



**Fourth Report of
KSV Restructuring Inc.
as Receiver and Manager of
Xela Enterprises Ltd.**

January 18, 2021

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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.

FOURTH REPORT OF KSV RESTRUCTURING INC.

JANUARY 18, 2021

1.0 Introduction

1.1 Background

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 Xela Enterprises Ltd. (the "**Company**"), her now-deceased father, Juan Arturo Gutierrez ("**Juan Arturo**"), and her brother, Juan Guillermo Gutierrez ("**Juan Guillermo**").
2. Pursuant to a judgment issued by the Court on October 28, 2015 (the "**Judgment**"), the Company, Juan Guillermo and Juan Arturo became jointly obligated to pay Margarita approximately \$5 million, plus interest and costs (the "**Judgment Debt**").

3. On January 15, 2019, Margarita made an application to the Court for, among other things, the appointment of KSV Restructuring Inc.¹ (“**KSV**”) as receiver and manager of the Company (the “**Receiver**”) pursuant to Section 101 of the *Court of Justices Act* (Ontario) (the “**Appointment Order**”).²
4. Pursuant to the terms of the Appointment Order, the Receiver is empowered and authorized to manage and deal with the property and assets of the Company, including the Avicola Litigation (as defined below), and where the Receiver does so, the Appointment Order prohibits any other party from dealing with those matters.
5. Further details regarding the background of these proceedings are provided in the Receiver’s First Report to Court dated October 17, 2019 (the “**First Report**”), the Second Report dated February 18, 2020 (the “**Second Report**”), the Supplement to the Second Report dated March 17, 2020 (the “**Supplement to the Second Report**”), the Second Supplement to the Second Report dated March 23, 2020 (the “**Second Supplement to the Second Report**”) and the Third Report dated July 24, 2020 (the “**Third Report**”).³

1.2 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide an update on the Receiver’s activities since the Third Report; and
 - b) recommend that the Court grant an order:
 - i. expanding the Receiver’s investigative powers including authorization to investigate, identify, quantify and take all steps necessary in the opinion of the Receiver to review certain transactions related to the business and assets of the Company;
 - ii. expanding the Receiver’s investigative powers including authorization to examine witnesses under oath including the directors, officers and employees of the Company’s current and former direct and indirect subsidiaries, affiliates and customers;
 - iii. requiring Juan Guillermo to immediately provide the Receiver with all encryption codes, keys, passwords or any other such information or knowledge necessary to unlock and access the data on any images or hard drives in the possession of the Receiver’s forensic agent, Duff & Phelps, LLC (“**Duff & Phelps**”), including but not limited to the DataShield Fantom Drive;

¹ KSV Kofman Inc. changed its name to KSV Restructuring Inc. on August 30, 2020.

² Appointment Order, Brief of Orders and Endorsements (“**Orders Brief**”), Tab 2

³ First Report, Brief of Reports of the Receiver (“**Reports Brief**”), Tab 1; Second Report, Reports Brief, Tab 2; Supplement to the Second Report, Reports Brief, Tab 3; Second Supplement to the Second Report, Reports Brief, Tab 4; Third Report, Brief, Tab 5

- iv. requiring Arturo's Technical Services Ltd. ("**ATS**") to identify the location of the images of the "Blue Network Servers" (as identified by Julio Fabrini, the Company's former Director of IT, in his interview dated November 26, 2020) on the hard drives in the possession of Duff & Phelps by identifying the file names, paths and any other information necessary to identify the Blue Network Server images;
- v. granting the Receiver, without any limitation whatsoever, authorization to access and review the images of the Blue Network Servers (including any content of the images) that are in Duff & Phelps' possession, further to the Order of this Court dated October 27, 2020;
- vi. requiring ATS to provide the Receiver with an electronic copy of all emails sent or received by Juan Guillermo (regardless of the email address to which it was forwarded and regardless of whether the email was sent directly to him or it was one on which he was copied) at any email address maintained on the ATS servers to the date of this Order, along with any encryption codes, keys or passwords used to secure the emails;
- vii. requiring:
 - the non-Receiver appointed officers and directors of Gabinvest, S.A. ("**Gabinvest**") and Lisa S.A. ("**Lisa**")⁴ to provide the Receiver with all available information or documentation in their control relating to shares, share registers, accounting, correspondence and related information of Gabinvest and Lisa, as well as the transactions discussed in this Report;
 - Alfaro, Ferrer & Ramirez Abogados ("**AFRA**")⁵, as former resident agent of Gabinvest and Lisa, to deliver to the Receiver and its agents all information related to the constitution, shares issued, know your client ("KYC"), correspondence, instructions given to AFRA and all information related to those companies;
 - authorizing the Receiver and its agents in Panama to take any steps reasonably incidental to the recognition and enforcement of this Order and any other Orders issued by this Court in this matter in Panama; and

⁴ To the best of the Receiver's knowledge, as of January 1, 2020, Harald Johannessen Hals (Guatemala), Calvin Shields (Florida), and Lester C. Hess Jr. (Texas) were the directors of Lisa. To the best of the Receiver's knowledge, as of January 1, 2020, Harald Johannessen Hals (Guatemala), Jose Eduardo San Juan (Panama), and David Harry (Ontario) were the directors of Gabinvest.

⁵ AFRA is a law firm with an office in Panama that resigned in February 2020 as resident agent of Gabinvest and Lisa. The role of the resident agent is to serve as a bridge between the Company and the governmental authorities. The resident agent is obligated to know its client, keep a copy of the shareholder register and copies of the accounting information or details where the accounting information is located. The resident agent may also keep copies of the book of minutes.

- the non-Receiver appointed directors of Lisa to provide all information concerning Lisa's alleged transfer (in early 2020) to BDT Investments Inc. ("**BDT**") of its interest in the Avicola Group (as defined below, the "Lisa Transfer");
- viii. approving the fees and disbursements of the Receiver and its legal counsel, Lenczner Slaght Royce Smith Griffin LLP ("**Lenczner Slaght**") and Aird & Berlis LLP ("**A&B**"), for the periods referenced in their respective fee affidavits;
 - ix. seeking an Order to domesticate the Appointment Order in Panama and seeking the assistance of the Panamanian Courts to permit the Receiver to exercise control over the Company's Panamanian subsidiaries and give effect to the Order requested herein, as well as all Orders issued by this Court and other related relief; and
 - x. seeking the aid and recognition of foreign courts to give effect to the Order requested herein.
2. Documents referred to in this Report will be filed as part of a separate brief.

1.3 Overview

1. While this Report sets out in detail the background and evidence of the efforts of the Receiver to date to investigate what happened to the assets of the Company under the direction of Juan Guillermo, the receivership has been frustrated by the conduct of Juan Guillermo and those around him. The Receiver requires the Orders sought in this motion to move the receivership ahead and fulfill its mandate. Without these Orders, the Receiver cannot do its job.
2. If the Orders issued in these proceedings are not complied with, the Receiver will bring on again its motion for contempt of the various Orders. This Court's assistance in making this round of Orders work, and for the Orders to be complied with, is at the heart of the successful continuation of the receivership.
3. As part of its mandate, the Receiver has identified two Reviewable Transactions (as defined below) and a third transaction, the Lisa Transfer (also defined below). Each transaction was prejudicial to the Company and serves no business purpose other than to benefit entities formerly owned by the Company, being BDT and Corporacion Arven, Limited ("**Arven**"). Each of BDT and Arven is now owned by the ARTCARM Trust (the "**Trust**"), the beneficiaries of which are Juan Guillermo's children.

4. As more fully detailed below, the Receiver's extensive efforts have been frustrated by various related people and parties:
 - a. Juan Guillermo has:
 - i. failed to provide any relevant information or documentation with respect to the Reviewable Transactions;
 - ii. provided false or misleading information about access to relevant information or documentation with respect to the Reviewable Transactions;
 - iii. failed to provide genuine support in assisting the Receiver to exercise control over the Company's subsidiaries, notwithstanding evidence which suggests he has the ability to exercise such control;
 - iv. delayed the delivery of images of his electronic devices notwithstanding the October 27, 2020 Order, which required imaging within seven business days; and
 - v. refused to permit the Receiver's agent to image his devices in accordance with the October 27, 2020 Order, which he ultimately provided to the Receiver on January 5, 2021 for that purpose.
 - b. ATS, which performs various aspects of the business formerly carried on by the Company (including providing IT services) and which is controlled by Juan Guillermo's sons (with "stewardship" from Juan Guillermo), has:
 - i. falsely stated to the Receiver that the Company's records could not be provided to the Receiver because they were "integrated" with ATS' network; and
 - ii. continues to delay, frustrate and limit the Receiver's efforts to access these records, notwithstanding the Orders issued in these proceedings requiring it to deliver up such records.
 - c. the Company's key subsidiary, Lisa, controlled by Juan Guillermo's brother-in-law, Harald Johannessen Hals ("**Hals**"), has refused to recognize the Receiver's authority, including the changes made by the Receiver to Lisa's Board of Directors, and has failed to respond to the Receiver's inquiries concerning the debts underlying the Reviewable Transactions, as well as related accounting information;
 - d. Lisa and Gabinvest, through their representatives, have threatened criminal legal proceedings against the Receiver's legal counsel in Panama, Hatstone Abogados ("**Hatstone**"), for exercising the Receiver's rights pursuant to the Orders of this Court; and

- e. the former subsidiary of the Company, BDT (which is the subject of a Reviewable Transaction) has made an unacceptable with-prejudice settlement offer which seeks to have the Receiver end its investigative efforts in exchange for a promissory note from BDT, which was one of the Company's primary revenue generating subsidiaries before it was transferred out of the reach of the Company's creditors soon after the Judgment Debt.
5. The Receiver requires compliance with the Orders already made by this Court, additional investigative powers and orders requiring the cooperation of the Company's subsidiaries and their representatives to fulfill its mandate.

1.4 Currency

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

1.5 Restrictions

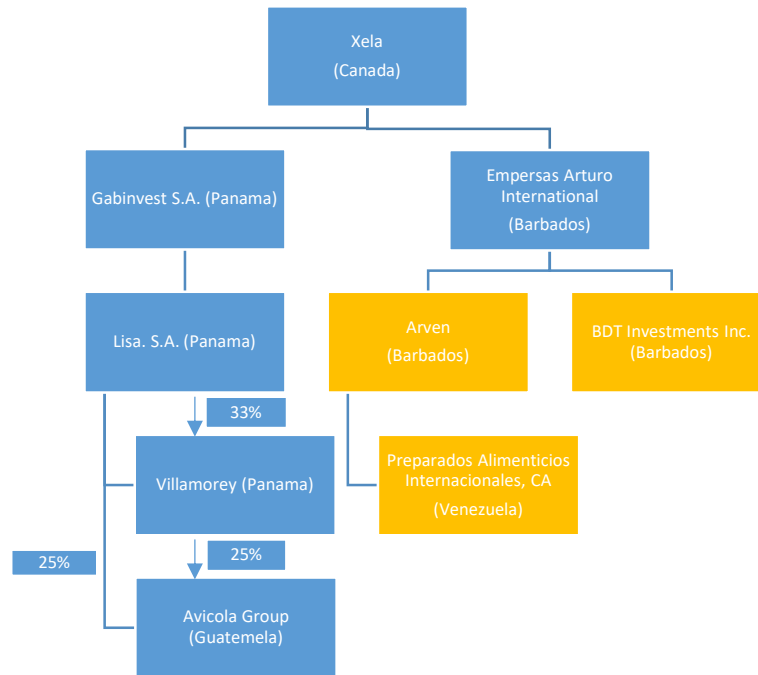
1. In preparing this Report, the Receiver has relied upon the Company's unaudited financial information, the Company's books and records, materials filed in the Avicola Litigation, discussions with representatives of the Company, Hatstone, Juan Guillermo and his Canadian and foreign legal counsel, and the correspondence and interviews referred to in this Report.
2. The Receiver has not audited, or otherwise attempted to verify the accuracy or completeness of the financial information relied upon in preparing 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. Any party wishing to place reliance on the financial information should perform its own diligence.

1.6 Receivership Materials

1. 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 Background

1. The Company is the parent of more than two dozen direct or indirect subsidiaries located predominantly in Central and South America that carry on, or carried on, businesses in the food and agricultural sectors.
2. Reproduced here from the Third Report is a condensed organizational chart for the Company prior to April 2016. The entities shaded in yellow are operating entities that were conveyed to the Trust, which was domiciled in Barbados in 2016. Juan Guillermo's children are the beneficiaries of the Trust.



3. The Company's most significant asset is believed to be its indirect, one-third interest in a group of purportedly-successful, family-owned, and vertically-integrated poultry businesses operating in Central America known as the "**Avicola Group**". As reflected in the corporate chart, the Company's interest in the Avicola Group is believed to be held as follows (the "**Avicola Interest**"):
 - a) 25% through its wholly-owned indirect subsidiary, Lisa, a Panamanian holding company. Gabinvest is believed to be the sole shareholder of Lisa; and
 - b) 8.3% through Villamorey S.A. ("**Villamorey**"), a Panamanian holding company.⁶
4. As set out below, the Avicola Interest may have been transferred by Lisa to BDT, and out of the control of the Company and the Receiver, during these proceedings (the "**Lisa Transfer**").
5. 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.
6. The Company, under the direction of Juan Guillermo, and the Cousins have been litigating for decades, primarily related to the Avicola Group (the "**Avicola Litigation**").

⁶ Villamorey owns 25% of the Avicola Group, of which the Company has an indirect one-third ownership interest.

2.1 Reviewable Transactions

1. The First Report describes the “Reviewable Transactions”, as follows:
 - a) the sale, conveyance or transfer in early 2016 by Empress Arturo International (“**EAI**”) of the shares of BDT and Arven to Juan Arturo, and then from Juan Arturo to the Trust (the “**EAI Transaction**”). The two-step transfer of BDT and Arven to the Trust effectively conveyed the “Arturo’s” restaurant chain business in Venezuela to Juan Guillermo’s children; and
 - b) the assignment in January 2018 by Lisa of the majority of the proceeds from the Avicola Litigation to BDT (the “**Assignment Transaction**”) for the benefit of Juan Guillermo’s children.
2. The Reviewable Transactions are detailed in the First and Third Reports. Summaries of these transactions are provided below.

2.2 The EAI Transaction

1. The EAI Transaction was completed in April 2016 by the Company’s direct subsidiary, EAI, a Barbados company, and Juan Arturo, Juan Guillermo’s father. Prior to April 2016, EAI, a subsidiary of the Company, indirectly owned and operated the Arturo’s restaurant chain business in Venezuela through its wholly-owned subsidiaries, BDT and Arven.
2. Juan Guillermo has advised the Receiver that the Arturo’s restaurant chain has a history of profitability. BDT, Arven and a subsidiary of Arven, Preparados Alimenticios Internacionales, CA (“**PAICA**”) are purported to have advanced over \$100 million to the Company and to Lisa to fund the Avicola Litigation, which amounts are purported to still be owing to these entities (the “**Intercompany Receivables**”). A summary of these obligations is provided in the table below.

(unaudited; \$000s)	Owing from the Company (CAD) (as at May 31, 2018)	Owing from Lisa (USD) (as at June 30, 2018)
Owed to:		
BDT	24,194	47,076
Arven	6,508	12,727
PAICA	11,835	(2,913)
	42,537	56,890

3. Despite several requests by the Receiver to Juan Guillermo and others who should have information relating to the Intercompany Receivables, the Receiver has been provided with limited and insufficient support for the advances underlying the receivables owing to BDT, Arven and PAICA.

4. In April 2016, EAI transferred the shares of BDT and Arven to Juan Arturo for US\$6.5 million in partial satisfaction of a debt then owing to Juan Arturo by EAI. Juan Arturo then transferred the shares of BDT and Arven to the Trust, which actions are collectively referred to as the EAI Transaction.
5. The EAI Transaction transferred to the Trust the only material cash generating business owned by the Company's subsidiaries, being the business carried on by Arturo's.

2.3 The Assignment Transaction

1. The Receiver was advised by Juan Guillermo that in January 2018, BDT agreed to fund Lisa's costs in the Avicola Litigation, provided Lisa assign its interest in the Avicola Litigation to BDT. Under this agreement, BDT agreed to pay Lisa 30% of the net litigation proceeds, after deducting costs and the repayment by Lisa of any amounts it then owed to BDT (\$47 million) (which actions are referred to as the **Assignment Transaction** and together with the EAI Transaction, the "**Reviewable Transactions**").
2. To the extent that Lisa required funding for the Avicola Litigation, it had no choice but to accept the funding terms required by BDT. As a holding company, Lisa has never had active business operations and no other source of liquidity since 1998.⁷ Juan Guillermo, as the CEO of the Company, and as the father of the beneficiaries of the Trust, was on both sides of the Assignment Transaction.
3. The Receiver has asked for, but it did not receive, sufficient information to verify the alleged debt underlying the Assignment Transaction, including evidence of advances.

2.4 The Investigation of the Reviewable Transactions

1. The Receiver has not uncovered any commercially reasonable basis for the Reviewable Transactions other than to benefit Juan Guillermo and his family.
2. The Company's creditors, including Margarita, were prejudiced by the Reviewable Transactions.
3. To the Receiver's knowledge, the Company's subsidiaries no longer carry on any business activity. The EAI Transaction resulted in the Company's only cash flow generating business, Arturo's, being transferred to the Trust through the conveyance of BDT and Arven which carry on the Arturo's business, and the Assignment Transaction resulted in substantially all of the value of the Avicola Interest being transferred from the Company to BDT.
4. The Reviewable Transactions occurred after the Judgment Debt and at a time when Juan Guillermo was litigating with Margarita.

⁷ Affidavit of Juan Guillermo, sworn June 17, 2019 ("**Juan Guillermo's June 17, 2019 Affidavit**"), at para. 5, in the CCAA Application Record of the Company, returnable July 4, 2019, Document Brief of the Receiver – 4th Report ("**Brief**"), Tab 1

5. The Receiver has made numerous requests for information relating to the Reviewable Transactions. These requests have been made to Juan Guillermo, representatives of BDT, Arven and Lisa's Board of Directors. Insufficient information has been received. A summary of these requests is provided below.
- a. On July 19, 2019, as part of its written interrogatories described below, the Receiver requested information concerning the value received for the EAI Transaction.⁸ No information was provided to substantiate the advances to EAI.
 - b. On August 22, 2019, as part of further written interrogatories:⁹
 - i. the Receiver requested information about advances to Lisa and amounts owed by Lisa to the Company. Juan Guillermo's counsel at the time (Torys LLP, "**Torys**") responded, "Records in support of these amounts are not readily available to Xela. Xela is continuing to conduct inquiries to retrieve relevant documents"¹⁰; and
 - ii. the Receiver requested evidence of advances by Juan Arturo to EAI (which was a basis for the EAI Transaction), as well as financial statements reflecting the debt owed by EAI to Juan Arturo. Torys responded on behalf of Juan Guillermo:

[Juan] Arturo funded subsidiaries of Xela from time to time with personal loans. The indebtedness of [EAI] that led to the transaction was the result of one such loan. To the best of Xela's knowledge, this indebtedness originated approximately 20 years ago. As such, Xela does not have access to any further information about the applicable loan.¹¹
 - c. On October 31, 2019, the Receiver sent requests for information to each of BDT, Arven, the Trust and individuals associated with them (pursuant to the October 29, 2019 Disclosure Order). The Trust company responded on behalf of the Trust and BDT stating that they were not subject to this Court's jurisdiction. The Trust did not provide the requested information.
 - d. On December 2, 2019, the Receiver wrote again to BDT, Arven and the Trust, noting that it required records to assess the validity and lawfulness of the Reviewable Transactions. The Trust, BDT and Arven did not provide the requested information and claimed that any attempts to set aside the EAI Transaction would be time-barred under Barbados legislation.

⁸ Xela's Answers to the Receiver's July 19, 2019 Questions, Brief, Tab 10

⁹ Xela's Answers to the Receiver's August 22, 2019 Questions, Brief, Tab 11

¹⁰ Xela's Answers to the Receiver's August 22, 2019 Questions, at p. 1, Brief, Tab 11

¹¹ Xela's Answers to the Receiver's August 22, 2019 Questions, at p. 5, Brief, Tab 11

- e. In January 2020, the Receiver attempted to exercise the Company's shareholder rights over Gabinvest and Lisa to access records in Panama. Those efforts have also been frustrated, as discussed in Section 8 below.
 - f. On March 24, 2020, this Court ordered Juan Guillermo to answer various questions, including questions concerning the Reviewable Transactions.¹² Juan Guillermo's counsel responded on April 7, 2020 and provided, essentially, the same response to all questions:

I [Juan Guillermo] am not an officer or director of BDT or LISA. Although I own Xela and as a consequence am generally informed and aware of LISA's activities, my knowledge is limited. I have no personal knowledge regarding this specific question, as I was not personally involved. Consequently, I lack information sufficient to respond. Neither do I have any documents in my possession, custody or control responsive to this request.¹³
 - g. On March 31, 2020, the Receiver served a copy of the March 24, 2020 Endorsement on the directors of Lisa, requesting information. The directors of Lisa did not respond. Instead, Lisa, through Hals, wrote to Juan Guillermo refusing to recognize the Receiver's authority and failing to provide the requested information.
 - h. On April 9, 2020, Hatstone wrote to the directors of Lisa, requesting information about the Lisa Transfer. The information was not provided.
6. The Receiver has previously advised the Court that it required further information to come to final conclusions concerning the Reviewable Transactions; however, despite repeated efforts by the Receiver since the outset of these proceedings to obtain the information it requires (including information that is in, or should be in, the possession of some or all of Juan Guillermo, BDT, Arven, PAICA and the Lisa Board of Directors), the information has still not been provided.

2.5 The Lisa Transfer

1. Hals, as President and Director of Lisa, swore an affidavit in this proceeding in March 2020 in Toronto. In that affidavit, Hals stated that in February 2020, during the pendency of these proceedings, Lisa completed the Lisa Transfer (being the transfer from Lisa to BDT of Lisa's interest in the Avicola Group).¹⁴
2. As set out above, the Avicola Interest, which is held through Lisa, is understood to be the Company's most significant asset. Juan Guillermo has testified that the value of this interest is close to a billion dollars.

¹² Endorsement of McEwen J., dated March 24, 2020, Orders Brief, Tab 4

¹³ Letter from Cambridge to the Receiver, dated April 7, 2020, Brief, Tab 15

¹⁴ Affidavit of Harald Johannessen Hals, sworn March 22, 2020 (in Toronto) ("**Hals' March 22, 2020 Affidavit**"), at para. 21, Brief, Tab 2

3. Lisa has since refused to provide the Receiver with any documentation in respect of the Lisa Transfer, including the conveyance documentation. Hals states in his affidavit that the Lisa Transfer was completed to “extinguish” in its entirety the debt allegedly owing by Lisa to BDT.¹⁵ Despite the Receiver’s extensive efforts to obtain evidence of the amount of the debt owing by Lisa to BDT, the Receiver has not been able to confirm that any advances were made from BDT to Lisa. In this regard, it is notable that Lisa never maintained a bank account and that BDT and Arven funded the Company since at least 1998. Lisa’s lack of a bank account is evidence that BDT and Arven could not fund Lisa directly.¹⁶ As noted above, Lisa has refused to recognize the Receiver’s authority. Furthermore, if the Avicola Group does have a value of a billion dollars as Juan Guillermo suggests, the conveyance of the Avicola Interest to BDT was grossly undervalued.
4. If the Lisa Transfer occurred, as has been attested to by Hals, it has stripped all of the value from the Company **during the pendency of these proceedings and is a breach of this Court’s orders.**

3.0 Investigations

3.1 Orders Obtained in the Receivership

1. The following orders have been issued in these proceedings:
 - a. Appointment Order dated July 5, 2019;¹⁷
 - b. Order dated October 29, 2019 (requiring production of records regarding the EAI Transaction and Assignment Transaction from EAI, the Trust, Arven, BDT and Lisa);¹⁸
 - c. Order dated March 24, 2020 (approving the Receiver’s actions to reconstitute Gabinvest’s Board of Directors);¹⁹
 - d. Endorsement dated March 24, 2020 (compelling Juan Guillermo, Hals and Shields²⁰ to provide information relating to the Reviewable Transactions in accordance with the October 29, 2019 Disclosure Order);²¹

¹⁵ Hals’ March 22, 2020 Affidavit, at para. 21, Brief, Tab 2

¹⁶ Transcript of the Examination of Mark Korol on September 9, 2020 (“**Korol Transcript**”), pp. 74-75, Q. 302, Brief, Tab 6

¹⁷ Appointment Order, Orders Brief, Tab 2

¹⁸ Order dated October 29, 2019, Orders Brief, Tab 3

¹⁹ Order dated March 24, 2020, Orders Brief, Tab 5

²⁰ Hals and Shields are both directors of Lisa.

²¹ Endorsement dated March 24, 2020, Orders Brief, Tab 4. As set out in the Third Report of the Receiver, at Section 3.0, neither Hals nor Shields complied with this endorsement. Hals wrote to Juan Guillermo indicating, among other things, that he refused to recognize the Receiver’s authority: Letter from Hals to Juan Guillermo, dated April 27, 2020, Reports Brief, Tab 17

- e. Order dated August 28, 2020 (requiring production of all Company Documents and Devices in the possession of Juan Guillermo, the Company's storage unit, ATS, the servers, and Cambridge LLP's ("**Cambridge**") file);²²
- f. Order dated October 27, 2020 (authorizing the Receiver to image servers under ATS' control);²³ and
- g. Order dated October 27, 2020 (establishing a protocol to image Juan Guillermo's devices).²⁴

3.2 Documents Received by the Receiver

1. The Receiver's efforts to-date have involved multiple attempts to obtain information from Juan Guillermo, as well as related parties and entities concerning the Reviewable Transactions. Despite the Receiver's extensive efforts, little to no relevant documents have been provided to the Receiver since the commencement of these proceedings.
2. Details of those efforts are described in the first three Reports of the Receiver, particularly in Sections 2 and 3 of the Third Report, as well as above. Of particular note is Juan Guillermo's repeated non-responsive answer that:

I am not an officer or director of BDT or LISA. Although I own Xela and as a consequence am generally informed and aware of LISA's activities, my knowledge is limited. I have no personal knowledge regarding this specific question, as I was not personally involved. Consequently, I lack information sufficient to respond. Neither do I have any documents in my possession, custody or control responsive to this request.²⁵

3. Juan Guillermo's response is not credible. He was the directing mind of the Company – a finding of fact made by Newbould J. in his reasons for the Judgment Debt.²⁶ A significant portion of the value (if not all) of the Company has been transferred out of the reach of the Company's creditors to Juan Guillermo's children, as beneficiaries of the Trust. If Juan Guillermo was acting in the best interests of the Company, he, as the sole common shareholder of the Company, should be aligned with the Receiver to obtain the cooperation of the directors of the Company's subsidiaries. That has not been the case.
4. The Receiver's efforts to obtain information and documents relevant to its mandate have continued following the Third Report.

²² Order dated August 28, 2020, Orders Brief, Tab 6

²³ ATS Order dated October 27, 2020, Orders Brief, Tab 7

²⁴ Juan Guillermo's Order dated October 27, 2020, Orders Brief, Tab 8

²⁵ Letter from Cambridge to the Receiver, dated April 7, 2020, Brief, Tab 15

²⁶ *Castillo v. Xela Enterprises Ltd.*, 2015 ONSC 6671, at paras. 16 and 55, Orders Brief, Tab 1

5. On August 28, 2020, this Court ordered, among other things, that Cambridge²⁷, produce to the Receiver:
 - a. any and all corporate documents of the Company and its subsidiaries or affiliates; and
 - b. any documentation relevant to its representation of the Company.
6. On September 11, 2020, Cambridge produced documents, including (among other things) various court orders and Juan Guillermo's affidavits sworn in this proceeding. The documents did not provide any new substantive information or documents to the Receiver, and there was no mention of Juan Guillermo's electronic devices.
 - a. The Receiver noted the failure to disclose or produce Juan Guillermo's devices.
 - b. Cambridge, on behalf of Juan Guillermo, responded that they would not produce Juan Guillermo's cellphone or iPad because they have "never been used to conduct business related to Xela" and because the cellphone is "used for personal purposes." These statements were - and are - false. Juan Guillermo had previously testified under oath that he used his current iPad and cellphone constantly for Company business.²⁸
7. On November 11, 2020, the Receiver received certain documents from Julio Cesar Nuñez Grimas, who the Receiver understands is Panamanian counsel for Lisa. These documents were provided to the Receiver following without prejudice calls among the Receiver, Mr. Grimas, Roberto Perez, Colombian counsel who stated he represents BDT, and Daniela Vesga, an associate of Mr. Perez who stated she represents Lisa. The documents were delivered to the Receiver further to the Receiver's request for evidence of BDT's advances to Lisa.
8. The documents provided certain limited information to the Receiver concerning a small number of historical transactions but did not provide sufficient evidence of BDT's advances to Lisa. The Receiver has written to Mr. Grimas asking for additional information and requested a response by January 8, 2021. As at the date of this Report, the Receiver has received no response from Mr. Grimas.

3.3 Interviews Conducted by the Receiver

1. The Receiver has conducted the following interviews/interrogatories:
 - a. the written interrogatories regarding the Company and its affiliates, dated July 19, 2019, August 22, 2019, and August 23, 2019;

²⁷ It is unclear who Cambridge acts for. It purports to be retained by the Company, but it has not been retained by the Receiver, and is acting adverse to the Receiver's efforts. Cambridge also appears to be acting for Juan Guillermo in his personal capacity.

²⁸ Transcript of Continued Examination in Aid of Execution of Juan Guillermo, August 30, 2018, Q. 951, 1069-1071, and 1093-1094, in the Motion Record to Appoint the Receiver, January 15, 2019, Tab BB, pp. 535-536, 586-587, 589, Brief Tab 5

- b. Mark Korol (former CFO at the Company and Arturos Group at ATS), September 9, 2020;
- c. Andres Gutierrez (“**Andres**”), September 18, 2020;
- d. Thomas Gutierrez (“**Thomas**”), September 18, 2020; and
- e. Julio Fabrini (the Company’s former IT Director and ATS’ current CIO), November 26, 2020.

3.4 Interrogatories

1. Torys was counsel to the Company in 2019. All or substantially all of Torys’ information concerning the Company is believed to have been provided to it by Juan Guillermo and Mark Korol. Torys provided written answers to interrogatories in July and August 2019. The interrogatories were mainly in respect of the Company and its subsidiaries, assets and financial statements. Answers provided by Torys to key questions included:
 - a. records in support of Lisa’s accounts receivable and accounts payable on Lisa’s June 2018 balance sheet (approximately \$31.4 million and \$70 million, respectively) “are not readily available to Xela. Xela is continuing to conduct inquiries to retrieve relevant documents”;²⁹
 - b. the Company “is conducting inquiries to find any audited or externally verified financial statements that might reflect the debt” in relation to the underlying debt that gave rise to the EAI transaction;³⁰
 - c. the debts owed by EAI to Juan Arturo, which led to the EAI Transaction, “originated approximately 20 years ago. As such, Xela does not have access to any further information about the applicable loan”;³¹ and
 - d. support for the debt owing to BDT and Arven from Lisa (approximately \$47 million and \$12.7 million, respectively, upon which the Assignment Transaction was based) “has been accumulating for approximately 15 years. As such, copies of all invoices in relation to [this] debt are not readily available. Xela is continuing to make inquiries to provide documents in relation to the debt that are reasonably accessible.”³²
2. Torys’ answers to interrogatories were of little, if any, assistance and provided no support for the Reviewable Transactions. Certain limited documents were provided as part of the answers to interrogatories, but as indicated above, most of the documents were identified as being unavailable to the Company.

²⁹ Xela’s Answers to the Receiver’s August 22, 2019 Questions, p. 1, Brief, Tab 11

³⁰ Xela’s Answers to the Receiver’s August 22, 2019 Questions, p. 6, Brief, Tab 11

³¹ Xela’s Answers to the Receiver’s August 22, 2019 Questions, p. 5, Brief, Tab 11

³² Xela’s Answers to the Receiver’s August 22, 2019 Questions, p. 6, Brief, Tab 11

3. Seven months later, Juan Guillermo swore that he and the Company had delivered all documents and information available to him that were responsive to the Receiver's requests for information.³³
4. Although no request was made of Torys for electronic records, no disclosure was made by Torys to the Receiver, at the time, that the Company's servers were functional and accessible to the Company through ATS:
 - a. As the Receiver later learned, "All the data for Xela" is on the Company's servers, which are under the control of ATS.³⁴ The information on those servers includes Company data from "1990 something" to "2017".³⁵ People acting under the direction of Juan Guillermo and/or the Company accessed the Company's records using ATS' computers and servers when they provided the above answers to interrogatories in 2019.³⁶
 - b. The fact that Juan Guillermo and ATS did not provide the requested information when historical data was accessible to them means that evidence of the debts either does not exist or that their previous answers were false.
5. Pursuant to this Court's March 24, 2020 Endorsement, the Receiver requested information from Lisa's directors on March 31, 2020. However, two of the directors did not respond at all. The one who did (Hals) communicated only with Juan Guillermo, refusing to recognize KSV's authority as the Receiver.

3.5 Witnesses

1. Mark Korol, the Company's former CFO, testified under oath and was cooperative with the Receiver during his September 9, 2020 interview.
2. Thomas and Andres were interviewed on September 18, 2020 following an exchange of correspondence relating to the Receiver's efforts to locate the Company's servers.
3. Thomas provided virtually no cooperation to the Receiver in his interview. When asked about his position at ATS, he advised, "I'm not prepared to answer any questions about ATS at this time."³⁷ He then indicated he would do his "best" to answer questions about the servers. During his interview, he provided some limited background relating to ATS and the Company but refused to answer relevant questions including, for example:

³³ Affidavit of Juan Guillermo, sworn March 31, 2020, at paras. 13 and 19, Brief, Tab 3

³⁴ Transcript of the Interview of Julio Fabrini on November 26, 2020 ("**Fabrini Transcript**"), p. 18, Brief, Tab 9

³⁵ Fabrini Transcript, p. 18, Brief, Tab 9

³⁶ Korol Transcript, pp. 40-43, Q. 150-161, Brief, Tab 6

³⁷ Transcript of the Witness Interview of Thomas Gutierrez on September 18, 2020 ("**Thomas Transcript**"), pp. 5-6, Q. 5-6, Brief, Tab 7

- a. how ATS became his “own business”³⁸ when he moved directly from the Company to ATS when the Company was “shut down”;³⁹
 - b. his receipt of the shares of BDT and Arven through the Trust:
 - i. when asked about his knowledge of being a beneficiary of the Trust, he said, “Sorry, is this related to Xela?”;⁴⁰
 - ii. when the Receiver reminded him of its investigation into the Reviewable Transactions, he said, “I don’t follow how that’s related to my employment at Xela”;⁴¹ and
 - c. his knowledge of BDT funding the costs of the Avicola Litigation and transactions between Lisa and BDT with respect to Lisa’s interest in the Avicola Group:⁴²
 - i. when asked about his knowledge of Lisa’s shareholdings in the Avicola Group, he said, “I don’t know how – nothing. I don’t – like, I’m not prepared to answer that”;⁴³ and
 - ii. when asked whether he was prepared to answer questions about loans from BDT to Lisa for the Avicola Litigation, he said, “No.”⁴⁴
4. Andres denied that there was any relationship between ATS and the Company, and he refused to answer questions about whether the servers purchased by ATS from the Company in 2017 (discussed further in Section 4 below) had any Company data on them because he was “unclear how this is going to help the Receiver in collecting the funds from the dividends that Xela is entitled to.”⁴⁵ He refused to answer any further questions without counsel.
5. During their interviews, both Thomas and Andres questioned the relevance of the Receiver’s questions. On September 21, 2020, counsel for the Receiver wrote to Thomas and Andres directing their attention to the Receiver’s reports and investigative efforts posted on the Receiver’s website and noting that they should review the Third Report for context to the Receiver’s questions. The Receiver asked for their cooperation in participating in a further interview.

³⁸ Thomas Transcript, p. 16, Q. 67, Brief, Tab 7

³⁹ Thomas Transcript, p. 9, Q. 24, Brief, Tab 7

⁴⁰ Thomas Transcript, pp. 22-23, Q. 96, Brief, Tab 7

⁴¹ Thomas Transcript, p. 23, Q. 98, Brief, Tab 7

⁴² Thomas Transcript, p. 26, Q. 113-114, Brief, Tab 7

⁴³ Thomas Transcript, p. 26, Q. 113, Brief, Tab 7

⁴⁴ Thomas Transcript, p. 26, Q. 114, Brief, Tab 7

⁴⁵ Transcript of the Witness Interview of Andres Gutierrez on September 18, 2020 (“**Andres Transcript**”), p. 7, Brief, Tab 8

6. On September 21, 2020, counsel for the Receiver also wrote to ATS by way of email to Thomas and Andres requesting access to the Company's servers. On October 13, 2020, WeirFoulds LLP ("**WeirFoulds**") advised that it had been retained as counsel to ATS. The Receiver and WeirFoulds subsequently negotiated the consent October 27, 2020 Order with respect to the servers. Neither Thomas nor Andres have identified counsel in their personal capacities, nor have they agreed to present for a continuation of their interviews.
7. Following the October 27, 2020 Order, WeirFoulds agreed to produce Mr. Fabrini for an interview related to the Company's computer servers (the "**Servers**") but did not agree that Mr. Fabrini's interview should be required to take place under oath. Mr. Fabrini agreed that he would cooperate with the Receiver. WeirFoulds attended at the interview as counsel and objected to certain questions on the basis that "there is no obligation on [Mr. Fabrini] to provide testimony on things that you are investigating right now."⁴⁶ As such, the Receiver was not permitted to ask questions about Mr. Fabrini's knowledge concerning the purpose of the transition of the Company's IT business and other aspects of the Company's business to ATS that occurred around the time of the Reviewable Transactions.

4.0 ATS

4.1 The Transfer of Company Assets and Information to ATS

1. From the investigations to date, it appears to the Receiver that ATS, a company owned and controlled by Juan Guillermo's children, Andres and Thomas (who are also the beneficiaries of the Trust), is operating, with the involvement of Juan Guillermo, certain aspects of the business formerly carried on by the Company.
2. The ATS website states that:
 - i. "we distribute restaurant equipment and supplies, products, IT equipment and software to clients throughout Canada, the U.S. and Central and South America";
 - ii. "we provide services in the areas of IT, procurement, design, accounting and finance to BDT Investments Inc. and the Arturo's restaurant group"; and
 - iii. "ATS plans, designs, deploys, supports, operates, maintains, audits [and] assesses IT infrastructure solutions [for BDT, Arturo Restaurant Group and other clients]."
3. Mr. Fabrini testified that ATS presently performs the work that the Company performed in, and prior to, 2017. ATS appears to have taken over the entirety of the Company's business.⁴⁷

⁴⁶ Fabrini Transcript, p. 12, Brief, Tab 9

⁴⁷ Fabrini Transcript, pp. 5-7, Brief, Tab 9

4. A chronology is instructive:
- a. the Judgment in favour of Margarita was issued on October 28, 2015 and the Judgment Debt became payable;
 - b. the EAI Transaction purportedly took place in April, 2016;
 - c. ATS was incorporated as a subsidiary of BDT in November 2016, although it is later listed on the Company's 2017 and 2018 financial statements as one of the Company's subsidiaries;
 - d. the appeal of the Judgment was dismissed by the Divisional Court on December 30, 2016;
 - e. the Company and ATS entered into a January 4, 2017 Purchase and Sale agreement in respect of the Company's Information Technology Division whereby the Company agreed to sell to ATS "all the undertaking [*sic*] and assets owned by the [Company] in connection with the Information Technology Services business". The effective date of the Agreement is June 1, 2017 (the "**Servers Agreement**"). Juan Guillermo signed the Servers Agreement on behalf of the Company. All of the Servers and data of the Company were transferred to ATS as part of this transaction. The Receiver reviewed the Company's bank records but found no record of any receipt of payment from ATS to the Company;
 - f. the Servers Agreement was not provided to the Receiver until October 21, 2020, and it was delivered by ATS' counsel on the understanding that it would "only be reviewed by" the Receiver and its counsel;⁴⁸
 - g. throughout 2017:
 - i. according to Thomas, the Company was "shut down" because of litigation with Margarita⁴⁹;
 - ii. all of the Servers were copied and transferred to ATS under the direction of Juan Guillermo;
 - iii. Company employees moved directly from working at the Company to working at ATS, including Mr. Fabrini, Mark Korol, and Thomas;

⁴⁸ The Servers Agreement was provided to the Receiver on the basis that it will be treated as confidential and will only be reviewed by the Receiver and counsel to the Receiver. The Receiver would not include a copy of the Servers Agreement in a Receiver's Report without ATS' consent. Accordingly, the Receiver has not included the Servers Agreement as an Exhibit. The Receiver is of the view that there is no confidential information contained in the Servers Agreement.

⁴⁹ Thomas Transcript, pp. 122-137 ("in terms of why the Xela office is closing, it was related to the litigation"), Brief, Tab 7

- iv. the Company's employees' @xela.com emails were forwarded to @arturos.com;⁵⁰
- v. the Company's employees, who immediately started working at ATS, retained the same physical devices;
- vi. ATS' employees reported to Juan Guillermo when they worked at ATS;⁵¹
- vii. the Company's customers became ATS' customers;⁵²
- viii. ATS could access the Company's historical information;⁵³ and
- ix. ATS used and relied on the Company's historical information for its continued operations;⁵⁴
- h. the Assignment Transaction took place in January, 2018; and
- i. in February 2020, at the time the Receiver was attempting to take control of the Avicola Litigation, related persons and entities purportedly completed the Lisa Transfer.

4.2 Juan Guillermo's Relationship with ATS and the Company Subsidiaries and Former Subsidiaries

1. Julio Fabrini, said he had two bosses, namely Juan Guillermo and Andres, during the period of transition of the Company's business to ATS in 2017.⁵⁵
2. When Mr. Fabrini was asked why the transition of the Company's data and technology was made from the Company to ATS, the question was refused by WeirFoulds, ATS' counsel.⁵⁶
3. In addition, Mr. Fabrini testified that Juan Guillermo currently has an Arturos.com email address and a Xela.com address on ATS' servers.⁵⁷

⁵⁰ Fabrini Transcript, pp. 19-20, Brief, Tab 9

⁵¹ Korol Transcript, p. 21, Q. 62, Brief, Tab 6

⁵² Fabrini Transcript, pp. 6-7, Brief, Tab 9

⁵³ Fabrini Transcript, p. 9, Brief, Tab 9; Korol Transcript, pp. 40-43, Q. 152-160, Brief, Tab 6

⁵⁴ Fabrini Transcript, p. 9, Brief, Tab 9

⁵⁵ Fabrini Transcript, p. 11, Brief, Tab 9

⁵⁶ Fabrini Transcript, p. 11-12, Brief, Tab 9

⁵⁷ Fabrini Transcript, p. 22, Brief, Tab 9

4. Mark Korol testified that he was group CFO for the “Arturos Group” from January 2017 to December 2019 providing consulting advisory services and working both from home and out of ATS’ offices. He explained that the “Arturos Group” was PAICA, BDT and Inversiones 22460 (“**Inversiones**”).⁵⁸ Mr. Korol explained that ATS was owned 50% by Arven and 50% by BDT.⁵⁹ He testified that Juan Guillermo came into the ATS office from time-to-time for meetings.⁶⁰
 5. Mr. Korol testified that, in providing consulting services for the period from January 2017 to December 2019, he reported to Juan Guillermo and to a lesser extent to Andres.⁶¹ Mr. Korol testified that from “a stewardship standpoint” BDT, PAICA and Inversiones (the latter two being the primary companies owned by Arven) reported to Juan Guillermo.⁶²
 6. When asked about Juan Guillermo’s role with ATS, Mr. Korol testified:
 - A. I don’t believe he had a role with ATS. It was really his sons that were, you know, call it, running ATS.
 - Q. Okay. And then what was his role, as you understood it, with PAICA, BDT, Inversiones, Arven, any of those?
 - A. I think providing stewardship from time to time. I don’t think he had a – a formal role, or I think, at that time, he was stepping away from the organization a little bit. He was more, I think, focused on – on Xela. But that isn’t to say that there wasn’t any interaction with – with the – you know, with the other group. Let’s put it that way.

...

 - Q. And so he [Juan Guillermo] would be a participant in discussions ... about the finances of those businesses, PAICA, BDT, Inversiones, right?
 - A. Yes. Yes, I would say – I would say so.⁶³
7. The Receiver showed Mr. Korol, Juan Guillermo’s answers to the questions that this Court ordered Juan Guillermo to answer (on March 24, 2020, and which were provided by Cambridge on April 7, 2020). As quoted above, when asked about the evidence of advances from BDT to Lisa, Mr. Guillermo’s answers were that he was not an officer or director of BDT or Lisa and that although he is “generally informed and aware of Lisa’s activities”, his knowledge is “limited.” The Receiver asked:

⁵⁸ Korol Transcript, pp. 16-18, Brief, Tab 6

⁵⁹ Korol Transcript, p. 22-23, Brief, Tab 6

⁶⁰ Korol Transcript, p. 23, Brief, Tab 6

⁶¹ Korol Transcript, p. 21, Q. 62, Brief, Tab 6

⁶² Korol Transcript, p. 22, Q. 64, Brief, Tab 6

⁶³ Korol Transcript, pp. 23-26, Q. 67-84, Brief, Tab 6

Q. But wouldn't you expect that if Juan Guillermo had any questions about the activities of Lisa as a shareholder of Xela that he would be provided those answers by Members of the Board or management of Lisa?

A. Yes, I – I would – I would expect that.⁶⁴

8. In the period when Mr. Korol was providing advisory services to the "Arturos Group" at ATS and reporting to Juan Guillermo if he had any questions about Lisa, its operations or financials, he was able to get those answers.⁶⁵
9. Mr. Korol stated that Juan Guillermo was actively involved in directing the Avicola Litigation. When the Receiver asked about Juan Guillermo's focus while at ATS, Mr. Korol testified, "[Juan Guillermo] was focused, basically, day and night on the [Avicola] litigation."⁶⁶
10. Mr. Korol's answers, given under oath, about Juan Guillermo's knowledge and access to information, demonstrate to the Receiver that Juan Guillermo is withholding information from the Receiver, that he is involved with ATS, that he has knowledge of BDT, Arven and PAICA, and that he is extensively involved in the Avicola Litigation.

5.0 The Servers

5.1 ATS' Lack of Cooperation/Misleading the Receiver

1. On April 2, 2020, the Receiver wrote to ATS asking ATS to identify and deliver to the Receiver any assets or property of the Company in its possession or control including paper or digital records.⁶⁷
2. On April 15, 2020, Thomas wrote back on behalf of ATS to advise that:

ATS controls four decommissioned servers belonging to Xela, which are in possession of a third-party vendor located at the Cogent datacenter in North York, Ontario. Those servers have been offline and unused for at least two years, during which time no software upgrades or other forms of maintenance have been performed. As a result, there is some cost associated with properly starting and accessing the servers. We can provide a quote to bring the servers back online.⁶⁸

⁶⁴ Korol Transcript, pp. 155-156, Q. 613, Brief, Tab 6

⁶⁵ Korol Transcript, p. 156, Q. 615-616, Brief, Tab 6

⁶⁶ Korol Transcript, p. 130, Q. 522-523, Brief, Tab 6. This appears to be in contradiction to the answers to interrogatories provided by the Company which provides "Xela is indirectly involved in litigation in Guatemala through its subsidiary Lisa... Specific information about each proceeding is not reasonably available to Xela at this time": Xela's Answers to the Receiver's July 19, 2019 Questions, p. 4, Brief, Tab 10

⁶⁷ Letter from Aird & Berlis to ATS, dated April 2, 2020, Brief, Tab 14

⁶⁸ Letter from ATS to Aird & Berlis, dated April 15, 2020, Brief, Tab 16

3. As set out in the Third Report of the Receiver, on May 4, 2020, Cambridge, purportedly on behalf of the Company and Juan Guillermo wrote to the Receiver. The letter:
 - a. acknowledges that ATS has Company documents on the Servers; and
 - b. confirms that documents relevant to the Receiver's inquiries are likely among the records.⁶⁹
4. On August 28, 2020, this Court issued an Order that required Juan Guillermo, ATS and anyone with notice of the Order to provide the Receiver with access to Company devices or data, including, but not limited to the xela.com server and to provide access to such data and to provide the Receiver with necessary assistance to decode the data.⁷⁰
5. The Order further provides that:
 - a. Juan Guillermo shall provide notice of the Order to any third party who may claim privilege over any Company Documents or Devices; and
 - b. any third party with notice of the order may assert a privilege claim or may seek to vary or amend the Order with notice to the Receiver and the service list.
6. The Receiver has not received any objection to the Order from any third party.
7. The Order was served on ATS, which is on the service list, on August 28, 2020.
8. Following the August 28, 2020 Order, the Receiver attempted to copy the Servers from their location at Cogent Communications, Inc. ("**Cogent**") in North York, Ontario. Cogent advised the Receiver that it required ATS' consent to access the Servers.
9. On September 21, 2020, the Receiver wrote to ATS again providing ATS with a copy of the Appointment Order and the August 28, 2020 Order and requiring that, in accordance with the August 28, 2020 Order, ATS provide its consent in writing to Cogent to permit the Receiver to attend to remove the Servers.⁷¹
10. On September 25, 2020, Andres responded on behalf of ATS:

As a matter of background, in January 2017, ATS purchased certain fixed assets from Xela, including various servers and software packages, for use by ATS in its business. **The Xela documents you are seeking are maintained on the servers acquired from Xela that, although presently decommissioned, is integrated with the ATS network at large.** Consequently, if the server containing Xela's documents is activated and accessed, all of ATS's own documents and those of its clients would be as readily available to the Receiver as Xela's documents. In accordance with Paragraph 17 of the August 28

⁶⁹ Letter from Cambridge to Aird & Berlis, dated May 4, 2020, Brief, Tab 18

⁷⁰ Order dated August 28, 2020, Orders Brief, Tab 6

⁷¹ Letter from Lenczner Slaght to ATS, dated September 21, 2020, Brief, Tab 19

Order you provided, ATS asserts the right to confidentiality and privilege over its documents and those of its clients. (emphasis added).⁷²

11. At the time the Receiver consented to the October 27, 2020 Order, it understood that the statement in ATS' September 25, 2020 letter that the Company's data was "integrated with the ATS network at large" was factually true. As discussed below, the Receiver later learned it was not.
12. On October 27, 2020, after negotiations with WeirFoulds, as counsel to ATS, this Court issued an Order permitting the Receiver to image the Servers. However, the Receiver shall not conduct "any analysis or review" of the Servers or any data contained in the Servers without a further Order of this Court or the written consent of the Receiver and ATS.
13. Following the October 27, 2020 Order, Duff & Phelps arranged with ATS to make a copy of the Servers.
14. On November 26, 2020, the Receiver conducted an interview of Mr. Fabrini with WeirFoulds counsel present.
15. Among other things, Mr. Fabrini told the Receiver that:
 - a. when there was a transition from the Company to ATS, he created two networks, one called the "blue network" which contained everything related to the Company's business and one called the "yellow network" which was the ATS network. A subset of the blue network was copied to the yellow network, but no "yellow network" ATS data is located on the "blue" network Servers;⁷³
 - b. there are three "blue" network servers containing the Company's information, not four as indicated in the letters;⁷⁴
 - c. the Blue Network Servers contain, among other things:
 - i. the Xela.com email server;⁷⁵
 - ii. the Company's financial records;⁷⁶ and
 - iii. the Skype for business records for the Company;⁷⁷

⁷² Letter from Andres to Lenczner Slaght, dated September 25, 2020, Brief, Tab 20

⁷³ Fabrini Transcript, pp. 9-10, Brief, Tab 9

⁷⁴ Fabrini, Transcript, pp. 41-42, Brief, Tab 9

⁷⁵ Fabrini Transcript, pp. 24-25, Brief, Tab 9

⁷⁶ Fabrini Transcript, p. 27, Brief, Tab 9

⁷⁷ Fabrini Transcript, p. 29, Brief, Tab 9

- d. contrary to the representation in the September 25, 2020 letter, **“the servers containing the Company’s data are not integrated with the ATS network at large” – Mr. Fabrini said, “today, they are completely separate”**.⁷⁸
- e. Mr. Fabrini was directed to Andres’ September 25, 2020 letter which said, “if the server containing Xela’s documents is activated and accessed, all of ATS’ own documents and those of its clients would be as readily available to the Receiver as Xela’s documents.” **When asked “if we [the Receiver] just got the Blue Network Servers, we would have no access to ATS documents. Is that right?”, Mr. Fabrini agreed, the Receiver would not have access to ATS documents.**⁷⁹
16. On December 1, 2020, the Receiver’s counsel wrote to WeirFoulds asking for confirmation in writing that the Receiver may access the images of the Blue Network Servers in accordance with the October 27, 2020 Order.
17. On December 2, 2020, WeirFoulds replied to the December 1, 2020 letter taking the position that the Receiver is not entitled to unfettered access to the Blue Network Servers because they contain employee and “third party” information. WeirFoulds suggested that the Receiver and ATS agree to a protocol.
18. On December 7, 2020, the Receiver’s counsel replied to WeirFoulds asking ATS to reconsider its position and to provide the Receiver with immediate access to the Blue Network Servers.
19. On December 9, 2020, WeirFoulds wrote again disagreeing with the Receiver’s position and specifically indicating that “if it is not clear from the above, ATS does not agree that the Receiver is entitled to complete access to the email server, ERP system and Skype for Business data.”
20. On December 17, 2020, the Receiver’s counsel replied to WeirFoulds again disagreeing with its position but noting that the December 9, 2020 letter provides written consent that:
- the Receiver may “instruct Duff & Phelps to contact Mr. Fabrini to make arrangements to view the file structure and report on this to the Receiver and ATS”; and
 - “The Receiver is entitled to the ‘@xela.com’ data”.
21. On December 24, 2020, Duff & Phelps wrote to WeirFoulds and the Receiver to report on the file structure.

⁷⁸ Fabrini Transcript, pp. 46-47, Brief, Tab 9

⁷⁹ Fabrini Transcript, pp. 47-48, Brief, Tab 9

22. The Receiver requires unfettered access to the Blue Network Servers and to Juan Guillermo's emails.
23. Also on December 17, 2020, WeirFoulds wrote to the Receiver's counsel, this time on behalf of BDT with a "with prejudice" settlement offer which, if accepted, among other things, requires the Receiver not to review or examine the Servers.⁸⁰
24. On January 12, 2021, the Receiver wrote to BDT, rejecting the with-prejudice settlement offer (as discussed in Section 7 below).

6.0 Conduct of Juan Guillermo

6.1 Failure to Comply with October 27, 2020 Imaging Order

1. On October 27, 2020, this Court ordered that:
 - a. the Receiver's agent would image the Servers that were sold to ATS and are listed in the Servers Agreement. The Receiver's agent was ordered to preserve the images but not to conduct a review of the images; and
 - b. Juan Guillermo would provide the Receiver's agent with all devices used by him **within seven (7) business days** (emphasis added) of the October 27, 2020 Order. A protocol was set for the review of those images and to address Juan Guillermo's objections.
2. On or about October 25, 2020, the Receiver was told that Juan Guillermo was travelling to Guatemala on October 26, 2020 to care for his sick mother-in-law. Cambridge told the Receiver that Juan Guillermo would return November 2, 2020. Cambridge undertook to pick up the devices and to meet the Receiver's agent to mirror image the devices within the Court-ordered timeline.⁸¹
3. Despite the October 27, 2020 Order and the undertakings of Cambridge, as at the date of this Report, Duff & Phelps is still not in control of an image of Juan Guillermo's devices. The following events have transpired:
 - a. on November 1, 2020, Cambridge advised that Juan Guillermo would not be returning on November 2, 2020 and did not know when he would return;
 - b. over the next two weeks, Cambridge advised the Receiver that Juan Guillermo's return remained uncertain. But Cambridge undertook as follows: "**As soon as he lands I will collect the phone and iPad from him and deliver for mirror imaging**" (emphasis added);

⁸⁰ Letter from WeirFoulds to Lenczner Slaght, dated December 17, 2020, Brief, Tab 22

⁸¹ This was conveyed orally and is confirmed in the email from Cambridge to Duff & Phelps and Lenczner Slaght, dated November 1, 2020, in which counsel stated, "Our plan to collect his device tomorrow AM and come to your office will need to be postponed." Email from Cambridge to Duff & Phelps and Lenczner Slaght, dated November 1, 2020, Brief, Tab 21

- c. on November 16, 2020, Cambridge requested an open-ended extension of the October 27, 2020 Order but still promised to deliver the devices the day after Juan Guillermo returned. The Receiver appreciated the extenuating circumstances surrounding the health (and subsequent death) of Juan Guillermo's mother-in-law, but the Receiver could not consent to an open-ended extension. The Receiver requested updates from Cambridge on multiple occasions;
 - d. on Saturday December 19, 2020, Cambridge sent a letter (dated December 18, 2020), advising that Juan Guillermo had returned on Thursday, December 17, 2020.⁸² Cambridge did not deliver the devices the morning after Juan Guillermo landed in Toronto as it had promised;
 - e. on December 20, 2020, the Receiver asked Cambridge to meet the Receiver's agent the next day with Juan Guillermo's devices. Cambridge did not do so;
 - f. between December 22, 2020 and January 5, 2021, Juan Guillermo and Cambridge attempted to extend the time for compliance with the October 27, 2020 Order and to avoid the protocol established therein for imaging Juan Guillermo's devices. The Receiver declined and sought compliance with the October 27, 2020 Order.
 - g. finally, on January 5, 2021, over the Receiver's objections and without-prejudice to the Receiver's position that Juan Guillermo had not complied with the October 27, 2020 Order, images were taken of two of Juan Guillermo's devices. As of the date of this Report, only Juan Guillermo has control over the images.⁸³
4. The October 27, 2020 Order sets out a specific protocol for imaging and review of the devices. Contrary to the terms of the Order, Cambridge insisted that the resulting image be locked with a password retained by Juan Guillermo. Cambridge does not agree that data can be uploaded to the Relativity Platform or that a deletion analysis can be undertaken in the manner set out in the October 27, 2020 Order.
 5. The Receiver seeks compliance with the October 27, 2020 Order such that Juan Guillermo be required to provide the Receiver with the password(s) to the images and that the Receiver be permitted to conduct the deletion analysis and upload of data to Relativity contemplated by the October 27, 2020 Order.

⁸² Email from Cambridge to Lenczner Slaght, dated December 19, 2020, Brief, Tab 23; Letter from Cambridge to Lenczner Slaght, dated December 18, 2020, Brief, Tab 24

⁸³ On January 8, 2021, Cambridge delivered an affidavit, sworn by Juan Guillermo on January 7, 2021, pursuant to paragraph 2 of Juan Guillermo's October 27, 2020 Order, Brief, Tab 4

7.0 BDT

7.1 December 2020 Offer from BDT

1. On December 17, 2020 (and prior to being advised of Juan Guillermo's return from Guatemala), WeirFoulds (also counsel for ATS), wrote, with prejudice, this time as counsel for BDT, with a proposal which involves the Receiver ceasing its investigation into the Reviewable Transactions in exchange for a promissory note provided by BDT.⁸⁴ The proposal provides that:
 - a. the promissory note is conditioned on Lisa's future receipt of money, which it expects to receive from a purported judgment in Panama related to the Avicola Litigation; and
 - b. it requires the Receiver to cease its investigative efforts (which includes not reviewing the Company's records on the Servers) in exchange for this promissory note from BDT.
2. The letter suggests that the proposal is the best alternative available to the Receiver. It repeats some of the statements contained in BDT's (and the Trust's) 2019 correspondence (that the Receiver could not succeed in reversing the EAI Transaction as it is subject to the law of Barbados and statute-barred). The letter suggests that, if the Receiver does not accept the proposal, it appears that the parties will continue to frustrate the Receiver's efforts by relying on the Company's complex, multi-jurisdictional corporate structure.
3. The letter also confirms that Lisa, in addition to the Lisa Transfer, assigned the right to control the Avicola Litigation to BDT during the receivership and contrary to paragraph 4 of the Appointment Order, which conferred on the Receiver the responsibility for the Avicola Litigation as of January 1, 2020. This also conflicts with paragraph 3 of the Appointment Order, which states that where the Receiver takes an action, the Receiver does so to the exclusion of any other party. These actions also frustrate the very purpose of these proceedings, which is to generate recoveries for the Company's creditors through realizing on the Avicola Interest, which is the Company's only (indirect) asset of value.
4. The Receiver has concluded that this offer is unacceptable for several reasons, including the limitation on the Receiver's investigation and the fact that it does not involve any actual payment to the Receiver for the benefit of the Company's creditors, other than the Judgment Debt owing to Margarita. Additionally, control of the Avicola Litigation would remain in the hands of parties other than the Receiver. These are the same parties who have been involved in, and had control of, the Avicola Litigation for over 20 years, without coming to or nearing a resolution.

⁸⁴ Letter from WeirFoulds to Lenczner Slaght, dated December 17, 2020, Brief, Tab 22

7.2 Receiver's Prior Dealings with BDT

1. In accordance with the Appointment Order and the Disclosure Order, the Receiver sought information and documents from BDT in late 2019. In brief, notwithstanding that the beneficiaries of the Trust (which owns BDT) are Ontario residents, BDT responded that it is not subject to the jurisdiction of this Court or the Receivership; however, it claimed it was not averse to cooperating with specific requests from the Receiver.⁸⁵ The Receiver thereafter provided BDT with detailed requests for documents.
2. On December 13, 2019, a Trustee of the Trust (Debbie McDonald, on behalf of Alexandria Trust Corporation in Barbados) wrote a letter to the Receiver on behalf of the Trust, BDT and Arven advising, *inter alia*, that:
 - a. as it relates to the EAI Transaction, any attempt by the Receiver to invalidate the transaction would be time barred under Barbados legislation and that the Trustee would not be providing any of the information required under the October 29, 2019 Disclosure Order; and
 - b. as it related to the Assignment Transaction, BDT had made significant advances to Lisa and that evidence of the advances may be provided at some future time as part of a claims process in the receivership.⁸⁶
3. BDT has been uncooperative with the Receiver – it has not provided it with any of its requested information. Moreover, BDT's present offer continues to assert its past warning (i.e., that, even if the Reviewable Transactions are illegal, the Receiver is powerless to do anything about them). These recurring assertions, together with the evidence that BDT is being operated out of ATS' office, cause the Receiver great concern, particularly because the owners of BDT are domiciled in Ontario and have shown no regard for the various orders issued by the Court in these proceedings. For all of the above reasons, on January 12, 2021, the Receiver responded rejecting the offer.

8.0 Gabinvest and Lisa – Interferences and Threats

8.1 The Receiver's Efforts to Exercise the Company's Rights over Gabinvest and Lisa

1. As detailed in Section 3 of the Receiver's Second Report and Section 2.4 of Receiver's Third Report, and as approved by this Court's March 24, 2020 Order, the Receiver has attempted to exercise the Company's shareholder rights by changing in full the Gabinvest Board of Directors and making additions to Lisa's Board of Directors. In this regard, the Receiver convened shareholders meetings and passed resolutions to change the Board of Directors of Gabinvest to representatives of Hatstone and to add three representatives of Hatstone to Lisa's Board of Directors. In addition, the Receiver sought to appoint Hatstone as resident agent following AFRA's resignation. The Receiver understands that all Panamanian companies are required to have at least three directors and officers and a resident agent.

⁸⁵ Letter from Alexandria Trust Corporation to the Receiver, dated November 20, 2019, Brief, Tab 12

⁸⁶ Letter from Alexandria Trust Corporation to the Receiver, dated December 13, 2019, Brief, Tab 13

2. One purpose of the Board changes and the appointment of Hatstone as Lisa's resident agent was to provide the Receiver with access to Gabinvest's and Lisa's records in Panama, including to obtain evidence concerning the Reviewable Transactions.
3. By making the changes to the Gabinvest and Lisa boards, the Receiver would also, indirectly, be able to oversee and facilitate the Avicola Litigation on behalf of the Company, consistent with its duties and obligations under the Appointment Order.
4. The Receiver understands that in Panama, a registered agent maintains, or has access to, various key documents regarding a company, including share registers, certain accounting information, and in some cases, a copy of the minute books and minutes of board of director meetings and shareholder meetings. In Panama, only details of the directors and officers and resident agent are public.
5. AFRA was Lisa's and Gabinvest's registered agent in Panama. AFRA resigned as registered agent on February 17, 2020. The Receiver understands that AFRA nevertheless maintains those documents. The Receiver has requested the documents directly from AFRA, but it has stated that it will only release the documents if requested to do so by the client on record or a Court order. It is not known who AFRA presently regards as the client on record. The Receiver is seeking a Court order that AFRA deliver these documents to the Receiver. The Receiver intends to take such steps as required to have this Court's Orders recognized in Panama.

8.2 Interferences and Threats

1. As described in the Second Report, Lisa (by way of its President, Hals), through its previous Panamanian counsel (Javier Quiroz), submitted letters of objection to the Panamanian public registry claiming that the Receiver's actions in exercising the Company's shareholder rights over Gabinvest and Lisa in January 2020 were fraudulent. Lisa further submitted documentation to reverse the additions to Gabinvest's and Lisa's boards. Mr. Quiroz's objections and minutes filed in early 2020 have delayed and prevented the Receiver's attempt to exercise the Company's rights over these subsidiaries.
2. The false and misleading statements by Mr. Quiroz to the Panamanian public registry have further interfered with the Receiver gaining access to the records of Gabinvest and Lisa. They have led to a great deal of additional work being undertaken in Panama to deal with the Receiver's efforts to change the board of Gabinvest, adding directors to the board of Lisa and appointing a resident agent to each company following AFRA's resignation. Lisa does not have a resident agent, in breach of Panama law, and it is hoped this will finally be rectified in due course through the steps that the Receiver intends to take in Panama.

3. On October 18, 2020, Hals sent an email to the Receiver's agent, Hatstone, attaching a criminal complaint against Hatstone. The complaint is in Spanish, but the Receiver understands that the essence of the complaint is an allegation that Gabinvest's shareholder was not present at the Gabinvest shareholder meeting convened by the Receiver on January 16, 2020 (which, as set out in Section 2.4 of the Receiver's Third Report, was approved by this Court's March 24, 2020 Order). Hals also alleges that the Hatstone-appointed directors of Gabinvest received \$2 million Balboas⁸⁷ (Panamanian currency) themselves, depriving Gabinvest of the funds. No documentation or other information has been provided in support of this unfounded allegation. There is no evidence of any diversion of funds by Hatstone, and this appears to the Receiver to be a meritless attempt to discredit and malign the Receiver and Hatstone.
4. As the Company is the sole shareholder of Gabinvest and the Receiver is authorized to exercise the Company's shareholder rights pursuant to the Appointment Order, the shareholder meeting was convened appropriately and the Gabinvest shareholder (the Receiver on behalf of the Company) was present at the January 16, 2020 shareholder meeting. Additionally, the meeting was ratified by Court's March 24, 2020 Order and the directors appointed were also ratified through shareholder minutes dated April 29, 2020. Hatstone has confirmed that, on the basis that the Company is the sole shareholder of Gabinvest, the January 16, 2020 shareholder meeting was correctly convened in accordance with Panamanian law and the articles of that company.⁸⁸ Holding a shareholder meeting to deal with such changes is standard for Panamanian companies. Likewise, on the basis that Gabinvest is the sole shareholder of Lisa, a shareholder meeting of Lisa conducted by the officers of Gabinvest appointed by the Receiver is equally valid under Panamanian law and should not be interfered with by the Mr. Quiroz submissions to the public registry.
5. In late 2020, Mr. Quiroz appears to have been replaced by a new Panamanian lawyer, Mr. Javier De Leon. On September 23, 2020, Mr. De Leon submitted letters to the public registry again complaining about the Receiver's resolutions and seeking to interfere with the changes the Receiver wishes to make in respect of the boards and resident agent of each of Gabinvest and Lisa.
6. Although the criminal complaint sent by Hals on October 18, 2020 (referenced in paragraph 8.2(3) above) is frivolous, the Receiver understands that, if filed, it would trigger an investigation by the criminal authorities in Panama, thereby further complicating (and effectively interfering) with the Receiver's efforts to exercise the Company's shareholder rights because of the time and expense responding to a criminal investigation.

⁸⁷ Equivalent to US\$2 million.

⁸⁸ Juan Guillermo swore that Gabinvest is "wholly-owned by Xela" and that "Gabinvest wholly-owns Lisa": see Juan Guillermo's June 17, 2019 Affidavit, at paras. 50-51, Brief, Tab 1

7. During a phone call with Hatstone on November 17, 2020, Daniela Vesga, Colombian counsel purporting to represent Lisa, threatened to file the same criminal complaint against Hatstone that Hals had sent a month earlier if the Receiver did not, within a week, review the material delivered by Mr. Grimas and attend at another call.
8. To the best of the Receiver's knowledge, no criminal complaint has been formally filed against Hatstone.⁸⁹ However, Hals and various counsel purporting to act for Lisa appear to be using the threat of a criminal complaint to pressure the Receiver from exercising the Company's rights over its subsidiaries.

9.0 Recognition Order

1. As a result of the lack of assistance from the non-Hatstone board members of Gabinvest and Lisa, and the inability to obtain information from the former resident agent, AFRA, together with the continued interference and threats from various parties, the Receiver, as Court-appointed representative of the Company, has not been able to exercise its authority as shareholder (or ultimate shareholder in the case of Lisa) of each company and obtain the information it requires.
2. Accordingly, the Receiver seeks a Recognition Order to, among other things, domesticate the Appointment Order in Panama along with related relief.
3. Recognition proceedings will allow the Receiver to exercise its shareholder rights and to obtain information from AFRA and the directors and officers of each company by removing the jurisdictional obstacles employed to delay the provision of information the Receiver requires to fulfill its position.
4. The Receiver understands from Hatstone that the Panamanian Court will expect a detailed recognition request order which explains:
 - i. the nature of the proceedings;
 - ii. a summary of the powers granted to the Receiver and the powers being sought to be recognized;
 - iii. the reason the recognition order is being sought;
 - iv. the dollar value in respect of any judgment or debt where assistance is being sought; and
 - v. when and how the Receivership proceedings will finalize.

⁸⁹ To know if a complaint was filed, Hatstone must attend at the Public Prosecutor's office. Hatstone last attended at the Prosecutor's office on October 30, 2020. At that time, no criminal complaint had been filed against Hatstone.

10.0 Lisa's Dividends

1. As discussed above, Lisa is a holding company for the Company's interest in the Avicola Group, a Guatemalan entity that Juan Guillermo has testified is valued at close to a billion dollars.
2. In the late 1990s, Juan Guillermo and Juan Arturo caused Lisa to commence litigation against various entities in various jurisdictions with respect to unpaid dividends owing to Lisa from the Avicola Interest. Lisa has not received dividends from its Avicola Interest since 1998.⁹⁰
3. After approximately 22 years of litigation, the Receiver understands that Juan Guillermo, Hals and those directing Lisa have never been successful in obtaining any of the dividends payable to Lisa arising from its Avicola Interest or the Avicola Litigation.
4. WeirFoulds (on behalf of BDT and ATS) claims that Villamorey (through which Lisa owns 8.3% of the Avicola Group) has retained earnings that are due and payable to Lisa in the amount of approximately US\$44 million.
5. Pursuant to paragraphs 3 and 4 of the Appointment Order, the Receiver is empowered to manage and control the Avicola Litigation to the exclusion of all others. As discussed above, the interference and threats by Juan Guillermo's family have frustrated the Receiver's efforts to exercise control over Gabinvest, Lisa and the Avicola Litigation for the benefit of the Company and its subsidiaries. The Receiver requires the aid and recognition of foreign courts to permit it to manage and control the Avicola Litigation and to take steps to recover monies payable to the Company and its subsidiaries.

11.0 Professional Fees

1. The fees of the Receiver, Lenczner Slaght and A&B are summarized in the [table\[A1\]\[A2\]](#) below:

Firm	Period	(\$)			Average Hourly Rate
		Fees	Disbursements	Total	
KSV	Jan 1 – Dec 31/20	282,961.50	4.42	282,961.50	625.61
Lenczner Slaght	Apr 15 – Nov 30/20	233,802.50	1,415.83	235,218.33	506.72
A&B	Jan 29 – Nov 19/20	186,505.00	6,287.36	192,792.36	562.95
Total		656,205.00	7,707.61	662,492.36	

⁹⁰ Receiver's First Report, at s. 3.0(4), Reports Brief, Tab 1

2. Detailed invoices for the Receiver, Lenczner Slaght and A&B can be found in the affidavits sworn by their representatives in the Brief of Documents that accompanies this Report.⁹¹
3. The Receiver and counsel have undertaken extensive efforts to gain access to the Company's records and data and to investigate the Reviewable Transactions. The Receiver has been met with resistance and delay at every instance. The matter is complex. The Company's multi-jurisdictional, corporate structure and the extensive materials filed in this matter have required extensive resources and time.
4. The Receiver is of the view that the hourly rates charged by Lenczner Slaght and 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.

12.0 Conclusions and Recommendation

1. It is the Receiver's recommendation that the Court should issue an order granting the relief requested in Section 1.2(1)(b) of this Report for the following reasons:
 - a. through the Reviewable Transactions and the Lisa Transfer, Juan Guillermo has caused the Company to be stripped of essentially all of its business, assets and cash flow to the detriment of the Company's creditors;
 - b. the Reviewable Transactions and the Lisa Transfer have no purpose other than to defeat the Company's creditors for the benefit of Juan Guillermo and the beneficiaries of the Trust, his children;
 - c. Juan Guillermo is not acting in the best interest of the Company, but rather, is preferring the interests of the Trust, which is beneficially owned by his sons, over the interests of the Company;
 - d. Juan Guillermo, Thomas and Andres have caused the Trust, BDT and Arven to fail to respond to the Receiver's questions by hiding behind the foreign jurisdiction of these entities. All of Juan Guillermo, Thomas and Andres are Ontario residents and are therefore subject to the jurisdiction of this Court's orders;
 - e. Juan Guillermo, his sons, his brother-in-law and ATS have been uncooperative at every instance. Essentially no information sought by the Receiver has been provided to it since the commencement of the receivership in July, 2019, notwithstanding the broad powers and authority granted to the Receiver under the Appointment Order (and consistent with all such receivership orders issued in Ontario);

⁹¹ Brief, Tabs 25-27. The Lenczner Slaght invoices have been redacted for privileged details.

- f. to apparently conceal the Company's financial and other information, the information technology business formerly carried on by the Company was conveyed to ATS, which is run by Juan Guillermo's children. The Receiver has not identified any consideration paid for this business, and ATS has frustrated the Receiver's attempts to review any Company information on the Blue Network Servers;
- g. the Company's former employees (Mark Korol and Julio Fabrini) have provided evidence that contradicts answers provided by Juan Guillermo concerning, *inter alia*, his involvement in the business of BDT, Arven, Lisa, ATS and the Company;
- h. ATS and Juan Guillermo's children have refused to consent to the Receiver's access to the Company's records in their control;
- i. Juan Guillermo has not complied with the terms of the October 27, 2020 Order, and his counsel has not respected its undertakings in respect of that Order;
- j. Juan Guillermo's family and associates, including his brother-in-law Hals, the President of Lisa, have continuously interfered with the Receiver's efforts in Panama and have used threats to attempt to cause the Receiver to discontinue its review of the Company's historical transactions, including those underlying the Reviewable Transactions. Additionally, Hals has refused to recognize the Receiver's authority notwithstanding swearing an affidavit in these proceedings; and
- k. to further impede the Receiver's investigative activities, and its efforts to exercise control of the Company's direct and indirect subsidiaries, Hals and individuals associated with him, have attempted to intimidate the Receiver's counsel, Hatstone, with unfounded and unsupported allegations, including allegations of potentially criminal misconduct.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

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