



**Supplement to the Second Report of  
KSV Kofman Inc.,  
as Receiver and Manager of  
Xela Enterprises Ltd.**

**March 17, 2020**

<b>Contents</b>		<b>Page</b>
1.0	Introduction and Purpose .....	1
1.1	Restrictions .....	1
2.0	February 21 Court Appearance.....	2
3.0	Events Since the Chambers Appointment.....	2
4.0	Contempt Order .....	3
5.0	Conclusion and Recommendation .....	4

## **Appendices**

<b>Appendix</b>	<b>Tab</b>
Endorsement of Justice McEwen dated February 21, 2020.....	A
Hatstone email dated February 24, 2020 .....	B
Mr. Hals' email dated February 24, 2020.....	C
Mr. Hals' email dated March 11, 2020 .....	D
First Report .....	E



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.**

**SUPPLMENT TO THE SECOND REPORT OF KSV KOFMAN INC.**

**MARCH 17, 2020**

## **1.0 Introduction and Purpose**

1. This report (the "Supplemental Report") supplements the Second Report of the Receiver dated February 18, 2020 (the "Second Report").
2. Capitalized terms used but not defined in this Supplemental Report shall have the meaning provided to them in the Second Report.
3. The purpose of the Supplemental Report is to:
  - a) update the Court on events since the Receiver's last Court attendance on February 21, 2020; and
  - b) recommend that the Court issue an order finding Juan Guillermo in contempt of the Court's Orders issued in these proceedings.

### **1.1 Restrictions**

1. This Report is subject to the restrictions provided in the Second Report.

## 2.0 February 21 Court Appearance

1. On February 21, 2020, the Receiver scheduled a chambers appointment before Justice McEwen to, *inter alia*, schedule the Receiver's motion seeking certain relief, including approving the Receiver's activities and its fees and disbursements.
2. The chambers appointment was attended by the Receiver and its counsel, A&B, as well as Cambridge and Bennett Jones. At the appointment, the Receiver summarized its Second Report, including advising the Court that Juan Guillermo had been causing the Company's subsidiaries to take actions that are undermining and frustrating the purpose of these proceedings, including, but not limited to, interfering with the Receiver's changes to the boards of directors for each of Gabinvest and Lisa and failing to have Lisa, BDT, Arven, the Trust and ATC comply with the Disclosure Order.
3. The Receiver further advised the Court that if Juan Guillermo continued to frustrate the receivership proceedings, the Receiver intended to bring a motion to find Juan Guillermo in contempt of the Court's Orders.
4. During the chambers appointment, Mr. Justice McEwen advised Cambridge, legal counsel to Juan Guillermo, of the Court's concerns regarding Juan Guillermo's conduct described in the Second Report. Mr. Justice McEwen advised Cambridge to advise Juan Guillermo of the Court's concerns. The Court also scheduled the Receiver's motion to be heard on March 24, 2020. A copy of Mr. Justice McEwen's endorsement dated February 21, 2020 is attached as Appendix "A".

## 3.0 Events Since the Chambers Appointment

1. As referenced in the Second Report, a meeting was scheduled in Bogota, Columbia on February 21, 2020, the same day as the chambers appointment, between the Receiver's Panamanian counsel, Hatstone and, among others, Mr. Hals, a current director and officer of Lisa, and Juan Guillermo. This meeting was requested by the non-Hatstone members of the Gabinvest and Lisa boards, and agreed to by Hatstone (at the direction of the Receiver) in the hopes of resolving the problems caused by the non-Hatstone board members in response to the changes to those boards made at the direction of the Receiver. At this meeting, Juan Guillermo expressed an interest in settling the dispute with Margarita and requested a subsequent meeting to be held on February 28, 2020 with the Receiver, the Receiver's counsel and Margarita.
2. On February 24, 2020, at the direction of the Receiver, Hatstone emailed Mr. Hals advising that the Receiver was prepared to meet with Juan Guillermo once the Lisa and Gabinvest Boards have been reconstituted on the basis sought by the Receiver. The Receiver also advised that it spoke with Margarita's legal counsel and that she was not interested in meeting. A copy of Hatstone's email is attached as Appendix "B".
3. On February 24, 2020, Mr. Hals responded to Hatstone and alleged, among other things, that Margarita had already been repaid the Judgement Debt. A copy of Mr. Hals' email and a translation of the e-mail from Spanish to English is attached as Appendix "C".

4. On March 3, 2020, Juan Guillermo called Hatstone to advise, *inter alia*, that he, allegedly on behalf of Gabinvest, would not agree to the Gabinvest board changes made by the Receiver and instead proposed a split board comprised of an equal number of appointees by the Receiver and Juan Guillermo. Presently, the Board of Gabinvest is comprised of the Receiver's appointees; however, Hatstone has advised that representatives of the former Board intend to challenge the Receiver's changes.
5. As set out in the Second Report, Juan Guillermo refused to accept the changes made to the Board of Lisa. Between January 30, 2020 and February 4, 2020, Juan Guillermo instructed Panamanian counsel to file a shareholder resolution changing back the board to the prior board, comprised of Mr. Hals, Mr. Hess Jr. and Mr. Shields. These changes have been filed with the Public Registry in Panama and the Public Registry is refusing to recognize the Gabinvest appointees.
6. On March 4, 2020, the Receiver served a motion record seeking, *inter alia*, an order:
  - a) declaring that, unless retained by the Receiver, no person or law firm shall act as counsel to the Company except for the limited and specific purpose of bringing a motion for discharge of the Receiver pursuant to paragraph 25 of the Receivership Order, and that neither the Company nor the Receiver shall be liable for the fees and disbursements of any counsel not retained by the Receiver, unless otherwise ordered by the Court; and
  - b) approving and ratifying the shareholder resolution changing the composition of the board passed by Gabinvest's sole shareholder, being the Company.
7. On March 11, 2020, the Receiver was forwarded an email by Hatstone from Mr. Hals which states that Lisa's Board (comprised of the non-Hatstone members) intended to forthwith initiate new criminal proceedings in Panama against Margarita. A copy of the email translated from Spanish to English is attached as Appendix "D".

#### **4.0 Contempt Order**

1. For the reasons provided in the Second Report and in Section 3.0 above, Juan Guillermo appears to be directing and representing Lisa, and purporting to direct and represent Gabinvest, notwithstanding that he is not an officer or director of either. Juan Guillermo is also the person directing Cambridge.
2. The Receiver believes that a contempt order is appropriate in the circumstances for the following reasons:
  - a) as of the date of this Report, Juan Guillermo, Lisa, BDT, Arven and the Trust have not provided the information requested by the Receiver under the Disclosure Order.
  - b) Juan Guillermo appears to be closely associated with each of the entities listed in 2(a) above, as detailed in the First Report (provided in Appendix "E", without appendices) and the Second Report, and is communicating with and participating in meetings with Hatstone as the directing mind of both Lisa and Gabinvest;

- c) despite Justice McEwen advising Cambridge at a chambers appointment on January 9, 2020 that he expected fulsome disclosure be provided to the Receiver, Juan Guillermo has refused to provide substantive disclosure concerning the purported Loan that is to be used to repay the Judgement Debt or pursuant to the Disclosure Order, as discussed in the Second Report; and
  - d) Juan Guillermo continues to instruct and direct the foreign subsidiaries to take steps that undermine these proceedings, including the steps taken by the Receiver and Gabinvest to reconstitute the boards of Gabinvest and Lisa.
3. Accordingly, the Receiver sees no option but to recommend that the Court find Juan Guillermo in contempt of Court and that he be appropriately sanctioned.

## 5.0 Conclusion and Recommendation

1. Based on the foregoing, the Receiver respectfully recommends that the Court make an order granting the relief detailed in Section 1.0 (3)(b) 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”**

**COUNSEL SLIP**

COURT FILE

NO.: CV-11-00609062-00CL

DATE: FEB 21 2020

NO. ON LIST 3

TITLE OF  
PROCEEDING

CASTILLO

v.

XELA ENTERPRISES LTD et al.

**COUNSEL FOR:**

- PLAINTIFF(S)
- APPLICANT(S)
- PETITIONER(S)

Kyle B. Plunkett

↳ Aird & Berlis LLP

↳ T: 416-865-3406

↳ E: kplunkett@airdberlis.com

PHONE \_\_\_\_\_

FAX \_\_\_\_\_

EMAIL \_\_\_\_\_

**COUNSEL FOR:**

- DEFENDANT(S)
- RESPONDENT(S)

↳ Counsel to Receiver

PHONE \_\_\_\_\_

FAX \_\_\_\_\_

EMAIL \_\_\_\_\_

**JUDICIAL NOTES:**

JEFFREY LEON + Sean Zweig

BENNETT JONES LLP

T 416 777 7472

leonj@bennettjones.com

for MARGARITA CASTILLO

CHRIS MACLEOD

N. JUAN KASOZI

CAMBRIDGE LLP

jkasoz@cambridgellp.com

For Xela Enterprises Ltd

P: 416 477 7007

F: 289 812 7355

21 Feb 20

Motion to be heard by me on March 24/20

90 mins ~~hour~~ confirmed. If matters become urgent the case may return on 2 days notice

before me in the interim

MELENT



## **Appendix “B”**

**From:** Carl O'Shea <[carl.oshea@hatstone.com](mailto:carl.oshea@hatstone.com)>

**Date:** Monday, 24 February 2020 at 09:01

**To:** Harald Johannessen | L <[H\\_Johannessen@granadavalley.com](mailto:H_Johannessen@granadavalley.com)>, Alvaro Almengor <[alvaro.almengor@hatstone.com](mailto:alvaro.almengor@hatstone.com)>

**Subject:** Xela - Settlement meetings

Dear Harald

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

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

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

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

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

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

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

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

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

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

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

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

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

All the best

**Carl O'Shea**  
**Group Partner**

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



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## **Appendix “C”**

**From:** Harald Johannessen | L <[H\\_Johannessen@granadavalley.com](mailto:H_Johannessen@granadavalley.com)>  
**Date:** February 24, 2020 at 14:41:49 EST  
**To:** Alvaro Almengor <[alvaro.almengor@hatstone.com](mailto:alvaro.almengor@hatstone.com)>  
**Cc:** Carl O'Shea <[carl.oshea@hatstone.com](mailto:carl.oshea@hatstone.com)>  
**Subject:** Xela - Settlement meetings

Guatemala, febrero 24 de 2020

**Señores:**

HATSTONE

Atn. Lic. Álvaro Almengor

Ref: Correo Electrónico de, febrero 24 de 2020

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

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

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

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

Con lo anterior, encontramos una clara LIMITACIÓN de actuación del señor Álvaro Almengor, en representación de la firma forense HATSTONE ABOGADOS, para tomar disposición sobre los activos del Deudor en Panamá. Para que dicho escenario legal pudiese haber tenido las resultas buscadas, el Administrador Judicial nombrado, tuvo que haber cumplido con las normas de derecho internacional

necesarias para que su nombramiento fuera válido en la República de Panamá. Ya que la firma HATSTONE ABOGADOS y sus representantes tienen una falta de legitimidad activa para actuar en nombre del Administrador Judicial, situación que a la fecha aún persiste.

2.El Receiver Appointment claramente establece, que dicho nombramiento se ejecuta de conformidad con la 101 de los Tribunales de Justicia, R.S.O. 1990, c.C.43 (section101 of the Courts of Justice Act, R.S.O. 1990, c. C.43).

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

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

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

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

Sin otro particular

Harald Johannessen  
Director - Presidente  
Lisa, S.A.

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

Dear Harald

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

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

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

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

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

All the best

**Carl O'Shea**  
**Group Partner**

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<image001.png>

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**Sirs:**

HATSTONE

Att'n. Lic. Álvaro Almengor

Ref E-mail of February 24 of 2020

Dear Sirs, with respect to your email of today, I should make the following clarifications:

- The receiver should look out for the interests of XELA and not exclusively for the interests of Ms. Margarita Castillo, as has been the case up until now.
- In the development of the aforementioned meeting, the company HATSTONE was duly informed that the major creditor of LISA, S.A. is the company BDT INVESTMENTS.
- That today there is enough information to affirm and prove that Ms. Margarita was already completely paid. It is the obligation of the receiver to study the documents accrediting this.
- With respect to the actions arbitrarily undertaken by you to restore the board of LISA and GABINVEST. Arbitrary and illegal acts were committed, to wit:

The appointment undertaken by the Ontario Court clearly establishes two situations:

1. The receiver appointment was granted to KSV Kofman Inc., that is, ONLY, the company KSV Kofman Inc., may in the name of the Debtor (Xela Enterprises, Ltd) act as the legal administrator (receiver) of the assets, properties of the Debtor.

With the foregoing, we find a clear LIMITATION of action of Mr. Alvaro Almengor, representing the forensic company HATSTONE ABOGADOS [Lawyers], to have authority over the assets of the Debtor in Panama. For this legal scenario to have had the hoped for results, the Legal Administrator who was name, had to have complied with the necessary rules of international law for his/her appointment to be valid in the Republic of Panama. Since the firm HATSTONE ABOGADOS and its representatives have lack of active legitimacy to be able to act on behalf of the Legal Administrator. This is a situation which persists to this day.

2. The Receiver Appointment clearly establishes that this appointment is executed pursuant to 101 of the Courts of Justice, R.S.O. 1990, c.C.43 (section 101 of the Courts of Justice Act, R.S.O. 1990, c. C.43).

That is, the appointment of the Legal Administrator is executed in fulfillment with the legal regulation which is only applicable in the Republic of Canada, and for this to be executed outside of the national territory of this court, the Legal Administrator once again, must comply with the rules of international law applicable to the case, and that an authority with the powers and jurisdiction within the Republic of Panama issue an order permitting the Legal Administrator to execute its arbitrations.

In addition to the foregoing, the articles of incorporation of the companies LISA and GABINVEST, are clear in the requirements necessary for the change of directors; this procedure was ignored by the HATSTONES company, which according to their knowledge and understanding thought it was enough with an order from the Receiver.

We find both limitations contained and substantiated, under the factual-legal *amparo*, that even if Xela Enterprises is the ultimate beneficiary of the companies GABINVEST, S.A. and LISA, S.A., each one of these are legal entities, with registered addresses and different regulations; so that, to comply with both intrinsic and extrinsic formalities, it becomes eminently necessary to give validity to the acts that the Legal Administrator itself contemplates undertaking.

Notwithstanding the foregoing, the parties continue with a conciliatory spirit, as long as the firm HATSTONE, counts with the power and/or mandate duly constituted under the laws of the Republic of Panama.

With no other matter at hand

Harald Johannessen  
Director - President  
Lisa, S.A.

## **Appendix “D”**

**From:** Harald Johannessen | L <H\_Johannessen@granadavalley.com>  
**Sent:** March 9, 2020 5:59 PM  
**To:** alvaro.almengor@hatstone.com  
**Subject:** Correo electrónico de febrero 24, 2,020

Señores:  
HATSTONE  
Atn. Lic. Álvaro Almengor

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

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

Sin otro Particular,

Harald Johannessen  
Director – Presidente  
Lisa, S.A.

English Translation

Álvaro Almengor,

Respected gentlemen, as the necessary time has elapsed and no response has been received to the request for the analysis of payments made by VILLAMOREY S.A. To Margarita Castillo with dividends owned by LISA S.A., we proceeded to present this criminal charge, with the aim that the authorities establish the veracity of it. Attached to this email is a copy of it.

I have been informed by Mr. Juan Guillermo Gutiérrez, that you state that you are not aware of the judgments that in Panama favor the interests of LISA SA, in the litigation against the VILLAMOREY SA Company, I have ordered that said judgments be delivered to you formally tomorrow.

## **Appendix “E”**



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

**October 17, 2019**

<b>Contents</b>		<b>Page</b>
1.0	Introduction.....	1
1.1	Purposes of this Report.....	3
1.2	Currency .....	3
1.3	Restrictions .....	4
1.4	Receivership Materials .....	4
2.0	Executive Summary .....	5
3.0	Background .....	5
3.1	The Company .....	6
4.0	EAI Transaction and Assignment Transaction .....	8
4.1	EAI Transaction.....	8
4.2	Assignment Transaction.....	10
4.3	Confidential Appendices.....	11
5.0	Receivership Order – Clarification re Paragraph 4 .....	11
6.0	Professional Fees .....	12
7.0	Overview of Receiver’s Activities .....	12
8.0	Conclusion and Recommendation .....	13

## **Appendices**

<b>Appendix</b>	<b>Tab</b>
Receivership Order .....	A
Present Corporate Organization Chart .....	B
Examination .....	C
Examination Undertakings .....	D
BDT and Lisa Assignment Agreement.....	E
KSV Fee Affidavit.....	F
Aird & Berlis Fee Affidavit.....	G
 <b>Confidential Appendix</b>	 <b>Tab</b>
BDT and PAICA Valuations.....	1
Receiver’s Concerns .....	2



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

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

**MARGARITA CASTILLO**

**Applicant**

**- And -**

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

**Respondents**

**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

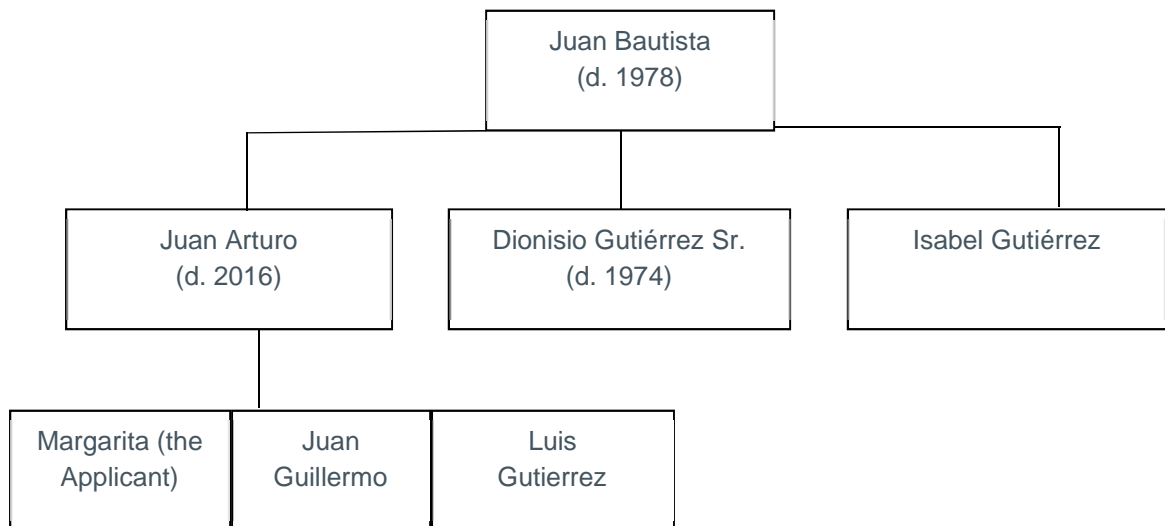
1. All materials filed in the receivership proceedings are available on the Receiver's website at: <https://www.ksvadvisory.com/insolvency-cases/case/xela-enterprises-ltd>.

## 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	<u>22,755</u>
Liabilities	
Accounts payable and other current liabilities	9,459
Due to shareholders	671
Due to related parties	72,944
Total liabilities	83,075
Equity	<u>(60,319)</u>
Total liabilities and equity	<u>22,755</u>

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

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

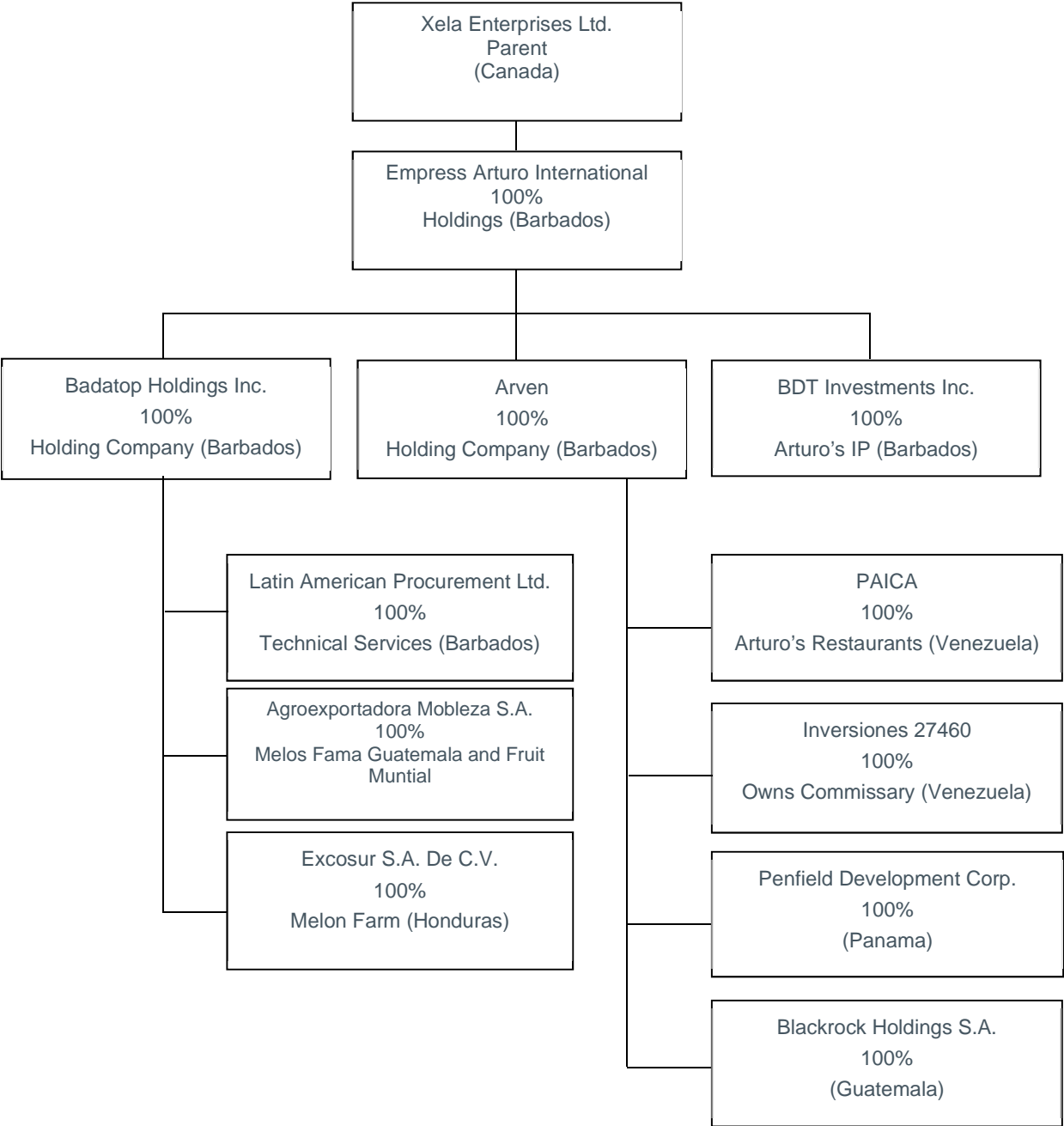
<sup>5</sup> The Company has not provided consolidated financial statements.

<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.

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

5. According to information provided to the Receiver by Juan Guillermo, at the time of the EAI transaction (around April 2016), EAI owed Juan Arturo approximately US\$9 million on account of loans purportedly advanced by Juan Arturo to EAI. To date, the Receiver has not been provided with any evidence of advances by Juan Arturo to EAI despite the Receiver’s requests for this evidence.
6. The Receiver has been advised by Juan Guillermo that EAI was unable to repay the amounts owing to Juan Arturo and, as a result, EAI conveyed the shares of BDT and Arven to Juan Arturo for US\$6.5 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:

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

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

## 7.0 Overview of Receiver's Activities

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

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

## 8.0 Conclusion and Recommendation

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

\* \* \*

All of which is respectfully submitted,



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