advised by counsel of record in Florida that after BDT 5 served the writs of garnishment, Banco Santander 6 removed the matter to federal court where it is 7 currently pending." Who is the counsel that you were 8 referring to? 9 A. Sorry, where are you? I missed.</p> <p>10 414. Q. Paragraph 28. 28. 11 A. Twenty-eight.</p> <p>12 415. Q. Page 8. 13 A. In the past Juan Rodriguez was the 14 lawyer for BDT. Since I'm not part of BDT I don't 15 have any direct contact with him. But I do with the 16 lawyers for Lisa.</p> <p>17 416. Q. Okay. So at Paragraph 28, what you 18 were referring to there, is counsel of record in 19 Florida the counsel for Lisa? 20 A. Yes.</p> <p>21 417. Q. Who is counsel for Lisa in the Florida 22 litigation? 23 A. It's the lawyer in Miami is called 24 Allan Joseph.</p> <p>25 418. Q. Has Mr. Joseph always been the lawyer</p>
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<p>1 MR. OPOLSKY: We will undertake to reconcile 2 those figures. 3 --- UNDERTAKING NO. 11 4 BY MR. WOYCHESHYN:</p> <p>5 408. Q. Thank you. We talked about your father 6 passing in June 2016. Has the estate made any demand 7 for payment on the shareholder note? 8 A. Not that I'm aware of.</p> <p>9 409. Q. In the past three years has Xela 10 prepared financial statements on a consolidated basis? 11 A. Xela has never prepared any 12 consolidated statements. Never did.</p> <p>13 410. Q. I'm done with Exhibit D. If we can 14 turn to Page 16 of the record, Page 7 of your 15 affidavit dealing with the Florida litigation. I just 16 have a few questions about that. As far as I 17 understand it and I know you've attached a number of 18 documents, but I just want to confirm: BDT is the 19 plaintiff in the Florida litigation? 20 A. That's correct.</p> <p>21 411. Q. And Juan Rodriguez is a lawyer of 22 record for BDT? 23 A. Until recently he was.</p> <p>24 412. Q. He's no longer the lawyer of record? 25 A. I'm -- my understanding is that he is</p>	<p>1 for Lisa in the Florida litigation? 2 A. That is correct.</p> <p>3 419. Q. Turning back to Paragraph 27 of your 4 affidavit. Just so I'm clear, when you say at the 5 bottom of Page 7, Page 16 of the application record, 6 "I have been advised by counsel for litigation Panama 7 and also by counsel of record in Florida that BDT 8 sought to satisfy its judgement against Lisa by 9 pursuing Villamorey for Lisa's unpaid dividends," the 10 counsel of record in Florida that you were referring 11 to there is Mr. Joseph? 12 A. Yes. There is -- there's several 13 different attorneys working there.</p> <p>14 420. Q. Yes. I'm not trying to trick you, sir. 15 I'm just trying to understand the source of the 16 information for Paragraph 27 in that sentence. 17 A. Yeah, it came from the legal team. I 18 don't remember exactly who personally I talked to 19 about it.</p> <p>20 421. Q. Either Mr. Joseph or someone at his 21 firm? 22 A. Someone at his firm or another firm 23 that's assisting us.</p> <p>24 422. Q. What other firm is assisting you? 25 A. It's Mr. Andrew Durkovic.</p>

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<p>1 423. Q. Lisa has two firms that's helping it in 2 the Florida litigation? 3 A. Mr. Durkovic is a legal advisor for 4 Lisa overall. 5 424. Q. Is he a Florida lawyer or is he based 6 in Panama? 7 A. He's based in Washington, actually. 8 425. Q. So my information is that Mr. Rodriguez 9 initially acted for both BDT and Lisa in the Florida 10 litigation, do I have that wrong? 11 A. As far as I know, Mr. Rodriguez never 12 represented Lisa in the Florida litigation. 13 426. Q. The Florida litigation is being funded, 14 from Lisa's perspective, from the funds advanced by 15 BDT? 16 A. From Lisa's perspective, that's 17 correct. 18 427. Q. You don't know the source of the funds 19 from the BDT side? 20 A. I don't know firsthand. 21 MR. OPOLSKY: I think we've already given 22 you an undertaking on that. 23 BY MR. WOYCHESHYN: 24 428. Q. Yes. If you turn to Paragraph 89 of 25 your affidavit. This is on Page 20 of your affidavit,</p>	<p>1 don't know? 2 A. It could be very close. 3 435. Q. I'm suggesting to you, sir, that that 4 unknown period of delay is prejudicial to creditors. 5 Do you agree or disagree with that? 6 A. Not if that secures payment. 7 436. Q. And if it doesn't secure payment, you'd 8 agree with me that the delay would be prejudicial? 9 A. The CCAA proceedings would facilitate 10 reaching a resolution and collecting the dividends 11 that will protect the rights of all creditors, not 12 just one creditor. And as president of the company I 13 have to look after all creditors. 14 437. Q. Your understanding of what the CCAA 15 will do certainly doesn't come from your experience; 16 you just told me you've never been involved in one 17 before? 18 A. I haven't been involved. 19 438. Q. So that's based on information that you 20 received from others? 21 A. It's based on my understanding and how 22 the process works. And also my business experience, I 23 know that this -- I know that this situation will be 24 resolved very soon. 25 439. Q. What situation?</p>
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<p>1 Page 29 of the application record. You say at 2 Paragraph 89, "I'm not aware of any material prejudice 3 that CCAA proceeding would cause for Xela's 4 creditors." Did I read that right? 5 A. Yes. 6 429. Q. Have you been involved in a CCAA 7 proceeding before, sir? 8 A. No. 9 430. Q. When you say material prejudice, what 10 do you mean? 11 A. I mean that the proceedings of CCAA 12 cannot cause any harm to any of the parties involved. 13 431. Q. Your evidence or your understanding is 14 that delay would not be prejudicial to any creditor? 15 A. Delay? What do you mean with that? I 16 don't understand the question. 17 432. Q. We can agree, sir, that under what Xela 18 is proposing in the CCAA that there will be no monies 19 paid to creditors until there is either a settlement 20 or a final judgement in the Florida litigation, right? 21 A. Correct. 22 433. Q. We agree that that could be months 23 away, right? 24 A. We don't know. 25 434. Q. Or it could be years away, right? We</p>	<p>1 A. The situation in Florida. 2 440. Q. Why do you say that? 3 A. Because we have a trial date, because 4 we have the -- Lisa has -- I'm sorry, Lisa and BDT 5 have the reason, the truth on their side. So I'm not 6 going to speculate, so you have a specific question, 7 ask me the specific question. 8 441. Q. You're no stranger to litigation, 9 that's fair? 10 A. Yeah. 11 442. Q. You know that even if there is a trial 12 and a judgement that there could be appeals of that in 13 Florida? 14 A. I understand that. 15 443. Q. You know firsthand that appeals can be 16 lengthy? 17 A. I understand that, yeah. 18 444. Q. It can take months if not over a year? 19 A. I understand that. 20 445. Q. You understand that in 2015 Justice 21 Newbould found that Xela had oppressed Margarita's 22 interests? 23 A. I understand what the ruling was. 24 446. Q. And also that you personally also 25 oppressed Margarita's interests?</p>

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<p>1 MR. OPOLSKY: Are you asking him for whether</p> <p>2 he understands that that's what Justice Newbould</p> <p>3 found?</p> <p>4 MR. WOYCHESHYN: Correct.</p> <p>5 THE DEPONENT: I understand what he found.</p> <p>6 BY MR. WOYCHESHYN:</p> <p>7 447. Q. You understand that he ordered</p> <p>8 Margarita to be paid \$4.25 million for her Tropic</p> <p>9 shares?</p> <p>10 A. I understand.</p> <p>11 448. Q. You understand that decision was upheld</p> <p>12 by a divisional court?</p> <p>13 A. I understand.</p> <p>14 449. Q. You understand that Court of Appeal</p> <p>15 denied leave to appeal?</p> <p>16 A. I do.</p> <p>17 450. Q. You agree that Xela has never</p> <p>18 voluntarily paid any amount towards the judgement?</p> <p>19 A. Xela has been doing -- well, first</p> <p>20 there was \$134,000.00, if I'm not mistaken the amount,</p> <p>21 that was in the bank accounts that went to payment,</p> <p>22 and Xela has been doing everything in its ability to</p> <p>23 obtain the funds to be able to satisfy the judgement</p> <p>24 as well as the other creditors.</p> <p>25 451. Q. The \$134,000.00 that you just</p>	<p>1 I'm fine for you to confirm it by way of undertaking.</p> <p>2 Paragraph 71 says, "As at May 31st, 2018, Xela's total</p> <p>3 liabilities had a book value of approximately</p> <p>4 \$83,000,000.00. The liabilities of Xela consisted of</p> <p>5 the following," and one of the categories listed under</p> <p>6 liabilities is due to related parties and that's for</p> <p>7 the amount of 72,944,120 and I just want to confirm</p> <p>8 that that figure listed in the chart at Paragraph 71</p> <p>9 of your affidavit includes amounts owing to both BDT</p> <p>10 and PAICA.</p> <p>11 A. Yes, because they were related in the</p> <p>12 past, so we just keep keeping them in the same total.</p> <p>13 MR. OPOLSKY: Counsel, just to draw your</p> <p>14 attention. That figure is the same sum as in the</p> <p>15 bottom right-hand side of Exhibit D.</p> <p>16 BY MR. WOYCHESHYN:</p> <p>17 455. Q. That's what I figured. Thank you. If</p> <p>18 we can look at Page 21 of your affidavit, Paragraph --</p> <p>19 Page 30 of the application record when you talk about</p> <p>20 the DIP loan. Capital D, capital I, capital P.</p> <p>21 A. Yes.</p> <p>22 456. Q. You understand DIP to be debtor in</p> <p>23 possession?</p> <p>24 A. Sorry, where? Which paragraph are we</p> <p>25 talking about?</p>
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<p>1 referenced, that was money that was garnished by</p> <p>2 Margarita?</p> <p>3 A. That's my understanding.</p> <p>4 452. Q. So back to my question. Since 2017</p> <p>5 when the judgement was final, Xela has not voluntarily</p> <p>6 paid any money towards the judgement?</p> <p>7 A. Xela has not been in the possibility to</p> <p>8 do it, but it's been looking for every -- every option</p> <p>9 to collect and obtain funds to pay, satisfy the</p> <p>10 judgement.</p> <p>11 453. Q. We can agree that under the proposed</p> <p>12 CCAA plan as currently contemplated, there is no</p> <p>13 deadline by which Margarita will receive any funds to</p> <p>14 pay down her judgement?</p> <p>15 A. I guess that that will be defined by</p> <p>16 the court when the CCAA is discussed and approved.</p> <p>17 MR. OPOLSKY: If this is a good time, I</p> <p>18 would like to run to the bathroom.</p> <p>19 MR. WOYCHESHYN: Sure.</p> <p>20 --- OFF THE RECORD (2:56 P.M.) ---</p> <p>21 --- UPON RESUMING (3:03 P.M.) ---</p> <p>22 BY MR. WOYCHESHYN:</p> <p>23 454. Q. Mr. Gutierrez, if you could please turn</p> <p>24 to Page 17 of your affidavit, Page 26 of the record,</p> <p>25 Paragraph 71. I just want to confirm something, and</p>	<p>1 457. Q. Ninety-three.</p> <p>2 A. Ninety-three, okay. Yes. What's the</p> <p>3 question?</p> <p>4 458. Q. You understand DIP to be debtor in</p> <p>5 possession?</p> <p>6 A. Yes.</p> <p>7 459. Q. Paragraph 94 of your affidavit you say</p> <p>8 Xela has sourced DIP financing from a numbered</p> <p>9 company, 10357235 Canada Ltd.?</p> <p>10 A. Yes.</p> <p>11 460. Q. That's owned by Thomas Gutierrez and</p> <p>12 Andres Gutierrez?</p> <p>13 A. That's correct.</p> <p>14 461. Q. Andres is A-N-D-R-E-S. They are your</p> <p>15 two sons?</p> <p>16 A. That's correct.</p> <p>17 462. Q. Andres is Juan Andres, right?</p> <p>18 A. That's correct.</p> <p>19 463. Q. And Thomas is Thomas Daniel?</p> <p>20 A. That's correct.</p> <p>21 464. Q. Andres is 38 years old?</p> <p>22 A. Yes.</p> <p>23 465. Q. And Thomas 31?</p> <p>24 A. Yes.</p> <p>25 466. Q. To your knowledge are they the only</p>

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<p>1 shareholders of the numbered company listed at</p> <p>2 Paragraph 94 of your affidavit?</p> <p>3 A. I believe so, but I'm not a hundred</p> <p>4 percent sure.</p> <p>5 467. Q. Could you ask them?</p> <p>6 MR. OPOLSKY: I'll take that under</p> <p>7 advisement.</p> <p>8 --- UNDER ADVISEMENT NO. 15</p> <p>9 BY MR. WOYCHESHYN:</p> <p>10 468. Q. Do you know when they incorporated that</p> <p>11 numbered company, sir?</p> <p>12 A. I don't know.</p> <p>13 469. Q. I'm showing you a corporate search for</p> <p>14 that company and according to this it looks like the</p> <p>15 certificate of corporation, if you look at Page 2, was</p> <p>16 on August 8th, 2017. Do you see that?</p> <p>17 A. Where is that?</p> <p>18 470. Q. Under certificate of ---</p> <p>19 A. Oh here in the bottom. Yeah. This one</p> <p>20 here?</p> <p>21 471. Q. Yes. Under certificate of</p> <p>22 incorporation it says August 18, 2017. You see that?</p> <p>23 MR. OPOLSKY: You're referring to the last</p> <p>24 bolded line on the page?</p> <p>25 MR. WOYCHESHYN: Correct.</p>	<p>1 business, I thought that there was a Xela-related</p> <p>2 company called Greenpak that was involved in that line</p> <p>3 of business?</p> <p>4 A. Sorry. No, there is no Greenpak</p> <p>5 related Xela.</p> <p>6 477. Q. Did I dream that in technicolour or was</p> <p>7 there not a business called Greenpak?</p> <p>8 A. There was a company that was started</p> <p>9 years ago under that name --</p> <p>10 478. Q. And it was involved ---</p> <p>11 A. -- and that was under Arven.</p> <p>12 479. Q. Arven.</p> <p>13 A. Yeah.</p> <p>14 480. Q. And it was in the packaging business,</p> <p>15 right?</p> <p>16 A. It was in the biodegradable packaging.</p> <p>17 481. Q. Andres was involved in that business?</p> <p>18 A. Yes.</p> <p>19 482. Q. Can you ask either of your sons -- and</p> <p>20 just so we're clear, you only have two sons, right?</p> <p>21 A. Sorry?</p> <p>22 483. Q. You only have the two sons? You have</p> <p>23 two daughters, but you also have two sons?</p> <p>24 A. That's correct.</p> <p>25 484. Q. You only have two sons?</p>
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<p>1 THE DEPONENT: Okay. I see that. Sorry.</p> <p>2 BY MR. WOYCHESHYN:</p> <p>3 472. Q. I take it that you have no personal</p> <p>4 involvement in this numbered company?</p> <p>5 A. No.</p> <p>6 473. Q. Any reason to doubt that it was</p> <p>7 incorporated on August 8, 2017?</p> <p>8 MR. OPOLSKY: I think that it says what it</p> <p>9 says. If this the corporate registration, it says</p> <p>10 what it says.</p> <p>11 MR. WOYCHESHYN: The next exhibit.</p> <p>12 MR. BORTOLIN: F.</p> <p>13 --- EXHIBIT NO. F: Corporate search for 10357235 Canada</p> <p>14 Ltd</p> <p>15 BY MR. WOYCHESHYN:</p> <p>16 474. Q. Do you know what the business of that</p> <p>17 numbered company is, sir?</p> <p>18 A. Sorry? What's the business they do?</p> <p>19 475. Q. Yes. What's the business of the</p> <p>20 numbered company?</p> <p>21 A. I am a hundred percent of everything</p> <p>22 they do because I'm not part of it, but I know they're</p> <p>23 in -- they're selling biodegradable plastics and some</p> <p>24 other things.</p> <p>25 476. Q. Now, the biodegradable plastics</p>	<p>1 A. That's correct.</p> <p>2 485. Q. Can you ask either of your sons what</p> <p>3 business the 10357235 Canada Limited is involved in</p> <p>4 other than the biodegradable packaging business?</p> <p>5 MR. OPOLSKY: We'll take that under</p> <p>6 advisement.</p> <p>7 --- UNDER ADVISEMENT NO. 16</p> <p>8 BY MR. WOYCHESHYN:</p> <p>9 486. Q. Your son's company has provided or</p> <p>10 agreed to provide a facility for \$500,000.00, sir?</p> <p>11 A. That's correct.</p> <p>12 487. Q. Do you know the source of those funds?</p> <p>13 A. They have been working together for a</p> <p>14 long time in different things.</p> <p>15 488. Q. Other than the biodegradable packing</p> <p>16 business, anything else to your knowledge?</p> <p>17 A. I don't work with them and they work</p> <p>18 independently.</p> <p>19 489. Q. Do you know when Greenpak stopped being</p> <p>20 associated with Xela?</p> <p>21 A. Greenpak was a part of Arven.</p> <p>22 490. Q. Right. But is this after Arven was</p> <p>23 separated from Xela or before?</p> <p>24 A. Greenpak started before that.</p> <p>25 491. Q. Right. So I'll ask my question: when</p>



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

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

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

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

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<p>1 519. Q. So it was you that worked with RSM to 2 come up with the \$500,000.00 charge? 3 A. Through counsel, too, I presume. I 4 don't know exactly what your question is. I don't 5 understand your question. 6 520. Q. My question, sir, is how on earth is it 7 reasonable in your view for there to be a \$500,000.00 8 charge for a company that has no operations and is 9 having its litigation entirely funded by I'll say a 10 related party, but I understand that you say a third 11 party? 12 MR. OPOLSKY: Don't answer that. I'm not 13 going to let him answer a question of whether 14 something is reasonable or not. That's a legal 15 assessment. 16 --- REFUSAL NO. 3 17 BY MR. WOYCHESHYN: 18 521. Q. So Paragraph 108 you say Xela worked 19 with RSM to estimate the proposed quantum of the 20 administrative charge and believes it to be reasonable 21 and appropriate in view of the complexities of the 22 company's CCAA proceeding. So your belief in the 23 reasonableness, sir, is based on what? Xela's belief 24 in the reasonableness, which you put in issue in your 25 affidavit at Paragraph 108, what's the basis for</p>	<p>1 already. So didn't you just take the number that the 2 monitor gave you and adopt it? 3 A. I don't have a prior experience, but I 4 am a businessman and I'm not an idiot or ignorant, so 5 I estimated the numbers that were presented to me and 6 they sounded reasonable to me. I don't -- like I'm 7 not saying that this is the only number either. I 8 don't know the future either. 9 528. Q. There was another number proposed to 10 you? 11 A. This is the number that seems 12 reasonable that was put forward. 13 529. Q. By RSM? 14 A. In consultation with them. Yes. 15 530. Q. Paragraph 109 of your affidavit, sir. 16 This is under the heading "Directors and Officers 17 Charge." Paragraph 109 you say, "To ensure that Xela 18 is able to continue its involvement in the litigation 19 described above, Xela requires the ongoing 20 participation of its directors and officers." Just to 21 be clear, that is the only people involved are you and 22 Mr. Shields? 23 A. That's correct. 24 531. Q. And as between you and Mr. Shields, who 25 has more involvement?</p>
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<p>1 Xela's belief in the reasonableness of that 2 \$500,000.00 charge? 3 A. I really don't understand your 4 question. If you can explain it to me a little bit 5 clearer because I don't know what you mean. 6 522. Q. Xela says that \$500,000.00 is 7 reasonable in terms of a charge. I'm asking why. 8 A. The charge for what? For the cost of 9 the CCAA? 10 523. Q. Yes. 11 A. Well, that's an estimated -- estimation 12 made after the consultation with the -- with the 13 proposed -- how you call it? The RSM. 14 524. Q. The monitor? 15 A. The monitor. Thank you. 16 525. Q. I take it what happened, sir, is the 17 monitor just put forward a number and you didn't 18 object to it? 19 A. That's not exactly accurate, but that's 20 the number that made sense. 21 526. Q. Based on what? 22 A. Based on the time that we presume it's 23 going to take to resolve this matter. 24 527. Q. Right. But you have no prior 25 experience in CCAA proceedings, you told me that</p>	<p>1 A. Myself. 2 532. Q. Does Mr. Shields have any involvement? 3 A. On the legal procedures and the 4 litigation, just what's necessary. He's aware of 5 what's going on. I obtain his advice when it's 6 necessary. Neither I or him are lawyers, so 7 litigation is in hands of the legal team. 8 533. Q. Help me with this, sir. Your evidence 9 is that you have no involvement with BDT? 10 A. I no longer have involvement with BDT. 11 534. Q. Right. And you've attached to your 12 affidavit as Exhibit G an assignment of causative 13 action that assigns Lisa's interests in the Avicola 14 litigation to BDT, right? 15 A. Right. 16 535. Q. Why do you need to be involved in 17 litigation? 18 A. Because Lisa is the owner of the 19 shares. 20 536. Q. Lisa's --- 21 A. Lisa has to be part in the ligation. 22 Lisa is subsidiary of Xela. 23 537. Q. Lisa, on your own evidence, sir, that 24 you've attached to your affidavit, Lisa's assigned its 25 rights in the litigation to BDT.</p>

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<p>1 A. But not the ownership of the shares.</p> <p>2 Lisa is the one that is the plaintiff in the majority</p> <p>3 on all the cases except the one in Florida. And my</p> <p>4 involvement is necessary because I am the -- the one</p> <p>5 that's been involved from the beginning. I know -- I</p> <p>6 have the knowledge.</p> <p>7 538. Q. So how can you say, sir, that you need</p> <p>8 to be involved in litigation, but you have no</p> <p>9 involvement with BDT, when BDT is the one that</p> <p>10 actually holds the rights to the litigation now?</p> <p>11 A. BDT is funding the litigation. Lisa is</p> <p>12 the one that's litigating.</p> <p>13 539. Q. That's different, sir, than what</p> <p>14 Exhibit G to your affidavit says. Let's read it</p> <p>15 together. "As a result of negotiation between the</p> <p>16 parties, BDT agrees to fund the litigation going</p> <p>17 forward, which could result in millions of dollars of</p> <p>18 expenses. In return, Lisa will assign all causative</p> <p>19 actions of all current and future lawsuits involving</p> <p>20 the Avicola holdings." You see that?</p> <p>21 A. Yeah. I understand what that means.</p> <p>22 540. Q. Lisa's ---</p> <p>23 A. I don't ---</p> <p>24 541. Q. Lisa's duty, sir ---</p> <p>25 MR. OPOLSKY: Sorry, I think he was not done</p>	<p>1 benefits of the -- that's why it says 30 percent and</p> <p>2 70 percent split.</p> <p>3 547. Q. I know.</p> <p>4 A. And that's of the results of the</p> <p>5 litigation.</p> <p>6 548. Q. I know. You told ---</p> <p>7 A. The actions remain in the</p> <p>8 responsibility of Lisa and BDT is funding them like in</p> <p>9 the past.</p> <p>10 549. Q. You told me before that you had</p> <p>11 discussed it before it was signed. My question is</p> <p>12 specific. Did you look at the agreement, the</p> <p>13 assignment of causative action attached as Exhibit G</p> <p>14 before it was signed?</p> <p>15 A. I already answered that question.</p> <p>16 550. Q. No, you didn't, sir. You said you</p> <p>17 discussed it. You didn't say you actually looked at</p> <p>18 it. My question is did you look at it?</p> <p>19 A. I discussed it.</p> <p>20 551. Q. Okay. Now, looking at it now, you see</p> <p>21 how in the fourth last paragraph it says, "Lisa agrees</p> <p>22 to fully cooperate with BDT on a reasonable basis"?</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p> <p>25 552. Q. All right.</p>
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<p>1 answering his question.</p> <p>2 BY MR. WOYCHESHYN:</p> <p>3 542. Q. Finish. Sorry, I did interrupt.</p> <p>4 A. I said I read that and I'm not a lawyer</p> <p>5 and I didn't write the causative actions words in</p> <p>6 there. So my understanding is that what Lisa has</p> <p>7 assigned to BDT is the benefits of the results of the</p> <p>8 litigation are in exchange of funding it, and Lisa is</p> <p>9 the one that's act -- the actor in all the cases in</p> <p>10 Guatemala and Panama.</p> <p>11 543. Q. But you told me earlier that you spoke</p> <p>12 to Mr. Shields about this proposal before it was</p> <p>13 signed?</p> <p>14 A. When it was signed. I learned it was</p> <p>15 signed. Yes.</p> <p>16 544. Q. Right. You don't remember sitting here</p> <p>17 today whether you reviewed it before it was signed?</p> <p>18 A. I don't understand what -- I don't</p> <p>19 understand what you're --</p> <p>20 545. Q. You're telling me ---</p> <p>21 A. -- trying to ask me.</p> <p>22 546. Q. I'm asking you don't remember whether</p> <p>23 you reviewed this Exhibit G before it was signed?</p> <p>24 A. We discussed it and I -- as I'm telling</p> <p>25 you what our understanding was. We were assigning the</p>	<p>1 A. Lisa is cooperating, and Lisa is the</p> <p>2 one that is acting in the different legal cases.</p> <p>3 553. Q. It's cooperating, sir, because it no</p> <p>4 longer holds the rights in the litigation. The rights</p> <p>5 in litigation belong to BDT.</p> <p>6 A. But I don't understand what the</p> <p>7 difference of what you're asking me or what is in</p> <p>8 there. I don't.</p> <p>9 554. Q. So your evidence, sir, is you don't</p> <p>10 understand the difference between whether Lisa owns</p> <p>11 the right to pursue Avicola litigation versus the</p> <p>12 obligation to share in recoveries in the Avicola</p> <p>13 litigation with BDT? You don't understand the</p> <p>14 difference between those two?</p> <p>15 MR. OPOLSKY: He's answered the question and</p> <p>16 I think ultimately you're asking for a legal</p> <p>17 determination of what the contract means --</p> <p>18 MR. WOYCHESHYN: No.</p> <p>19 MR. OPOLSKY: -- which he's not able to give</p> <p>20 you.</p> <p>21 --- REFUSAL NO. 4</p> <p>22 BY MR. WOYCHESHYN:</p> <p>23 555. Q. When you say you discussed the Exhibit</p> <p>24 G, sir, are you saying you specifically know that you</p> <p>25 did not review it before it was signed, or you don't</p>

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<p>1 remember whether you reviewed it before it was signed?</p> <p>2 MR. OPOLSKY: Are you asking whether he saw</p> <p>3 this piece of paper before it was signed?</p> <p>4 BY MR. WOYCHESHYN:</p> <p>5 556. Q. Yes.</p> <p>6 A. The answer is no, I didn't see it</p> <p>7 before it was signed.</p> <p>8 557. Q. But you knew it was being signed</p> <p>9 because you discussed it with Cal Shields?</p> <p>10 A. We discussed the terms.</p> <p>11 558. Q. Let me just see. When you discussed it</p> <p>12 with Cal Shields, you knew that it dealt with Avicola</p> <p>13 litigation?</p> <p>14 A. Ask the question again.</p> <p>15 559. Q. When you discussed Exhibit G with Cal</p> <p>16 Shields, you knew that the document being signed</p> <p>17 related to the Avicola litigation?</p> <p>18 A. Yes. To the benefits of it.</p> <p>19 560. Q. Right. And as we said before, the</p> <p>20 Avicola litigation relates to the Avicola shares and</p> <p>21 that is by far the largest asset of Xela or any of its</p> <p>22 subsidiaries?</p> <p>23 A. Correct.</p> <p>24 561. Q. And as president and director of Xela,</p> <p>25 you didn't feel it important to look at the document</p>	<p>1 just said. You just said, sir, that the agreement</p> <p>2 signed as Exhibit G was signed on the terms you</p> <p>3 discussed with Mr. Shields, is that -- did I get that</p> <p>4 right?</p> <p>5 A. To my understanding, what I understand</p> <p>6 when I read this document, it is within what him and I</p> <p>7 talked about.</p> <p>8 564. Q. With all the lawyers that Xela has, did</p> <p>9 you bother to get legal advice on the agreement before</p> <p>10 it was signed?</p> <p>11 MR. OPOLSKY: Please don't answer that.</p> <p>12 --- REFUSAL NO. 5</p> <p>13 BY MR. WOYCHESHYN:</p> <p>14 565. Q. I don't want to know -- I don't know</p> <p>15 what the advice was; I'm asking whether you received</p> <p>16 advice.</p> <p>17 A. I cannot comment on anything that we</p> <p>18 discussed with our lawyers.</p> <p>19 566. Q. I'm not asking you to say what you said</p> <p>20 to your lawyer or what your lawyer may have said back.</p> <p>21 I'm asking whether Xela bothered to get legal advice?</p> <p>22 MR. OPOLSKY: Don't answer the question.</p> <p>23 --- REFUSAL NO. 6</p> <p>24 THE DEPONENT: On the instructions of my</p> <p>25 lawyer, I'm not answering.</p>
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<p>1 before it was being signed?</p> <p>2 A. The truth of the matter here is that</p> <p>3 the litigation requires funding. BDT has been</p> <p>4 providing the funding. And there has been a lot of</p> <p>5 effort to make it impossible for Lisa to continue</p> <p>6 litigation because it's the only way Lisa would lose.</p> <p>7 So my responsibility as president of Xela is to make</p> <p>8 sure that the litigation continues. The ownership of</p> <p>9 Lisa is Xela's., the ownership of the shares belong to</p> <p>10 Lisa, but BDT is funding it and it deserves payment</p> <p>11 for the funding it's putting. Anybody that would fund</p> <p>12 litigation would require a similar type of conditions.</p> <p>13 562. Q. Just so that I understand your answer,</p> <p>14 sir, are you saying as long as you were securing</p> <p>15 funding to pursue the Avicola litigation, you didn't</p> <p>16 think it was important to actually have a look at the</p> <p>17 agreement between BDT and Lisa with respect to the</p> <p>18 litigation?</p> <p>19 A. No, because they -- I wasn't there when</p> <p>20 it was signed. Mr. Shields is a responsible</p> <p>21 businessman and it was signed on the terms that we</p> <p>22 agreed. So the legal terminology you're trying to put</p> <p>23 in here, I cannot comment on because I'm not a lawyer.</p> <p>24 So I really don't understand where you're going to.</p> <p>25 563. Q. No, I just want to understand what you</p>	<p>1 BY MR. WOYCHESHYN:</p> <p>2 567. Q. Did Lisa bother to get legal advice</p> <p>3 before it signed the agreement at Exhibit G?</p> <p>4 MR. OPOLSKY: Don't answer the question.</p> <p>5 --- REFUSAL NO. 7</p> <p>6 THE DEPONENT: Same answer.</p> <p>7 BY MR. WOYCHESHYN:</p> <p>8 568. Q. Paragraph 112 of your affidavit.</p> <p>9 Actually, the bottom of Paragraph 111. This is Page</p> <p>10 33 of the application record, Page 24 of your</p> <p>11 affidavit. Xela is seeking a charge in favour of</p> <p>12 president and former directors and officers on the</p> <p>13 assets, property and undertakings of the company in</p> <p>14 the maximum amount of \$100,000.00, and that's defined</p> <p>15 as the directors and officers charge. That will allow</p> <p>16 Xela to continue to benefit from the expertise and</p> <p>17 knowledge of its directors and officers. And you say</p> <p>18 in Paragraph 112 that that quantum of the directors</p> <p>19 and officers charge has been considered by RSM and</p> <p>20 negotiated by Xela and its directors and officers. I</p> <p>21 take it that you were the one that was involved in</p> <p>22 that negotiation and not Mr. Shields?</p> <p>23 A. Correct.</p> <p>24 569. Q. Carrying on in Paragraph 112, you state</p> <p>25 Xela believes that that charge is reasonable in the</p>

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<p>1 circumstances. You see that?</p> <p>2 A. Yes.</p> <p>3 570. Q. What liability does that charge protect</p> <p>4 against?</p> <p>5 A. What is your question regarding</p> <p>6 exactly?</p> <p>7 571. Q. What do you need that charge for?</p> <p>8 A. The charge of the -- that's in case</p> <p>9 that there is any litigation against the directors.</p> <p>10 572. Q. Right. But certainly you understand,</p> <p>11 sir, that as part of a CCAA filing there would be a</p> <p>12 stay of all actions?</p> <p>13 A. I understand --</p> <p>14 573. Q. Against Xela?</p> <p>15 A. -- that. Yes.</p> <p>16 574. Q. So that's not a risk?</p> <p>17 A. That would be for ---</p> <p>18 MR. OPOLSKY: Just if we're commenting on</p> <p>19 legal niceties, there's a stay of actions against</p> <p>20 Xela. There's not a stay of action against its</p> <p>21 directors and officers.</p> <p>22 BY MR. WOYCHESHYN:</p> <p>23 575. Q. Right. So that's the concern? That's</p> <p>24 what you understand the charge to be, is if there are</p> <p>25 proceedings commenced individually against either you</p>	<p>1 A. He has not said anything one way or the</p> <p>2 other.</p> <p>3 582. Q. I know I asked you earlier, sir, and</p> <p>4 you confirmed that you had never been involved in a</p> <p>5 CCAA proceeding, so my questions are going to be a bit</p> <p>6 different so just bear with me. Xela has never been</p> <p>7 involved in a CCAA proceeding to your knowledge,</p> <p>8 right?</p> <p>9 A. Never.</p> <p>10 583. Q. And Xela has never been placed into</p> <p>11 receivership before?</p> <p>12 A. No.</p> <p>13 584. Q. You agree with me?</p> <p>14 A. Yes.</p> <p>15 585. Q. None of Xela's Canadian subsidiaries</p> <p>16 have ever sought CCAA protection to your knowledge?</p> <p>17 A. No.</p> <p>18 586. Q. And none of Xela's Canadian</p> <p>19 subsidiaries have ever been placed into receivership?</p> <p>20 A. Sorry, I couldn't hear very well.</p> <p>21 587. Q. None of Xela's Canadian subsidiaries</p> <p>22 have every been placed into receivership?</p> <p>23 A. No.</p> <p>24 588. Q. You agree with me?</p> <p>25 A. Yes.</p>
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<p>1 or Mr. Shields?</p> <p>2 A. Correct.</p> <p>3 576. Q. Has there been any threat of those</p> <p>4 proceedings, sir?</p> <p>5 A. None that I'm aware of, but there is</p> <p>6 always the possibility.</p> <p>7 577. Q. For a company with no operations?</p> <p>8 A. Well, from the people who are attacking</p> <p>9 the company.</p> <p>10 578. Q. I take it, sir, your evidence isn't</p> <p>11 that you would not be willing to participate as, or</p> <p>12 continue as a director and officer of Xela if that</p> <p>13 charge wasn't there? You're not saying that, are you?</p> <p>14 A. Me personally ---</p> <p>15 MR. OPOLSKY: Sorry, can you ask that</p> <p>16 question without double negatives?</p> <p>17 BY MR. WOYCHESHYN:</p> <p>18 579. Q. Sure. If there was no \$100,000.00</p> <p>19 directors and officers charge, would you continue to</p> <p>20 serve as a director and officer as Xela?</p> <p>21 A. I personally would.</p> <p>22 580. Q. Do you know whether Mr. Shields would?</p> <p>23 A. I have not discussed that with him.</p> <p>24 581. Q. I take it that he hasn't told you that</p> <p>25 he would resign if there was no charge?</p>	<p>1 589. Q. And yet, sir, I understand that you are</p> <p>2 concerned that if a receivership is put in place or a</p> <p>3 receiver is put in place over Xela that that will</p> <p>4 result in a fire sale of Avicola shares?</p> <p>5 MR. OPOLSKY: Counsel, are you referring to</p> <p>6 a portion of his affidavit?</p> <p>7 MR. WOYCHESHYN: Paragraph 5.</p> <p>8 MR. OPOLSKY: Paragraph 5 of your affidavit.</p> <p>9 THE DEPONENT: Yes.</p> <p>10 BY MR. WOYCHESHYN:</p> <p>11 590. Q. So that's your concern, that there will</p> <p>12 be a fire sale of Avicola shares?</p> <p>13 A. That is a concern for everybody</p> <p>14 involved in this.</p> <p>15 591. Q. Who is everyone?</p> <p>16 A. All the creditors and Xela.</p> <p>17 592. Q. So all the creditors listed on Exhibit</p> <p>18 D that we looked at before?</p> <p>19 A. I assume that every creditor will be</p> <p>20 concerned about that because Xela is trying to do and</p> <p>21 the reason we offered CCAA is because we're trying to</p> <p>22 put together a plan so all creditors are protected.</p> <p>23 593. Q. But there is no plan right now?</p> <p>24 A. That's what the CCAA is for, to put</p> <p>25 together the plan.</p>

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<p>1 594. Q. Right. But you told me earlier, sir, 2 that plan won't come for months, if longer. 3 A. That's your speculation. I said it 4 could be very soon. We don't know for sure. It's 5 more than one option to resolve this matter. 6 MR. WOYCHESHYN: Do you have Exhibit D? 7 MR. BORTOLIN: D. 8 BY MR. WOYCHESHYN: 9 595. Q. Groia and Company is no longer counsel 10 to Xela, right? 11 A. Correct. 12 596. Q. Has Groia and Company expressed any 13 concern with Xela being placed into receivership? 14 A. I have not talked to them. 15 597. Q. Epic Realty Partners Inc., I take it 16 that that is a former landlord? 17 A. Former landlord, yes. 18 598. Q. Has anyone at Epic Realty Partners Inc. 19 raised any concern with Xela being placed into 20 receivership? 21 A. I have not talked to any of them. 22 599. Q. Am I right, sir, that you haven't 23 talked to any of the creditors about the CCAA plan 24 other than the creditors that are related parties or 25 shareholders?</p>	<p>1 you and remind you that all settlement discussions are 2 privileged. I would ask you not to put any of them 3 into the record. 4 THE DEPONENT: Sorry about that. But so 5 what I want to say is that Xela has had the best 6 interest all along to satisfy that judgement as well 7 as all the other creditors, and we've been doing our 8 best to do it, and the CCAA avenue is the one that 9 gives the best option. And going to that paragraph 10 that you were reading before, there's a very 11 legitimate risk that a receiver appointed by my sister 12 would attempt to sell those shares in a fire sale, and 13 that's a concern. 14 BY MR. WOYCHESHYN: 15 604. Q. Do you remember my question, sir? 16 A. Yeah. That was your question, if there 17 was a concern that the fire sale could occur. 18 605. Q. That concern was four questions ago. 19 My question that I asked you was other than the people 20 listed -- other than your mother and those listed as 21 related parties, you haven't spoken to any other 22 creditors listed on Exhibit D regarding whether they 23 prefer a CCAA proceeding over a receivership? 24 A. There is a few of these creditors that 25 have signed in their agreement to participate; that's</p>
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<p>1 A. The ones that -- yeah, the ones that we 2 talked to, they all have the same concern. 3 600. Q. Right. But the ones that you talked to 4 are either shareholders or related parties? 5 A. Shareholders? Not shareholders. Xela 6 has only one shareholder; that was my father. 7 601. Q. Presumably you spoke to your mother 8 about this? 9 A. Yes. 10 602. Q. Your mother is the estate trustee for 11 your father's estate? 12 A. That's correct. 13 603. Q. Other than speaking to your mother and 14 speaking to related parties as listed on Exhibit D, do 15 I have it correct that you haven't spoken to any other 16 creditors regarding whether they prefer a CCAA or a 17 receivership? 18 A. I have not spoken to all of them, I 19 have spoken to a few. But the issue here is that 20 everybody wants to get, collect -- collect these 21 dividends, related or not related -- sorry, collect 22 the debts. Xela has always been in the best position 23 to negotiate a solution. We've been attempting to do 24 so with my sister, too. 25 MR. OPOLSKY: Hold on. I'm going to stop</p>	<p>1 further in the affidavit. Those are the ones that we 2 have talk -- I have talked to and those are the ones 3 that have expressed concern. 4 606. Q. Other than those in the support 5 agreement, your evidence is you haven't to spoken to 6 any other credits? 7 A. Not all -- not all of them. 8 607. Q. Sir, I'm just trying to understand who 9 you've spoken to. It's not that complicated. You've 10 told me that you spoke to the people in the support 11 agreement; fine. I asked you to confirm that that's 12 everybody you've spoken to and you said it's not all 13 of them. Which other ones? 14 A. I've said everybody that signed the 15 consent are the ones I spoken to and they're the ones 16 that expressed their concern. 17 608. Q. Yes. And I want to know and I'm 18 entitled to know which other creditors you've spoken 19 to. 20 A. I already answer who I talked to. The 21 ones that signed the consent. Everybody I talked to 22 has signed the consent. 23 609. Q. And no one else? 24 A. No. 25 610. Q. Now, when you use that terminology,</p>

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<p>1 fire sale, sir -- actually, one more question about</p> <p>2 Exhibit D. You see here there's Heenan Blaikie</p> <p>3 listed?</p> <p>4 A. That's a law firm?</p> <p>5 611. Q. Yes. Sir, you understand that that law</p> <p>6 firm ceased to operate in 2014?</p> <p>7 A. I did not know that.</p> <p>8 612. Q. Back to your use of the words fire</p> <p>9 sale. So just so I understand what you mean by that,</p> <p>10 what I take it you mean is that a fire sale means that</p> <p>11 the shares will be sold quickly, right? That's one</p> <p>12 aspect?</p> <p>13 A. Mm-hmm.</p> <p>14 613. Q. Yes?</p> <p>15 MR. OPOLSKY: Are you again referring to</p> <p>16 Paragraph 5?</p> <p>17 MR. WOYCHESHYN: Yes. I'm trying to</p> <p>18 understand what he means by a fire sale.</p> <p>19 THE DEPONENT: What's the question?</p> <p>20 BY MR. WOYCHESHYN:</p> <p>21 614. Q. I take it that there's two aspects to a</p> <p>22 fire sale as you use those words: one is timing, that</p> <p>23 the sale will happen quickly; and two is that they'll</p> <p>24 be sold for below what you think the fair value is, is</p> <p>25 that right?</p>	<p>1 A. They are the only feasible purchaser</p> <p>2 and they are interested parties in this matter. So</p> <p>3 that definitely would be very harmful for Xela and for</p> <p>4 its stockholders, for BDT and the other creditors,</p> <p>5 presumably including Margarita.</p> <p>6 619. Q. At Paragraph 83 of your affidavit, sir.</p> <p>7 A. What number again?</p> <p>8 620. Q. Eighty-three. It's on Page 19 of your</p> <p>9 affidavit and Page 28 of the application record.</p> <p>10 Paragraph 83 you say, "Until this litigation provides</p> <p>11 a source of revenue to Xela, Xela will be unable to</p> <p>12 pay its numerous creditors, including Ms. Castillo."</p> <p>13 And what you're referring to there is the Avicola</p> <p>14 litigation, right?</p> <p>15 A. That's correct.</p> <p>16 621. Q. You say, "Nevertheless, Ms. Castillo</p> <p>17 has undertaken specific action to place Xela into</p> <p>18 equitable receivership, proceedings that will not</p> <p>19 offer the same protection and benefits to all actors</p> <p>20 as that available under the CCAA." And you told me</p> <p>21 before, sir, you had no prior experience with either</p> <p>22 the CCAA or a receivership, right?</p> <p>23 A. No.</p> <p>24 622. Q. So that cannot be information that</p> <p>25 obtain -- that originates from you, right?</p>
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<p>1 A. There's a third one. And it's because</p> <p>2 considering the circumstances of the litigation, there</p> <p>3 is only one potential purchaser, which is the Cousins.</p> <p>4 615. Q. Right. But, sir, you told me earlier</p> <p>5 in your evidence that you haven't in the past five</p> <p>6 years even tried to market the shares.</p> <p>7 A. Because of the litigation there is no</p> <p>8 parties that are in the poultry industry or investors</p> <p>9 that would be interested in acquiring this minority</p> <p>10 position.</p> <p>11 616. Q. You don't know that because you haven't</p> <p>12 bothered to market the shares in the past five years.</p> <p>13 MR. OPOLSKY: Is that question?</p> <p>14 MR. WOYCHESHYN: Yes.</p> <p>15 THE DEPONENT: Well, you're telling me that</p> <p>16 we haven't bothered. I already told you we have tried</p> <p>17 in the past to find buyers.</p> <p>18 BY MR. WOYCHESHYN:</p> <p>19 617. Q. More than five years ago?</p> <p>20 A. Several times over the 20 years.</p> <p>21 618. Q. Okay. So there's three aspects to the</p> <p>22 fire sale then: one is they'll be sold very quickly;</p> <p>23 two is they'll be sold for less than their true value;</p> <p>24 and third is they'll be sold to the Cousins? Three</p> <p>25 aspects?</p>	<p>1 A. It's plain and simple logic that a</p> <p>2 process like a CCAA would protect the interest of all</p> <p>3 the creditors.</p> <p>4 623. Q. I want to be clear that I want your</p> <p>5 evidence, sir, because you've put in issue in</p> <p>6 Paragraph 83 that the CCAA will provide better</p> <p>7 protection to the creditors in an equitable</p> <p>8 receivership and I want to know what protections and</p> <p>9 benefits that the CCAA provides that an equitable</p> <p>10 receivership will not provide on your own evidence?</p> <p>11 A. A CCAA procedure will allow the</p> <p>12 litigation to continue under the supervision of the</p> <p>13 monitor, while the receivership, in my understanding,</p> <p>14 is that it would do the opposite.</p> <p>15 624. Q. Anything else? Is that all?</p> <p>16 A. I answered the question.</p> <p>17 625. Q. I just want to make sure that's the</p> <p>18 totality of your evidence on that point.</p> <p>19 A. Yeah.</p> <p>20 626. Q. You understand, sir, that if a receiver</p> <p>21 is appointed that neither my firm nor my client will</p> <p>22 control the receiver? Do you understand that?</p> <p>23 A. I don't.</p> <p>24 627. Q. You understand that if a receiver is</p> <p>25 appointed that that receiver will owe a duty to all</p>

Page 138	Page 140
<p>1 creditors?</p> <p>2 A. I don't know that.</p> <p>3 628. Q. You understand, sir, that the receiver</p> <p>4 could decide to continue the Avicola litigation?</p> <p>5 A. I don't know what the receiver would</p> <p>6 do.</p> <p>7 629. Q. Do you know, sir, that if your receiver</p> <p>8 was appointed and tried to sell the Avicola shares</p> <p>9 that that sale would ultimately require court</p> <p>10 approval? Do you understand that?</p> <p>11 A. I don't know. I don't know the</p> <p>12 procedure, but...</p> <p>13 630. Q. At Paragraph 87 of your Affidavit, sir,</p> <p>14 you say, "Given the liquidity crisis faced by Xela,</p> <p>15 court protection is a prerequisite to achieving this</p> <p>16 result. Without a stay of proceedings in the context</p> <p>17 of a CCAA filing, Xela and its directors and officers</p> <p>18 would be unable to continue Xela's involvement in the</p> <p>19 various disputes that are underway." What do you mean</p> <p>20 by that, sir?</p> <p>21 A. Because of the -- I -- what I mean by</p> <p>22 that is that without the proper framework to protect</p> <p>23 the rights of all the parties involved, it will be</p> <p>24 very difficult if not impossible to continue.</p> <p>25 631. Q. Are you saying, sir, that if a receiver</p>	<p>1 Xela and its stakeholders?</p> <p>2 A. That's correct.</p> <p>3 638. Q. And one you're referring to there is</p> <p>4 the creditors of Xela as well?</p> <p>5 A. Absolutely. All included.</p> <p>6 639. Q. Just so I'm clear, your evidence is</p> <p>7 that that's the most sensible approach despite the</p> <p>8 fact that there's no end to the litigation, the</p> <p>9 Avicola litigation in sight?</p> <p>10 A. There is an end in sight. And having</p> <p>11 the presence of the monitor injects another element,</p> <p>12 which is a Canadian oversight.</p> <p>13 640. Q. When do you say all the Avicola</p> <p>14 litigation will be wound up?</p> <p>15 A. I cannot answer that question. Nobody</p> <p>16 knows.</p> <p>17 641. Q. You agree with me that there's no</p> <p>18 certainty in the outcome of the Avicola litigation?</p> <p>19 A. There's no certainty in the outcome of</p> <p>20 anything in life. It's not even a certainty that we</p> <p>21 can go down the elevator without an accident.</p> <p>22 642. Q. Well, one thing that's certain is ---</p> <p>23 A. It's not a certainty, anything.</p> <p>24 643. Q. One thing that is certain is that over</p> <p>25 \$50,000,000.00 has been spent in the Avicola</p>
Page 139	Page 141
<p>1 was appointed over Xela that you would not cooperate</p> <p>2 with the receiver in -- with respect to the Avicola</p> <p>3 litigation?</p> <p>4 A. I did not say that.</p> <p>5 632. Q. Turn to Paragraph 38 of your affidavit.</p> <p>6 A. Thirty?</p> <p>7 633. Q. Thirty-eight, pardon me. It's Page 10</p> <p>8 of your affidavit, Paragraph 38, Page 30 -- 19 of the</p> <p>9 application record, pardon me. This is under the</p> <p>10 heading, "The above litigation represents the only</p> <p>11 realistic avenue of recourse for Xela and its</p> <p>12 creditors." And the ligation you're referring to</p> <p>13 there is the Avicola litigation, right? Right?</p> <p>14 A. I'm reading the paragraph.</p> <p>15 634. Q. Okay.</p> <p>16 A. The Avicola litigation, correct.</p> <p>17 635. Q. Your evidence, sir, is enabling the</p> <p>18 above litigation, which is the Avicola litigation, to</p> <p>19 continue, provides the most sensible result for Xela</p> <p>20 and its stakeholders. Did I read that correctly?</p> <p>21 A. Sorry, where are you reading?</p> <p>22 636. Q. Paragraph 38.</p> <p>23 A. Yeah. Yes. That's right.</p> <p>24 637. Q. I just want to understand, your</p> <p>25 evidence is that that's the most sensible result for</p>	<p>1 litigation on your side, right?</p> <p>2 A. Yes. Fighting for an asset that is</p> <p>3 worth close to a billion dollars.</p> <p>4 644. Q. In the course of 20 years, the only</p> <p>5 final judgement that your side has obtained is less</p> <p>6 than \$5,000,000.00 U.S.?</p> <p>7 A. It is the only portion of the case that</p> <p>8 has ended. But all the other portions are advancing</p> <p>9 very positively.</p> <p>10 645. Q. Your evidence, sir, is it's sensible to</p> <p>11 continue down that path?</p> <p>12 A. That what, sorry?</p> <p>13 646. Q. Your evidence is that it's sensible to</p> <p>14 continue down the path that you have for the past 20</p> <p>15 years?</p> <p>16 A. Absolutely. We are getting very close</p> <p>17 to the end of it. As I explained before, there's a</p> <p>18 lot of recourses that have been used in the past that</p> <p>19 delayed things for years. Those recourses are no</p> <p>20 longer available.</p> <p>21 MR. WOYCHESHYN: Just give me a few minutes,</p> <p>22 please.</p> <p>23 --- OFF THE RECORD (3:52 P.M.) ---</p> <p>24 --- UPON RESUMING (3:56 P.M.) ---</p> <p>25 BY MR. WOYCHESHYN:</p>



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

6 A. Thank you.

7 RE-EXAMINATION BY MR. OPOLSKY:

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

12 A. That is correct.

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

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

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

21 CONTINUED EXAMINATION BY MR. WOYCHESHYN:

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

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

3 A. I did.

4 652. Q. You did?

5 A. Yes, I did.

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

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

9  
10  
11 I hereby certify that this is the  
12 examination of JUAN GUTIERREZ, taken  
13 before me to the best of my skill  
14 and ability on the 26th day of June,  
15 2019.

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

20  
21  
22 Reproductions of this transcript are in direct  
23 violation of O.R. 587/91 Administration of Justice Act  
24 January 1, 1990, and are not certified without the  
25 original signature of the Court Reporter

## **Appendix “D”**

Court File No. CV-19-622852-00CL

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

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

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

Applicant

\* \* \* \* \*

**ANSWER CHART OF THE APPLICANT**

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

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

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

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

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

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

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



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

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

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

## **Appendix “E”**

January 24, 2018

#### ASSIGNMENT OF CAUSATIVE ACTION

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

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

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

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

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

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

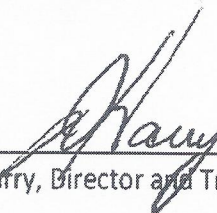
For further clarity, BDT shall be reimbursed for past debts from both LISA and XELA and related future debts plus 70% of the net proceeds arising from an AVICOLA settlement or judgement that is successfully collected.

The parties are in agreement as evidenced below:

This Agreement is dated January 24, 2018.



Patrick Doig, President  
BDT Investment Inc.



David Harry, Director and Treasurer  
Lisa S.A.



Calvin K. Shields, Director  
Xela Enterprises Ltd.

## **Appendix “F”**

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

**MARGARITA CASTILLO**

**APPLICANT**

**- AND -**

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

**RESPONDENTS**

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

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

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

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

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

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

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

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

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

**SWORN BEFORE ME** at the City of  
Toronto, in the Province of Ontario, this  
17<sup>th</sup> day of October, 2019.

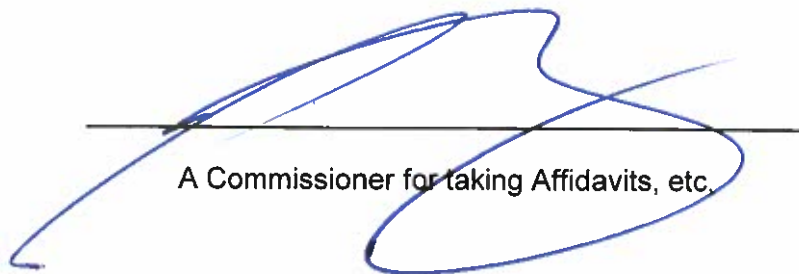
Commissioner for taking affidavits, etc.

*Adam B. Brown* LSO: 56716B

**NOAH GOLDSTEIN**



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



A Commissioner for taking Affidavits, etc.

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

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

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



A Commissioner for taking Affidavits, etc.



**ksv advisory inc.**

150 King Street West, Suite 2308  
Toronto, Ontario, M5H 1J9  
T +1 416 932 6262  
F +1 416 932 6266

ksvadvisory.com

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**INVOICE**

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

September 11, 2019

Invoice No: 1394  
HST #: 818808768 RT0001

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

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

**Pre-Receivership Activities**

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

**Receivership Activities**

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

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

KSV Kofman Inc.  
Xela Enterprises Ltd.  
**Time Summary**

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

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

## **Appendix “G”**

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

**B E T W E E N :**

**MARGARITA CASTILLO**

Applicant

- and -

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

Respondents

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

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

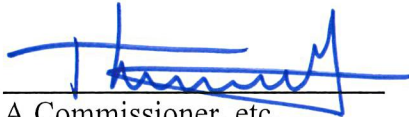
1. I am a partner at Aird & Berlis LLP and, as such, I have knowledge of the matters to which I hereinafter depose. Aird & Berlis LLP has acted as counsel for KSV Kofman Inc. (“KSV”), in its capacity as Court appointed Receiver and continues to do so.
2. Aird & Berlis LLP has prepared Statements of Account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

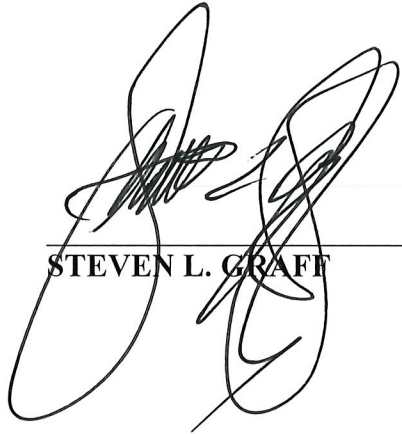


(a) an account dated September 17, 2019 in the amount of \$49,177.68 in respect of the period from January 10, 2019 to September 11, 2019. Attached hereto and marked as **Exhibit "A"** to this my affidavit is a copy of the Statement of Account. The average hourly rate of Aird & Berlis LLP is \$549.44.

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

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

  
\_\_\_\_\_  
A Commissioner, etc.

  
\_\_\_\_\_  
STEVEN L. GRAFF

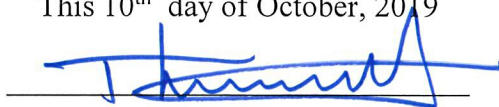
Attached is Exhibit "A"

Referred to in the

AFFIDAVIT OF STEVE GRAFF

Sworn before me

This 10<sup>th</sup> day of October, 2019

A handwritten signature in blue ink is written over a horizontal line. The signature is stylized and appears to be a cursive or semi-cursive script.

Commissioner for taking Affidavits, etc

**KSV Kofman Inc.**

In its capacity as Receiver

*September 17, 2019 Account 645141*

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

IN ACCOUNT WITH:

**AIRD BERLIS**

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

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

Attention: Mr. Noah Goldstein

**Account No.: 645141**

PLEASE WRITE ACCOUNT NUMBERS  
ON THE BACK OF ALL CHEQUES

File No.: 41611/148591

September 17, 2019

**Re: Receivership of Xela Enterprises Ltd.**

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

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

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

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

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

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



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

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

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

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

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

<b>OUR FEE</b>	\$42,636.50
HST at 13%	\$5,542.75

**DISBURSEMENTS**

**COST INCURRED ON YOUR BEHALF AS AN AGENT**

Due Diligence-Gov Fee	\$11.00
Search Under P.P.S.A.	\$24.50

Total Agency Costs	\$35.50
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**Subject to HST**

Photocopies	\$383.50
Photocopies - Local	\$315.50
Imaging/Scanning	\$71.25
Binding and Tabs	\$36.00
Taxi	\$10.40
Corporate Search	\$20.00
Service Provider Fee	\$15.50

Total Disbursements	\$852.15
HST at 13%	\$110.78

**AMOUNT NOW DUE**

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**\$49,177.68**

THIS IS OUR ACCOUNT HEREIN  
Aird & Berlis LLP

Steven L. Graff  
E.&O.E.

**PAYMENT OF THIS ACCOUNT IS DUE ON RECEIPT**

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

GST / HST Registration # 12184 6539 RT0001

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

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**MARGARITA CASTILLO**  
Applicant

AND

**XELA ENTERPRISES LTD. ET AL**  
Respondents

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

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**  
PROCEEDING COMMENCED AT TORONTO

**AFFIDAVIT OF FEES**

**AIRD & BERLIS LLP**  
Barristers and Solicitors  
Brookfield Place  
Suite 1800, Box 754, 181 Bay Street  
Toronto, Ontario M5J 2T9

Tel: 416.863.1500  
Fax: 416.863.1515  
Email: [kplunkett@airdberlis.com](mailto:kplunkett@airdberlis.com)

**Kyle B. Plunkett - LSUC No. 61044N**

**Lawyers for KSV Kofman Inc.**