

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

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 DISTRICT SUBCOMMITTEE

RESPONDENTS THE APPLICANTS IN THESE CCAA
PROCEEDINGS AND ALL DEFENDANTS IN
THE DISTRICT REPRESENTATIVE ACTIONS
NUMBERED: 1603-03142 (ALBERTA QB),
S1611798 (BC SC), S1611966 (BC SC), 1603-
22816 (ALBERTA QB).

DOCUMENT APPLICATION FOR ADVICE, DIRECTIONS,
DECLARATIONS AND RELATED ORDERS

ADDRESS FOR SERVICE AND CONTACT
INFORMATION OF PARTY
FILING THIS DOCUMENT Higgerty Law
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Clerk's Stamp

CLERK OF THE COURT
FILED
DEC 01 2017
JUDICIAL CENTRE
OF CALGARY

NOTICE TO RESPONDENTS:

This application is made against you. You are a respondent. You have the right to state your side of this matter before the judge.

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

Date: **December 7, 2017**

Time: **11:30 am**

Where: **Calgary Court Center, 601 – 5th Street SW, Calgary, Alberta**

Before Whom: **The Honourable Justice B.E.C Romaine in Chambers**

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

Remedy claimed or sought:

1. An Order declaring service of notice of this application and the supporting materials to be good and sufficient, shortening the time for service, and dispensing with service, to any extent this Honourable Court deem appropriate.
2. Advise and direction pursuant to, *Inter alia*,
 - a. the 5th Amended Plan of Compromise and Arrangement (the "Plan"), as amended from time to time, sanctioned by the Sanction Order pronounced on August 5, 2016 (the "Sanction Order");
 - b. the Initial Order pronounced on January 23, 2015 (the "Initial Order");
 - c. the District Subcommittee Order pronounced August 5, 2016 (the "Subcommittee Order");

in relation to certain actions undertaken on behalf of the Applicant by its District Representative Counsel from time to time in the Applicant's District Representative Actions.

3. A Declaration and Order that all procedural steps taken by the Plaintiffs in the Alberta Action Number 1603-03142 (the "District Alberta Class Action") and B.C. Action Number S1611798 (the "District BC Class Action") (collectively the "District Class Actions") to date are compliant, *nunc pro tunc*, with the Plan, the *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36. ("CCAA"), and, as applicable, the Rules of Court, the *Class Action Proceedings Act of Alberta and B.C.* and all other relevant acts and regulations, and may continue without further leave.
4. A Declaration and Order that the Alberta Action 1603-22816 ("District Alberta Derivative Action") and BC Action S1611966 ("District B.C. Derivative Action") (collectively the "District Derivative Actions") are compliant, *nunc pro tunc*, with the Plan, the CCAA, and, as applicable, the Rules of Court, the *Business Corporations Act* of Alberta and B.C. and all other relevant acts and regulations, and to the extent that they may be subject to any stay, such stay be lifted and that they may continue without further leave.
5. An Order approving the substitution of some of the Representative Plaintiffs in the District Alberta Class Action and District BC Class Action.
6. An Order that the District Class Actions (as defined in the Plan, Sanction Order and Subcommittee Order) may continue under and shall be governed by the Class Proceedings Act of Alberta or BC, as applicable, and supervised by the Superior Court having jurisdiction for each such action.
7. Order to extend time for service of Statements of Claim in the District Class Actions, as amended in the District Alberta Class Action, and District Derivative Actions.
8. Such further and other relief as counsel may advise and this Honourable Court may permit.

Grounds for making this application:

9. All terms not otherwise defined herein shall have the meanings prescribed within the Plan, Initial Order, Sanction Order and/or the Subcommittee Order.
10. The District Alberta Class Action was filed on February 22, 2016 and then served on all Defendants named in that Action to that date and before that Action was stayed.

11. The District Alberta Class was subsequently amended on December 16th, 2016, December 23rd, 2016, *inter alia*, adding additional defendants to meet the limitation deadline in relation to those Defendants, and amended again on February 13, 2017 for certain body amendments.
12. Except as specified in paragraph 10 above, no service of the Statements of Claim in the District Class Actions and District Derivative Actions has been effected.
13. Paragraph 9 of the Subcommittee Order authorizes the District Subcommittee to take reasonable steps to maximize the amount of funds that are ultimately available for distribution to the District Representative Action Class. Moreover, under the same Order, the District Subcommittee has a fiduciary duty to the Representative Action Class with respect to the District Representative Action.
14. Paragraph 20 of the Subcommittee Order authorizes and enables the District Subcommittee to take any and all such steps as they deem necessary and desirable to commence and prosecute the District Representative Action on behalf of the District Representative Action Class.
15. The Representative Action Class are an aging population with 57% of the individual members being over 75 years of age and older. These elderly people are in many cases vulnerable financial situations with many of them unable to pay for their care. It is therefore essential that the District Representative Action proceed expeditiously on their behalf.
16. The District Subcommittee accordingly wishes to pursue the Representative Action Claims as summarily as possible, and having regard to what has transpired procedurally thus far.
17. Therefore, the District Subcommittee has instructed counsel to seek the requested advice, direction, Declarations and Orders from this Honourable Court.

Material or evidence to be relied on:

18. The Court Record herein and in the District Class Actions and District Derivative Actions; including without limitation the following:
 - a. The Plan;
 - b. The Initial Order;
 - c. The Sanction Order;
 - d. The Subcommittee Order.
19. The Affidavit of Erinn Wilson, sworn on December 1, 2017.
20. Such further and other material as counsel may advise and this Honourable Court will permit.

Applicable rules:

21. Alberta Rules of Court, including, *inter alia*, Rules 1.3, 3.26, 3.27, 3.62, 6.3, 6.58(1), 9.4(2), 13.5;
22. BC Supreme Court Civil Rules, including, *inter alia*, Rules 3-2, 4-5, 6-1, 6-2.

Applicable Acts and regulations:

23. *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36;

24. *Alberta Judicature Act*, RSA 2000 J-2;
25. *Supreme Court Act*, RSBC 1996, C-443;
26. *Class Proceedings Act*, RSA 2003, C-16.5;
27. *Class Proceedings Act*, RSBC 1996, C-50;
28. *Business Corporations Act*, RSA 2000, c. B-9;
29. *Business Corporations Act*, SBC 2002, C-57.

Any irregularity complained of or objection relied on:

30. N/A

How the application is proposed to be heard or considered:

31. Before the presiding Justice in Chambers.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) 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 give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.