



**COURT FILE NUMBER**

**1501-00955**

**COURT**

**COURT OF QUEEN'S BENCH OF ALBERTA**

**JUDICIAL CENTRE**

**CALGARY**

**DOCUMENT**

**THIRTY-EIGHTH REPORT OF THE MONITOR**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF LUTHERAN CHURCH – CANADA, THE  
ALBERTA – BRITISH COLUMBIA DISTRICT, LUTHERAN  
CHURCH-CANADA, THE ALBERTA-BRITISH COLUMBIA  
DISTRICT INVESTMENTS LTD., ENCHARIS COMMUNITY  
HOUSING AND SERVICES AND ENCHARIS MANAGEMENT AND  
SUPPORT SERVICES

DATED NOVEMBER 26, 2019

**ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS  
DOCUMENT**

Counsel

Cassels Brock & Blackwell LLP  
3810, Bankers Hall East Tower  
888 3rd Street SW  
Calgary, Alberta T2P 5C5

Attention: Jeffrey Oliver

Telephone/ Facsimile: 403-351-2921/ 403-648-1151  
Email: joliver@casselsbrock.com

Monitor

Deloitte Restructuring Inc.  
700 Bankers Court, 850 – 2<sup>nd</sup> Street SW  
Calgary, AB T2P 0R8

Attention: Ryan Adlington & Luke Alliband  
Telephone/Facsimile: 587-293-3203/ 403-718-3681  
Email: radlington@deloitte.ca & lualliband@deloitte.ca

# Table of Contents

Introduction and Notice to Reader	1
Introduction	1
Notice to Reader	2
Court Application	3
Sensitive Information	4
Creditor Contact Information	4
Valuation Information	4
Conclusion	5

Appendix "A"            Initial court order by Justice Yamauci dated January 25, 2015

# Introduction and Notice to Reader

## Introduction

1. On January 23, 2015 (the "Filing Date"), Lutheran Church – Canada, the Alberta – British Columbia District (the "District"), Encharis Community Housing and Services ("ECHS"), Encharis Management and Support Services ("EMSS") and Lutheran Church – Canada, the Alberta – British Columbia District Investments Ltd. ("DIL") (collectively the "Applicants" or the "District Group") obtained an Initial Order (the "Initial Order") from the Court of Queen's Bench of Alberta (the "Court") under the *Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36*, as amended (the "CCAA"). Deloitte Restructuring Inc. ("Deloitte") was appointed as Monitor (the "Monitor") in the CCAA proceedings.
2. For clarity, the District includes the Church Extension Fund ("CEF"), which was originally created to allow District members to loan their money and earn interest in faith-based developments. CEF was operated under the purview of the District's Department of Stewardship and Financial Ministries and was not created as a separate legal entity. As such, depositors to CEF are creditors of the District. Depositors to DIL will be referred to as the "DIL Depositors".
3. The Initial Order provided for an initial stay of proceedings (the "Stay") until February 20, 2015. The Court subsequently granted nine (9) extensions of the Stay. The most recent Order was granted at an application on September 2, 2016 and extended the Stay until the earlier of December 31, 2016, or the date on which Certificates of Plan Termination (the "Certificate(s)") were filed signaling the completion of the plans of compromise and arrangement for all of the District (the "District Plan"), DIL (the "DIL Plan"), ECHS (the "ECHS Plan") and EMSS (the "EMSS Plan"), all as subsequently amended (collectively the "Applicants' Plans"). On November 15, 2016, the Applicants' legal counsel wrote a letter to the Court (the "Stay Letter") noting that the Monitor would not be in a position to file the Certificates by December 31, 2016. The Stay Letter also noted that the Sanction Orders granted in respect of the Applicants' Plans extended the Stay until the Certificates were filed and that, as a result, another Court application was not necessary to extend the Stay. On October 25, 2017, the Court granted two Orders partially lifting the Stay (the "Stay Orders") to allow the legal actions undertaken on behalf of participating District and DIL Depositors (the "Representative Actions") to proceed.
4. Prior to the Initial Order being granted, Deloitte prepared a Pre-Filing Report of the Proposed Monitor dated January 22, 2015 (the "Pre-Filing Report"). The Monitor subsequently prepared thirty-seven reports dated between February 17, 2015 and April 18, 2019 (collectively, the "Reports").
5. The Monitor also filed confidential supplements to the Second Report of the Monitor dated March 23, 2015, the Fourth Report of the Monitor dated June 24, 2015, the Fifth Report of the Monitor dated August 24, 2015, the Fifteenth Report of the Monitor dated February 25, 2016, the Seventeenth Report of the Monitor dated March 18, 2016, and the Twenty-Eighth Report of the Monitor dated May 24, 2017 (collectively the "Supplements"). The Supplements have been sealed by the Court.

6. In addition to the Reports and the Supplements, the Monitor prepared a First Report to the Creditors of ECHS and EMSS dated November 10, 2015 (the "Encharis Report"), a First Report to the Creditors of DIL dated December 8, 2015 (the "DIL Report") and a First Report to the Creditors of the District dated March 28, 2016 (the "District Report"). The Encharis, DIL and District Reports were prepared to provide creditors of the corresponding entities with specific information related to the Applicants' Plans.
7. Capitalized terms not otherwise defined herein shall have the meanings given to them in the Reports and in the Supplements.
8. Information on the CCAA proceedings can be accessed on Deloitte's website (the "Monitor's Website") at [www.insolvencies.deloitte.ca](http://www.insolvencies.deloitte.ca) under the link entitled "Lutheran Church – Canada, the Alberta – British Columbia District et. al."

### Notice to Reader

9. In preparing this report, the Monitor has relied on unaudited financial information, the books and records of the Applicants, and discussions with the Applicant's employees, the Applicant's Chief Restructuring Officer, interested parties and stakeholders.
10. The financial information of the Applicants has not been audited, reviewed or otherwise verified by the Monitor as to its accuracy or completeness, nor has it necessarily been prepared in accordance with generally accepted accounting principles and the reader is cautioned that this report may not disclose all significant matters about the Applicants. Additionally, none of the Monitor's procedures were intended to disclose defalcations or other irregularities. If the Monitor were to perform additional procedures or to undertake an audit examination of the financial statements in accordance with generally accepted auditing standards, additional matters may have come to the Monitor's attention. Accordingly, the Monitor does not express an opinion nor does it provide any other form of assurance on the financial or other information presented herein. The Monitor may refine or alter its observations as further information is obtained or brought to its attention after the date of this report.
11. The Monitor assumes no responsibility or liability for any loss or damage occasioned by any party as a result of the circulation, publication, reproduction, or use of this report. Any use, which any party makes of this report, or any reliance or decision to be made based on this report, is the sole responsibility of such party.
12. All amounts included herein are in Canadian dollars unless otherwise stated.

# Court Application

13. This report represents the Thirty-Eighth Report of the Monitor (the “Thirty-Eighth Report”). The Thirty-Eighth Report is being prepared in support of an application to the Court in the proceeding styled Court of Queen’s Bench Action No.: 1901-04984 (JDR) *Wiley Hertlein and Glen Mitchell v. Donald Schiemann, Jim Kentel, William Ney, et. al.* for a sealing order to cover information previously provided to counsel for the Representative Action, namely:

13.1. Contact information contained in the list of creditors (the “Contact Information”); and

13.2. Valuation information relating to the shares of Sage Properties Corp. (“Sage”) provided by Deloitte and/or EY (the “Valuation Information”).

# Sensitive Information

14. The Monitor supports the application for a sealing order covering several items of sensitive information and outlines the reasons for supporting the application below.

## Creditor Contact Information

15. During a typical CCAA proceeding, it is expected that the Monitor prepares and maintains a listing of all creditors containing the names, addresses, telephone numbers and/or email addresses to assist the Monitor with corresponding with all creditors.
16. However, during the CCAA proceedings of the District Group the Monitor produced, with the approval of the Court, a creditors list that contained the names of all creditors without other relevant personal information. This was done as the overwhelming majority of creditors of the District Group were vulnerable senior citizens and there were serious concerns regarding protecting the privacy of these vulnerable individuals. A copy of the Initial Order from the CCAA Proceedings is affixed as Appendix "A" hereto, with the scope of public information in paragraph 46 thereof.
17. The Monitor also notes that preventing the disclosure of the full contact information of creditors is consistent with the approach taken and protections afforded through the CCAA proceedings.
18. It is the opinion of the Monitor that there is no other reasonable way to protect the privacy of these vulnerable individuals and the privacy benefits of the proposed sealing order outweigh any concerns regarding transparency during the CCAA proceedings.

## Valuation Information

19. As part of the District Group's CCAA proceedings, certain depositors received shares in Sage as part of the consideration received under the plan of arrangement.
20. The Valuation Information relates to the value of the shares in Sage as determined by Deloitte and Ernst & Young ("EY").
21. If the Valuation Information were to be disclosed, this could prejudice potential sales of the Sage shares by shareholders and/or cause irreparable harm to any future realization of the Sage shares by shareholders.
22. It is the opinion of the Monitor that there is a real and substantial risk that the disclosure of the Valuation Information would provide other parties in the market with unearned information at the expense of the shareholders. Such disclosures would unfairly benefit other parties in the market while causing potential irreparable harm to the realization of the shares for any shareholders wishing to sell. The Monitor believes that it is necessary for the Court to grant an order sealing the Valuation Information to prevent a serious risk to an important commercial interest, being the future realization of the shares.
23. The Monitor has been informed that EY shares the same view as the Monitor, given the limited scope and nature of EY's report.

# Conclusion

24. The Thirty-Eighth report has been prepared in support of an application to the Court for a sealing order to cover the Contact Information and Valuation Information previously provided to counsel for the Representative Action, which was provided on terms of confidentiality.

**DELOITTE RESTRUCTURING INC.,**

In its capacity as Court-appointed Monitor of The Lutheran Church – Canada, The Alberta – British Columbia District, Encharis Community Housing and Services, Encharis Management and Support Services and The Lutheran Church – Canada, The Alberta – British Columbia District Investments Ltd. and not in its personal or corporate capacity



---

Ryan Adlington, CPA, CA, CIRP, LIT  
Senior Vice-President

# Appendix "A"



COURT FILE NUMBER

1501-00955

COURT

COURT OF QUEEN'S BENCH OF ALBERTA IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE

CALGARY



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

APPLICANTS

LUTHERAN CHURCH – CANADA, THE ALBERTA – BRITISH COLUMBIA DISTRICT, ENCHARIS COMMUNITY HOUSING AND SERVICES, ENCHARIS MANAGEMENT AND SUPPORT SERVICES, AND LUTHERAN CHURCH – CANADA, THE ALBERTA – BRITISH COLUMBIA DISTRICT INVESTMENTS LTD.

DOCUMENT


INITIAL ORDER

I hereby certify this to be a true copy of the original Initial Order

Dated this 23 day of January 2015

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

Bishop & McKenzie LLP  
1700-530-8<sup>th</sup> Avenue SW  
Calgary, Alberta T2P 3S8  
403-237-5550 (phone)  
403-243-3623 (fax)  
Attention: Francis N. J. Taman  
File No.: 103007-003

  
for Clerk of the Court

DATE ON WHICH ORDER WAS PRONOUNCED:

FRIDAY, JANUARY 23, 2015

NAME OF JUDGE WHO MADE THIS ORDER:

K.D. YAMAUCHI

LOCATION OF HEARING:

CALGARY

**UPON** the application of Lutheran Church – Canada, the Alberta – British Columbia District (the “District”), Encharis Community Housing and Services (“ECHS”), Encharis Management and Support Services (“EMSS”), and Lutheran Church – Canada, The Alberta – British Columbia District Investments Ltd. (“DIL”) (collectively the “Applicants”); **AND UPON** having read the Affidavit of Kurtis Robinson; **AND UPON** reading the consent of Deloitte Restructuring Inc. to act as Monitor; **AND UPON** noting that this Application is brought on a without notice basis; **AND UPON** hearing counsel for the Applicants; **IT IS HEREBY ORDERED AND DECLARED THAT:**

#### **SERVICE**

1. Service of notice of the application for this order is hereby dispensed with.

#### **APPLICATION**

2. The Applicants are companies to which the CCAA applies.

#### **PLAN OF ARRANGEMENT**

3. The Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the “Plan”).

#### **POSSESSION OF PROPERTY AND OPERATIONS**

4. The Applicants shall:
  - (a) remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “Property”);
  - (b) subject to further order of this Court, continue to carry on business in a manner consistent with the preservation of its business (the “Business”) and Property; and
  - (c) be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively “Assistants”) currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. To the extent permitted by law, the Applicants shall be entitled but not required to pay the following expenses, incurred prior to or after this Order:
  - (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
  - (b) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges.
  
6. Except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:
  - (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
  - (b) payment for goods or services actually supplied to the Applicants following the date of this Order.
  
7. The Applicant shall remit, in accordance with legal requirements, or pay:
  - (a) any statutory deemed trust amounts in favour of the Crown in Right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of:
    - (i) employment insurance,
    - (ii) Canada Pension Plan, and
    - (iii) income taxes,but only where such statutory deemed trust amounts arise after the date of this Order, or are not required to be remitted until after the date of this Order, unless otherwise ordered by the Court;

- (b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and
  - (c) any amount payable to the Crown in Right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.
- 8. Until a real property lease is disclaimed or resiliated in accordance with the *CCAA*, the Applicants may pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable as rent to the landlord under the lease) based on the terms of existing lease arrangements or as otherwise may be negotiated by the Applicants from time to time for the period commencing from and including the date of this Order ("Rent"), but shall not pay any rent in arrears.
- 9. Except as specifically permitted in this Order, the Applicants are hereby directed, until further order of this Court:
  - (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors, which includes any account holders in the Church Extension Fund of the District, as of the date of this Order;
  - (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and
  - (c) not to grant credit or incur liabilities except in the ordinary course of the Business.
- 10. Except as specifically permitted in this Order, DIL shall make no payments of principal, interest thereon or otherwise on account of amounts owing under any Registered Retirement Retirement Savings Plans ("RRSPs"), Registered Retirement Income Funds

("RRIFs") or Tax Free Savings Accounts ("TFSA") that are under its management as of the date of this Order except for statutory minimum payments to RRIF account holders. For greater clarity, but without otherwise limiting the generality of the forgoing, unless otherwise ordered by this Court, DIL shall not transfer any RRSP, RRIF, or TFSA account to another institution.

## **EMERGENCY FUND**

11. The Applicants are hereby authorized and directed to establish an Emergency Fund up to a maximum of \$75,000.00 per month as described in the Affidavit in support of this Application and the Monitor's Pre-filing Report.
12. Distributions from the Emergency Fund may be made to Depositors as that term is defined in the Affidavit in support of this Application, or to congregations:
  - (a) in amounts set by the District and approved by the Monitor; and
  - (b) the maximum payable to any individual Depositor shall not be more than 75% of his or her pro-rata share of the low estimated amount that would be payable to him or her in a liquidation scenario as determined by the Applicants and approved by the Monitor.
13. Any payments under the Emergency Fund shall be considered as an interim distribution under any Plan of Arrangement that may be approved in these proceedings, or as a return on investment to the DIL Depositors, and payments made thereunder will be reflected in any final distribution under any such Plan of Arrangement, or final return on investment to the DIL Depositors.
14. Any payments made by the Applicants under the Emergency Fund that was established prior to this Application shall not be deemed to be preferential, voidable or subject to being set aside under any federal or provincial legislation or rule of law, notwithstanding the circumstances itemized in paragraphs 43 (a) to (d) of this Order.
15. The Applicants shall provide regular reports to the Monitor as to the distributions made pursuant to the Emergency Fund.

**RESTRUCTURING**

16. The Applicants shall subject to such requirements as are imposed by the *CCAA* have the right to:
- (a) permanently or temporarily cease, downsize or shut down any of its business or operations and to dispose of redundant or non-material assets not exceeding \$100,000.00 in any one transaction or \$300,000.00 in the aggregate, provided that any sale that is either (i) in excess of the above thresholds, or (ii) in favour of a person related to the Applicants (within the meaning of section 36(5) of the *CCAA*), shall require authorization by this Court in accordance with section 36 of the *CCAA*;
  - (b) terminate the employment of such of their employees or temporarily lay off such of their employees as they deem appropriate on such terms as may be agreed upon between the Applicants and such employee, or failing such agreement, to deal with the consequences thereof in the Plan; and
  - (c) pursue all avenues of refinancing of their Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the "Restructuring").

17. The Applicants shall provide each of the relevant landlords with notice of the Applicants' intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal. If the landlord disputes the Applicants' entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicants, or by further order of this Court upon application by the Applicants on at least two (2) days' notice to such landlord and any such secured creditors. If the Applicants disclaim or resiliate the lease governing such leased premises in accordance with section 32 of the *CCAA*, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in section 32(5))

of the CCAA, and the disclaimer or resiliation of the lease shall be without prejudice to the Applicants' claim to the fixtures in dispute.

18. If a notice of disclaimer or resiliation is delivered pursuant to section 32 of the CCAA, then:
- (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicants and the Monitor 24 hours' prior written notice; and
  - (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises and such landlord shall be entitled to notify the Applicants of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

#### **NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY**

19. Until and including **February 20, 2015**, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court (each, a "Proceeding") shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, except with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court.

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

20. During the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person"), whether judicial or extra-judicial, statutory or non-statutory against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended and shall not be

commenced, proceeded with or continued except with leave of this Court, provided that nothing in this Order shall:

- (a) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on;
- (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by section 11.1 of the *CCAA*;
- (c) prevent the filing of any registration to preserve or perfect a security interest; or
- (d) prevent the registration of a claim for lien.

21. Nothing in this Order shall prevent any party from taking an action against the Applicants where such an action must be taken in order to comply with statutory time limitations in order to preserve their rights at law, provided that no further steps shall be taken by such party except in accordance with the other provisions of this Order, and notice in writing of such action be given to the Monitor at the first available opportunity.

#### **NO INTERFERENCE WITH RIGHTS**

22. During the Stay Period, no person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court.

#### **CONTINUATION OF SERVICES**

23. During the Stay Period, all persons having:
- (a) statutory or regulatory mandates for the supply of goods and/or services; or
  - (b) oral or written agreements or arrangements with the Applicants, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Business or the Applicants

are hereby restrained until further Order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply of such goods or services as may be required by the Applicants or exercising any other remedy provided under such agreements or arrangements. The Applicants shall be entitled to the continued use of its



current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the usual prices or charges for all such goods or services received after the date of this Order are paid by the Applicants in accordance with the payment practices of the Applicants, or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court. Nothing in this Order has the effect of prohibiting a person from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order.

#### **NO OBLIGATION TO ADVANCE MONEY OR EXTEND CREDIT**

24. Subject to paragraphs 37 to 39 of this Order, but notwithstanding anything else contained in this Order, no creditor of the Applicants shall be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants.

#### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

25. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA and paragraph 21 of this Order, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

#### **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

26. The Applicants shall indemnify its directors and officers against obligations and liabilities that they may incur as directors and or officers of the Applicants after the commencement of the within proceedings except to the extent that, with respect to any officer or director, the obligation was incurred as a result of the director's or officer's gross negligence or wilful misconduct.
27. The directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge") on the Property, which charge shall

not exceed an aggregate amount of \$5,000,000.00, as security for the indemnity provided in paragraph 26 of this Order. The Directors' Charge shall have the priority set out in paragraphs 40 and 42 herein.

28. Notwithstanding any language in any applicable insurance policy to the contrary:
- (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge; and
  - (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 26 of this Order.

#### **APPOINTMENT OF MONITOR**

29. Deloitte Restructuring Inc. is hereby appointed pursuant to the *CCAA* as the Monitor, an officer of this Court, to monitor the Property, Business and financial affairs and the Applicants with the powers and obligations set out in the *CCAA* or set forth herein and that the Applicants and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.
30. The Monitor, in addition to its prescribed rights and obligations under the *CCAA*, is hereby directed and empowered to:
- (a) monitor the Applicants' receipts and disbursements, Business and dealings with the Property;
  - (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein and immediately report to the Court if in the opinion of the Monitor there is a material adverse change in the financial circumstances of the Applicants;

- (c) advise the Applicants in its preparation of the Applicants' cash flow statements and reporting;
  - (d) advise the Applicants in its development of the Plan and any amendments to the Plan;
  - (e) advise the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
  - (f) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form and other financial documents of the Applicants to the extent that is necessary to adequately assess the Applicants' Property, Business and financial affairs or to perform its duties arising under this Order;
  - (g) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
  - (h) hold funds in trust or in escrow, to the extent required, to facilitate settlements between the Applicants and any other Person; and
  - (i) perform such other duties as are required by this Order or by this Court from time to time.
31. The Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, or by inadvertence in relation to the due exercise of powers or performance of duties under this Order, be deemed to have taken or maintain possession or control of the Business or Property, or any part thereof. Nothing in this Order shall require the Monitor to occupy or to take control, care, charge, possession or management of any of the Property that might be environmentally contaminated, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal or waste or other contamination, provided however that this Order does not exempt the Monitor from any duty to report or make disclosure imposed by applicable environmental legislation.

32. The Monitor shall provide any creditor of the Applicants with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.
33. The Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the *CCAA* or any applicable legislation.
34. The Monitor, counsel to the Monitor and counsel to the Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on at least a monthly basis.
35. The Monitor and its legal counsel shall pass their accounts from time to time.
36. The Monitor, counsel to the Monitor, if any, the Applicants' counsel, as security for the professional fees and disbursements incurred both before and after the granting of this Order, shall be entitled to the benefits of and are hereby granted a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of \$300,000.00, as security for their professional fees and disbursements incurred at the normal rates and charges of the Monitor and such counsel, both before and after the making of this order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 40 and 42 hereof.
37. The following companies are declared to be critical suppliers to the Applicants under s. 11.4 of the *CCAA*:

Hill + Knowlton Strategies, a division of WPP Group Canada Communications Limited;  
Diversicare Canada Management Services Co., Inc.;

Alsco

ATCO GAS

Canada Bread Company Limited  
 County of RockyView  
 Direct Energy  
 ENMAX  
 Norica Nursing Agency  
 PC eSolutions Corporation  
 Pratts Food Service  
 Shannon'S Services Management  
 Corp.  
 Sysco Foods Calgary  
 Shaw phone and Internet services

(collectively, the "Critical Suppliers").

38. The Critical Suppliers shall continue to supply goods or services to the Applicants in accordance with any contracts previously entered into with the Applicants, and shall extend credit to the Applicants for such goods or services with payment being net 30 days from the Applicants being invoiced for the same.
39. The Critical Suppliers, as security for their goods, services, professional fees and disbursements incurred both before and after the granting of this Order, shall be entitled to the benefits of and are hereby granted a charge (the "Critical Suppliers Charge") on the Property, which charge shall not exceed an aggregate amount of \$100,000.00, as security for their goods, services, professional fees and disbursements incurred at the normal rates and charges of such service providers, both before and after the making of this order in respect of these proceedings. The Critical Suppliers Charge shall have the priority set out in paragraphs 40 and 42 hereof.

#### **VALIDITY AND PRIORITY OF CHARGES**

40. The priorities of the Directors' Charge, the Administration Charge, and the Critical Suppliers' Charge, as among them, shall be as follows:
- First – Administration Charge (to the maximum amount of \$300,000.00);
- Second – Critical Suppliers' Charge (to the maximum amount of \$100,000.00); and
- Third – Directors' Charge (to the maximum amount of \$5,000,000.00).

41. The filing, registration or perfection of the Directors' Charge, the Administration Charge or the Critical Suppliers' Charge (collectively, the "Charges") shall not be required, and the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.
42. Each of the Directors' Charge, the Administration Charge and the Critical Suppliers' Charge (all as constituted and defined herein) shall constitute a charge on the Property and subject always to section 34(11) of the *CCAA* such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person.
43. Except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Directors' Charge, the Administration Charge or the Critical Suppliers' Charge, unless the Applicants also obtain the prior written consent of the Monitor, and the beneficiaries of the Directors' Charge, the Administration Charge, and the Critical Suppliers' Charge, or further order of this Court.
44. The Directors' Charge, the Administration Charge, and the Critical Suppliers' Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees") thereunder shall not otherwise be limited or impaired in any way by:
  - (a) the pendency of these proceedings and the declarations of insolvency made in this Order;
  - (b) any application(s) for bankruptcy order(s) issued pursuant to *BIA*, or any bankruptcy order made pursuant to such applications;
  - (c) the filing of any assignments for the general benefit of creditors made pursuant to the *BIA*;
  - (d) the provisions of any federal or provincial statutes; or
  - (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement

(collectively, an "Agreement") which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (i) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of any documents in respect thereof shall create or be deemed to constitute a new breach by the Applicants of any Agreement to which it is a party;
- (ii) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges,; and
- (iii) the payments made by the Applicants pursuant to this order, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct or other challengeable or voidable transactions under any applicable law.

#### ALLOCATION

45. Any interested Person may apply to this Court on notice to any other party likely to be affected, for an order to allocate the Administration Charge, the Critical Suppliers' Charge, and the Directors' Charge amongst the various assets comprising the Property.

#### SERVICE AND NOTICE

46. The Monitor shall (i) without delay, publish in the Globe & Mail a notice containing the information prescribed under the CCAA; (ii) within five (5) days after the date of this Order (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicants of more than \$1,000 and (C) prepare a list showing the names and addresses of those creditors and the <sup>gross</sup> estimated amounts of those claims, <sup>invested by all investors.</sup> and make it publicly available in the prescribed manner, all in accordance with section 23(1)(a) of the CCAA and the regulations made thereunder.

47. The Applicants and the Monitor shall be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile transmission or e-mail to the Applicants' creditors or other interested Persons at their respective addresses as last shown on the records of the Applicants, or by posting such

documents on the website address established by the Monitor provided that the Applicants' creditors or other interested Persons have been provided with the website address by way of one of the alternative service methods, and that any such service or notice by courier, personal delivery, facsimile transmission, e-mail, or website posting shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing. The Applicants and the Monitor shall serve any minors who are creditors of any of the Applicants by sending such aforementioned documents by courier to the Office of the Public Trustee by courier with a copy to the minor either by ordinary mail or by posting to the website address established by the Monitor provided that such minors have been provided with the website address by way of one of the alternative service methods. The Monitor shall establish and maintain a website in respect of these proceedings at [www.insolvencies.deloitte.ca](http://www.insolvencies.deloitte.ca) and shall post there as soon as practicable:

- (a) all materials prescribed by statute or regulation to be made publically available; and
- (b) all applications, reports, affidavits, orders or other materials filed in these proceedings by or behalf of the Monitor, or served upon it, except such materials as are confidential and the subject of a sealing order or pending application for a sealing order.

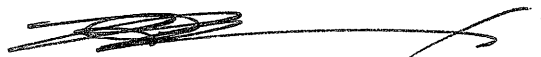
## **GENERAL**

- 48. The Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of their powers and duties hereunder.
- 49. Notwithstanding Rule 6.11 of the *Alberta Rules of Court*, unless otherwise ordered by this Court, the Monitor will report to the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence.
- 50. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.
- 51. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in



carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

52. Each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and that the Monitor is authorized and empowered to act as a representative in respect of the within proceeding for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
53. Any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.
54. This Order and all of its provisions are effective as of 12:01 a.m. Mountain Standard Time on the date of this Order.



---

Justice of the Court of Queen's Bench of Alberta