

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 **AFFIDAVIT**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
Scott Venturo Rudakoff LLP
1500, 222 3rd Avenue SW
Calgary, AB T2P 0B4
Attention: Alan S. Rudakoff, Q.C. & Scott Chimuk
Phone: 403.261 9043
Fax: 403.265.4632
File No. 67678.001



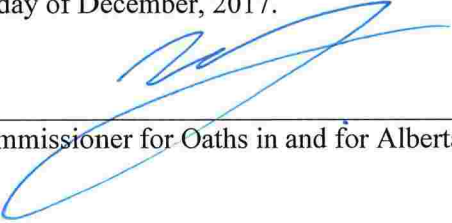
AFFIDAVIT OF CARA THOMPSON
Sworn on December 7, 2017

I, **Cara Thompson**, Legal Assistant, of the City of Calgary, in the Province of Alberta, **SWEAR AND SAY THAT:**

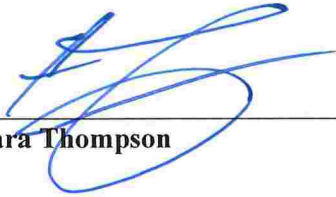
1. I am a legal assistant employed at the law firm of Scott Venturo Rudakoff LLP, counsel to Respondents in this matter, and as such have personal knowledge of the matters hereinafter deposed to, except where stated to be based upon information and belief, and whereso stated I verily believe the same to be true.
2. Attached and marked as **Exhibit "A"** to this my Affidavit is a true copy of a letter sent from our office to Higgerty Law on December 5, 2017.

3. Attached and marked as **Exhibit "B"** to this my Affidavit is a true copy of a letter sent from Higgerty Law to our office on December 6, 2017.
4. Attached and marked as **Exhibit "C"** to this my Affidavit is a true copy of a draft form of order sent to our office from Higgerty Law as was attached to the letter sent from Higgerty Law on December 6, 2017.
5. I make this Affidavit in opposition to the application brought forth by the District Subcommittee and relief sought therein, and for no improper purpose.

SWORN BEFORE ME at Calgary, Alberta, this)
 7th day of December, 2017.)


 _____)
 Commissioner for Oaths in and for Alberta)

Neil Tichkowsky
Barrister & Solicitor


 _____)
Cara Thompson)

SCOTT VENTURO RUDAKOFF LLP
LAWYERS

December 5, 2017

VIA EMAIL

Higgerty Law Firm
101, 440 2nd Avenue SW
Calgary, AB T2P 5E9

EXHIBIT "A" REFERRED TO IN
THE AFFIDAVIT OF

Cara Thompson
ON THE 7 DAY OF December 2017

Neil Tichkowsky
Barrister & Solicitor

Alan S. Rudakoff Q.C.
Direct Line: 403.231.8232
Email: a.rudakoff@svrlawyers.com
Assistant: Ginger Campbell
Direct Line: 403.231.3456
Email: g.campbell@svrlawyers.com

Attention: Clint Docken, Q.C.

Dear Sir:

**Re: In the Matter of Lutheran Church - Canada, the Alberta-British Columbia District et al; Court File No.: 1501-00955
Our File: 67678.001**

We are in receipt of your application returnable on December 7, 2017 in respect of the above-captioned matter.

In order to assess this application and obtain instructions with respect to the same, we require the following particulars:

- (a) in paragraph 2, you seek "advise and direction" respecting the "Plan", "Initial Order" and "Subcommittee Order" (as defined in your letter) respecting "certain actions undertaken on behalf of the Applicant" by previous counsel. What is the nature of the advice and direction that you are seeking in respect of the Plan and Orders, and which particular actions are you seeking advice and direction in respect of?
- (b) In paragraph 3, you seek a declaration and order that all "procedural steps" taken by the Plaintiffs in the District Class Actions are compliant "*nunc pro tunc*" with the Plan, the CCAA, the Rules of Court, the *Business Corporations Act* of Alberta and BC, and "all other relevant acts and regulations". Which procedural steps are you referring to, and which laws specifically are you seeking an order that they are compliant with?
- (c) Also in paragraph 3, you seek that the District Class Actions "may continue without further leave". Are you of the view that the District Class Actions require further leave to proceed and, if so, on what basis should that leave be granted?
- (d) In paragraph 4, you seek a declaration and order that the Derivative Actions, are compliant "*nunc pro tunc*" with the Plan, the CCAA, the Rules of Court, the *Business Corporations Act* of Alberta and BC, and "all other relevant acts and regulations". Which procedural steps are you referring to, and which laws specifically are you seeking an order that they are compliant with?
- (e) Also in paragraph 4, you seek that "to the extent that [the Derivative Actions] may be subject to any stay, that such stay be lifted and that they may continue without further leave". Are you of the view that the Derivative Actions are stayed? If so, on

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what basis should the stays be lifted? Further, are you of the view that there may be further leave required? If so, on what basis should the further leave be granted?

- (f) In paragraph 5, you seek an order approving the substitution of "some of the Representative Plaintiffs in the District Alberta Class Action and District BC Class Action". On what basis are you proposing substitution of the Representative Plaintiffs and for what reason?
- (g) In paragraph 6, you seek an order that the "District Class Actions (as defined in the Plan, Sanction Order 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." Where are "District Class Actions" defined in the Plan, Sanction Order, or Subcommittee Order? Are you suggesting that these actions are different than the Representative Actions set out in the Plan? Further, why are you seeking that the District Class Actions "may continue under and shall be governed by the Class Proceedings Act of BC and Alberta" since the actions plead those Acts and the Acts already apply. Is there further relief than the mere application of the referenced legislation that you are seeking?
- (h) In paragraph 7, you seek an order "extending time for service of the Statements of Claim in the District Class Actions, as amended in the District Alberta Class Action, and District Derivative Actions." on what basis is he seeking the order to extend time for service, and for how long?

We are of the view that a Brief in advance of the Application would be of assistance to counsel and the Court in order to better understand the nature of the relief that you are seeking.

We look forward to your response at your earliest convenience.

Yours truly,

SCOTT VENTURO RUDAKOFF LLP



for **ALAN S. RUDAKOFF Q.C.**

ASR/ct

cc: Patrick Higgerty
Via Email

Erinn Wilson
Via Email



HIGGERTY LAW
info@higgertylaw.ca
higgertylaw.ca

Toll Free 1-888-699-7826
Main 403-503-8888
Fax 587-316-2260

Millennium Tower | Main Floor
101, 440 - 2nd Avenue SW
Calgary, AB T2P 5E9

December 6, 2017

Addressed to: See Service List

Dear Sirs/Mesdames :

**RE: Lutheran Church - Canada, the Alberta - British Columbia District et al
Court of Queen's Bench Action No. 1501-00955**

Several of you have inquired as to further information as to the District Subcommittee's position relative to its Representative Actions. Its position in this regard is essentially as follows, namely that:

all procedural steps undertaken on behalf of the District Subcommittee in the Representative Actions during the CCAA process are in order;

to the extent that the CCAA court may determine otherwise, that leave be granted approving the steps taken, *nunc pro tunc*;

orders are sought to extend the time for service of the statements of claim;

an order be granted henceforth that supervision of the Representative Actions be transferred from the CCAA Court to the Alberta and BC superior courts and entirely governed under the Alberta and BC Class Proceedings Acts and applicable provincial laws.

Our client's position is further set out in more detail in the attached proposed form of Order.

Sincerely,

HIGGERTY LAW

Patrick B Higgerty, QC
Principal Counsel

PBH/eww
Enclosures
cc: Service List

THIS IS EXHIBIT "B" REFERRED TO IN
THE AFFIDAVIT OF

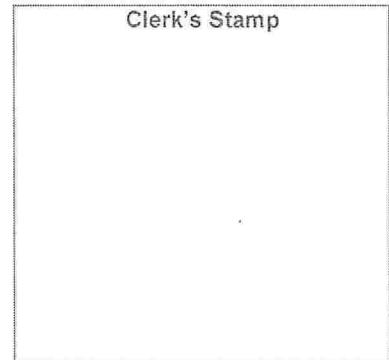
Cara Thompson
SWORN THE 7 DAY OF December 2017

Neil Tichkowsky
Barrister & Solicitor

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 **ORDER**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
Higgerty Law
Attn: Clint Docken, Q.C
Suite 1010 440 2nd Ave SW
Calgary AB, T2P 5E9
Phone: 403-503-8888
Fax: 587-316-2260

THIS IS EXHIBIT " C " REFERRED TO IN
THE AFFIDAVIT OF

Cara Thompson
SWORN THE 7 DAY OF December 2017

Neil Tichkowsky
Barrister & Solicitor

DATE ON WHICH ORDER WAS PRONOUNCED:
NAME OF MASTER/JUDGE WHO MADE THIS ORDER: **Justice B. E. C. Romaine**
LOCATION OF HEARING: **Calgary, Alberta**

UPON THE APPLICATION of the Applicant, the District Subcommittee; AND UPON having heard representations of the Applicant and the Respondents;
AND UPON having read the Affidavits of Erinn Wilson, sworn on December 1, 2017 and December 7, 2017;

AND UPON having read the 33rd Report of Deloitte Restructuring Inc., the Court-appointed Monitor of the Applicants, filed and the pleadings proceedings and Monitor's Reports previously filed in this action;

IT IS HEREBY ORDERED AND DECLARED THAT:

1. Service of notice of this application and the 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. 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.
3. 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.
4. Wiley Hertlein and Glen Mitchell be substituted for Sharon Sherman (in her capacity as Personal Representative of the Estate of Ruby Sherman and Georg Beinert as Representative Plaintiffs in the District Alberta Class Action (as defined above).
5. Willy Berger be substituted for Dianne Wilson (in her capacity as Executor of the Estate of Federick Voight) as Representative Plaintiff in the District BC Class Action (as defined above).
6. That the District Class Actions may continue under and shall be governed by the Class Proceedings Act of Alberta or BC, and any and all other provincial legislation. as applicable, and supervised by the Superior Court having jurisdiction for each such action
7. Time for service of the Statement of Claim as amended in the District Alberta Class Action is hereby extended until March 15, 2018.
8. Time for service in District BC Class Action is hereby extended until March 23, 2018.

Justice of the Court of Queen's Bench of Alberta