



COURT FILE NUMBER 1501 00955
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY

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

APPLICANT **The DIL Creditors' Committee and The District Creditors' Committee**

DOCUMENT **APPLICATION**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
Field LLP
400 - 604 1 ST SW
Calgary AB T2P 1M7
Lawyer: Douglas S. Nishimura
Phone Number: (403) 260-8548
Fax Number: (403) 264-7084
Email Address: dnishimura@fieldlaw.com
File No. 61041-1

NOTICE TO RESPONDENT

This Application is made against you. You are a Respondent.

You have the right to state your side of this matter before the Justice.

To do so, you must be in Court when the application is heard as shown below:

DATE	<u>Monday, January 4, 2016</u>
TIME	<u>2:30 p.m. – Commercial List</u>
WHERE	<u>Court House, Calgary, Alberta</u>
BEFORE WHOM	<u>Madam Justice K. M. Horner</u>

Go to the end of this document to see what else you can do and when you must do it.

The Applicants seek an Order:

1. Substantially in the form attached hereto as Schedule "A", approving the settlement proposed by the DIL Creditors' Committee and the District Creditors' Committee, as set out in the Tenth Report of the Monitor, to be filed; and
2. Such further and other relief as Counsel may seek.

Grounds of the Application:

3. On January 23, 2015, Lutheran Church – Canada, The Alberta-British Columbia District et al (the "CCAA Applicants"), applied for, and were granted, protection from their creditors under the *Companies' Creditor Arrangement Act*, R.S.C. 1985, c. C-36 (the "CCAA"), pursuant to the Initial Order;
4. Pursuant to an Order granted February 20, 2015, the DIL Creditors' Committee and the District Creditors' Committee were appointed and given a task of representing the interests of the respective investors in the Church Extension Fund of the Lutheran Church – Canada, The Alberta-British Columbia District District and the Lutheran Church – Canada, The Alberta-British Columbia District Investments Ltd.
5. As part of their mandate, the DIL Creditors' Committee and the District Committee investigated various claims in which the position of the DIL Creditor's Committee and the District Creditors' Committee conflicted, and negotiated a settlement of such claims between the respective Committees.
6. It is the desire of the DIL Creditors' Committee and the District Creditors' Committee that the settlement proposed be approved by this Honourable Court and given effect in the within proceedings, or any subsequent proceedings which may arise.
7. The DIL Creditors' Committee, the District Creditors' Committee, the CCAA Applicant and the Monitor have consented to the form of Order attached as Schedule "A" and a signed Consent Order will be presented at the Application.
8. Such further and other grounds as counsel may advise and this Honourable Court deem fit.

Material or evidence to be relied on:

9. Initial Order granted by Justice K. D. Yamauchi on January 23, 2015;

10. Order granted by Justice C. M. Jones on February 20, 2015, approving the appointment of the Creditors' Committees, filed;
11. First Report of the Monitor dated February 17, 2015, filed;
12. Tenth Report of the Monitor, to be filed; and
13. Such further and other materials as counsel may advise and this Honourable Court may permit.

Applicable Rules:

14. *Alberta Rules of Court*; and
15. Such further and other rules as counsel may advise.

Applicable Acts and Regulations:

16. *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended;
17. *The Judicature Act* (Alberta);
18. The inherent jurisdiction of this Honourable Court; and
19. Such further and other Acts and regulations as counsel may advise.

Any irregularity complained of or objection relied on:

20. N/A

How the Application is proposed to be heard or considered:

21. This Application is proposed to be heard in Justice Chambers.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the Applicant what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the Applicant.

CLERK'S STAMP

SCHEDULE "A"

COURT FILE NUMBER 1501-00955

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

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

DOCUMENT: **CONSENT ORDER**

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

BENNETT JONES LLP
Barristers and Solicitors
4500, 855 – 2nd Street S.W.
Calgary, Alberta T2P 4K7
Attention: Chris Simard
Telephone No.: (403) 298-4485
Facsimile No.: (403) 265-7219
Our File: 74414.1

DATE ON WHICH ORDER WAS
PRONOUNCED:

LOCATION OF HEARING OR TRIAL: Calgary

NAME OF MASTER/JUDGE
WHO MADE THIS ORDER:

UPON the Application of the District Creditors' Committee and the DIL Creditors'
Committee (the "Applicants"); AND UPON considering the • Report of Deloitte Restructuring

Inc., the Court-appointed Monitor of the Applicants (the "Monitor"), and the pleadings and proceedings filed in this action; AND UPON noting the consent of counsel for the parties set out herein; IT IS HEREBY ORDERED AND DECLARED THAT:

1. Service of notice of this application and supporting materials is hereby declared to be good and sufficient, and no other person is required to have been served with notice of this application, and time for service of this application is abridged to that actually given.
2. The Settlement Agreement and Mutual Release Term Sheet (the "Settlement") attached hereto as Schedule "A" is hereby approved and District and DIL are hereby authorized to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Settlement.
3. The Settlement is valid and binding on Lutheran Church – Canada, The Alberta – British Columbia District ("District") and Lutheran Church – Canada, The Alberta – British Columbia District Investments Ltd. ("DIL") and all parties claiming by, through or under District or DIL, for all purposes and regardless of whether or not Plans of Compromise and Arrangement respecting District and DIL are sanctioned by this Honourable Court in these proceedings, or not.
4. Notwithstanding:

The pendency of these proceedings;

Any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Applicants and any bankruptcy order issued pursuant to any such applications; and

Any assignment in bankruptcy made in respect of the Applicants

the Settlement shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of District or DIL, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute

oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

- 5. District, DIL, the Monitor and any other interested party, shall be at liberty to apply for further advice, assistance and directions as may be necessary in order to give full force and effect to the terms of this Order and to assist and aid the parties in closing the Settlement.
- 6. This Order must be served only upon those interested parties attending or represented at the within application and service may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following the transmission or delivery of such documents.
- 7. Service of this Order on any party not attending this application is hereby dispensed with.
- 8. There shall be no costs of this application.

J.C.Q.B.A.

BENNETT JONES LLP

FIELD LAW LLP

Per: _____
Chris Simard
Solicitors for the District Creditors'
Committee

Per: _____
Doug Nishimura
Solicitors for the DIL Creditors' Committee

GOWLING LAFLEUR HENDERSON LLP

BISHOP & MCKENZIE LLP

Per: _____
Jeff Oliver
Solicitors for Deloitte Restructuring Inc.,
the Court-appointed Monitor

Per: _____
Francis Taman
Solicitors for the Debtor Companies

SETTLEMENT AGREEMENT AND MUTUAL RELEASE TERM SHEET

BETWEEN:

**LUTHERAN CHURCH – CANADA, THE ALBERTA –
BRITISH COLUMBIA DISTRICT**

(hereinafter referred to as "District")

- and -

**LUTHERAN CHURCH – CANADA, THE ALBERTA –
BRITISH COLUMBIA DISTRICT INVESTMENTS LTD.**

(hereinafter referred to as "DIL")

(District and DIL are collectively referred to hereinafter as the "Parties")

RECITALS:

1. Encharis Community Housing and Services Inc. ("ECHS") is the registered owner of the lands legally described as:

Plan 9712096, Block 1 excepting thereout Plan 0311251
Plan 9712096, Block 2
Condominium Plan 9812469, Units 1 to 39 and all of the Common Property
Condominium Plan 0011410, Units 41 to 62 and all of the Common Property
Condominium Plan 0013287, Units 64 to 85 and all of the Common Property
Condominium Plan 0111629, Units 87 to 106 and all of the Common Property
Condominium Plan 01113520, Units 108 to 154 and all of the Common Property
Condominium Plan 0310076, Units 156 to 197 and all of the Common Property

in each case excepting thereout all mines and minerals

AND

Plan 0311251
Block 4
Lot 1

~~Excepting thereout all mines and minerals~~

(collectively, the "PoP Property").

2. Encharis Community Housing and Services Inc. ("ECHS") was, until sometime after May 19, 2015, the registered owner of the lands legally described as:

Meridian 4, Range 28, Township 24, Section 2

Portion of South West Quarter Lying South of Right of Way RY331
Containing 40.9 Hectares (101 Acres) More or Less
Excepting thereout all mines and minerals

(the "Chestermere Property").

3. District is the registered owner of the land legally described as:

Plan 8010862
Block 10
Excepting thereout all mines and minerals
Area: 1.96 hectares (4.85 acres) more or less

(the "Strathmore Property").

4. The "PoP Property" and the "Chestermere Property" are hereinafter referred to collectively as the "PoP and Chestermere Property".

5. The following encumbrances, among others, were or are registered against some or all of the POP and Chestermere Property:

(a) \$45,000,000 mortgage in favour of District registered on January 10, 2006 as Instrument No. 061 231 890;

(b) Caveat regarding assignment of rents and leases in favour of District registered on June 10, 2006 as Instrument No. 061 231 891;

(collectively, the encumbrances in subparagraphs (a) and (b) shall be referred to as the "District ECHS Encumbrances");

(c) \$4,000,000 mortgage in favour of Concentra Trust (as Trustee for DIL) registered on December 7, 2011 at Instrument No. 111 319 853;

(d) Caveat regarding assignment of rents and leases in favour of Concentra Trust (as Trustee for DIL) registered on December 7, 2011 as Instrument No. 111 319 854;

(e) \$3,950,000 mortgage in favour of Concentra Trust (as Trustee for DIL) registered on December 7, 2011 at Instrument No. 111 319 855; and

(f) Caveat regarding assignment of rents and leases in favour of Concentra Trust (as Trustee for DIL) registered on December 7, 2011 as Instrument No. 111 319 856;

(collectively, the encumbrances in subparagraphs (c) through (f) shall be referred to as the "DIL ECHS Encumbrances" and collectively, the encumbrances in subparagraphs (a) through (f) shall be referred to as the "ECHS Encumbrances").

6. The following encumbrances, among others, are registered against the Strathmore Property:

(a) Caveat regarding assignment of rents and leases in favour of District registered on September 15, 2007 as Instrument No. 071 463 804; and

(b) \$5,891,322 mortgage in favour of Concentra Trust (as Trustee for DIL) registered on September 13, 2015 at Instrument No. 151 009 358;

(collectively, the "DIL Strathmore Encumbrances").

7. There exist disputes or potential disputes as between District and DIL with respect to:

(a) the relative priority of the District ECHS Encumbrances and the DIL ECHS Encumbrances;

(b) the validity of the DIL Strathmore Encumbrances; and

(c) the relative priority of the District v. DIL Claims, as against the claims of individual investors in DIL

(collectively, the "Disputes").

8. On January 23, 2015, the Court of Queen's Bench of Alberta (the "Court") granted an Initial Order pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36 (the "CCAA") with respect to District, DIL, ECHS and Encharis Management and Support Services ("EMSS"), as applicants (the "CCAA Proceedings").

9. On February 20, 2015, the Court in the CCAA proceedings granted an Order establishing a Claims Procedure Order for the identification and determination of all claims against the

applicants in the CCAA Proceedings, including District, DIL and ECHS (the "Claims Procedure").

10. On May 19, 2015, the Court in the CCAA proceedings granted an Order authorizing the sale of the Chestermere Property (the "Chestermere Vesting Order"). Thereafter, the Chestermere Property was sold. Pursuant to the Chestermere Vesting Order, among other things:

- (a) the net proceeds of the sale of the Chestermere Property (the "Net Proceeds") are being held in trust by legal counsel to ECHS; and
- (b) all claims against ECHS, including the ECHS Encumbrances, attach to the Net Proceeds in place of the Chestermere Lands.

11. Pursuant to the Claims Procedure, District and DIL filed the following proofs of claim:

District Claim Against DIL

- (a) an unsecured claim in the amount of \$863,022.24 with respect to management fees (the "District v. DIL Claim");

District Claim Against ECHS

- (a) secured and unsecured claims of District in the amount of \$82,095,702.57 related to various loans, a portion of which were secured by the District ECHS Encumbrances (the "District v. ECHS Claim");

DIL Claim Against District

- (a) secured and unsecured claims by DIL related to various loans to District, which were claimed to be secured by the DIL Strathmore Encumbrance (along with any corresponding deficiency) (the "DIL v. District Claim");

DIL Claim Against ECHS

two claims in the amounts of \$3,981,265.70 and \$3,740,739.29 related to various loans to District, which were secured by the DIL ECHS Encumbrances (the "DIL v. ECHS Claim");

(collectively, the District v. DIL Claim, District v. ECHS Claim, DIL v. District Claim and the DIL v. ECHS Claim shall be referred to hereinafter as the "Proofs of Claim").

12. Deloitte Restructuring Inc., the Court-appointed Monitor in the CCAA proceedings (the "Monitor") made the following determinations with respect to the Proofs of Claim:

District v. DIL Claim

- (a) the District v. DIL Claim was disallowed but the dispute period was extended until further notice;

District v. ECHS Claim

- (a) \$26,440,798.13 of the District v. ECHS claim was allowed as an unsecured claim and \$55,654,904.44 of the District v. ECHS claim was allowed as secured claim, secured by the District ECHS Encumbrances;

DIL v. District Claim

- (a) the DIL v. District Claim was disallowed as a secured claim but allowed as an unsecured claim, and the dispute period was extended until further notice;

DIL v. ECHS Claims

- (a) the DIL v. ECHS Claim was allowed as a secured claim, secured by the DIL ECHS Encumbrances;

(collectively, the "Allowed Claims, Revisions and Disallowances").

13. On February 20, 2015, the Court in the CCAA proceedings granted an Order establishing a creditors' committee representing the interests of investors of District (the "District Creditors' Committee") and a creditors' committee representing the interests of investors of DIL (the "DIL Creditors' Committee"). Among other things, the District Creditors' Committee and the DIL Creditors' Committee have been charged with responsibility to attempt to negotiate a settlement of the Disputes. The District Creditors' Committee and the DIL Creditors' Committee have negotiated the terms of settlement set out herein. Among other things, they considered various appraisals of the PoP and Chestermere Property and the Strathmore Property in the course of the

negotiations, and they acknowledge that no adjustments will be made to the settlement terms set out herein, based on any changes in value to the PoP and Chestermere Property and the Strathmore Property.

14. The parties to this Settlement Agreement and Mutual Release Term Sheet wish to settle the Disputes on the terms and conditions set out herein.

AGREEMENT:

NOW THEREFORE, in consideration of the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, THE PARTIES AGREE AS FOLLOWS:

1. The recitals set out above are accurate and form part of this Settlement Agreement and Mutual Release Term Sheet.
2. In relation to the Disputes regarding the ECHS Encumbrances, District shall pay to DIL the all-inclusive sum of \$4,114,006 (the "PoP Chestermere Settlement Amount") as soon as reasonably practicable after the earlier of:
 - (a) the Plan Implementation Date of the Plans filed or to be filed in the CCAA Proceedings with respect to ECHS, District and DIL (or, if the Plan Implementation Dates for those Plans are not the same date, the latest of the three Plan Implementation Dates); or
 - (b) the date on which District receives, directly or indirectly, a transfer of title to the PoP Property; or
 - (c) the date on which District receives the proceeds of sale of the PoP Property.
3. In relation to the Disputes regarding the Strathmore Encumbrances, District shall pay to ~~DIL 50% of the net proceeds of sale of the Strathmore Property (the "Strathmore Settlement Amount")~~ as soon as reasonably practicable after the date on which District receives the net proceeds of sale of the Strathmore Property. The parties agree and acknowledge that the sale of the Strathmore Property is subject to the approval of the District Creditors' Committee, the DIL Creditors' Committee and the Court.

4. In consideration of the payment of the PoP Chestermere Settlement Amount and the Strathmore Settlement Amount, and the other covenants set out herein, the receipt and sufficiency of which consideration is hereby acknowledged, the parties hereto forever discharge each other from any and all actions, causes of action, claims, demands, damages, costs and expenses whatsoever at law or in equity, that they had, now have, or may have in the future, by reason of or arising out of any cause, matter or thing whatsoever done or omitted to be done, occurring or existing up to and inclusive of the date of these presents, with respect to the Disputes.
5. Notwithstanding paragraph 4 hereof, the following claims between the Parties are not hereby released:
 - (a) with respect to the District v. ECHS Claim, any and all claims by District against ECHS that are not paid by ECHS, through a direct or indirect transfer of title of the PoP Property, or the proceeds thereof, or otherwise (the "District v. ECHS Deficiency Claim"); and
 - (b) with respect to the DIL v. ECHS Claims, any and all claims by DIL against ECHS that are not paid by District pursuant to the settlement herein (the "DIL v. ECHS Deficiency Claim"); and

for clarity, the Parties hereto acknowledge and agree that the District v. ECHS Deficiency Claim and the DIL v. ECHS Deficiency Claim are not being released hereby so that those claims can be pursued (including as against any third parties and joint obligors who may be fully or partially liable for such claims): (x) in the Representative Action(s) (as defined in the Plans of Compromise and Arrangement with respect to District and DIL in the CCAA Proceedings, hereinafter the "District and DIL Plans"); or (y) in the event that such CCAA plans are not approved, outside of the Representative Action(s).

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6. For clarity, the following claims are fully and finally released hereby:
 - (a) the District v. DIL Claim; and
 - (b) all that portion of the DIL v. District Claim, including all of DIL's claims against District relating to the Strathmore Property, the DIL Strathmore Encumbrances

and any and all loans secured thereby, that is not paid by District pursuant to the settlement herein (the "DIL v. District Strathmore Deficiency Claim").

7. The Proofs of Claim and the Allowed Claims, Revisions and Disallowances shall be deemed to be fully and finally determined pursuant to the Claims Procedure, as set out herein.
8. Each Party agrees that the terms of this Settlement Agreement and Mutual Release Term Sheet are accepted voluntarily and not influenced by any representations of any kind made by any of the parties, except such representations as are outlined in this Settlement Agreement and Mutual Release Term Sheet. This Settlement Agreement and Mutual Release Term Sheet is being entered to terminate controversy and no admissions of liability are made by any party.
9. This Settlement Agreement and Mutual Release Term Sheet is without prejudice to all of the claims, defences, issues, arguments and positions, past, present or future, of the parties. For greater clarity, but without limiting the generality of the foregoing, this Settlement Agreement and Mutual Release Term Sheet is entirely independent of the District and DIL Plans and, notwithstanding any approval of this Settlement Agreement and Mutual Release Term Sheet by the Court, this Settlement Agreement and Mutual Release Term Sheet shall not and shall not be interpreted or deemed to modify or limit the terms of the District and DIL Plans should the District and DIL Plans, individually or collectively, be sanctioned by the Court, including, *inter alia*, any releases contained therein.
10. This Settlement Agreement and Mutual Release Term Sheet is governed by and shall be construed in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein, and both parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Alberta.
11. The parties shall from time to time do such further acts and execute such further documents as shall be reasonably required to fully perform and carry out the terms, spirit and intent of this Settlement Agreement and Mutual Release Term Sheet.

12. The parties to this Settlement Agreement and Mutual Release Term Sheet shall each bear their own costs with respect to this Settlement Agreement and Mutual Release Term Sheet.
13. The parties agree that this Settlement Agreement and Mutual Release Term Sheet may be executed in any number of counterparts and by facsimile.

Dated this ____ day of December, 2015.

**LUTHERAN CHURCH - CANADA,
THE ALBERTA - BRITISH COLUMBIA
DISTRICT**

**LUTHERAN CHURCH - CANADA,
THE ALBERTA - BRITISH
COLUMBIA DISTRICT
INVESTMENTS LTD.**

Per: _____

Per: _____