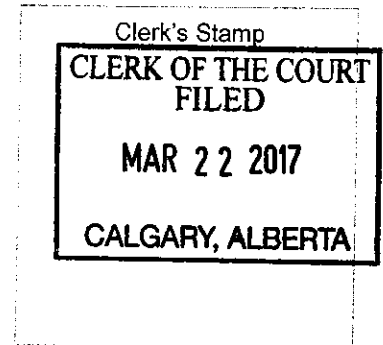


COURT FILE NUMBER 1501 – 00955
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTER CALGARY

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 **AFFIDAVIT OF GEORG BEINERT**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
Allan Garber Professional Corporation
Barrister and Solicitor
Suite 108, 17707 105 Avenue
Edmonton, AB T5S 1T1
Attn: Allan A. Garber
Tel: (587) 400-9310
Fax: (587) 400-9313
File No.: 212-3AAG

AFFIDAVIT OF GEORG BEINERT

Sworn on March 21, 2017.

I, Georg Beinert, of Fairview, Alberta

SWEAR AND SAY THAT:

1. I am the Chair of the District (CEF) Subcommittee established by the District Subcommittee Order filed in this action on August 5, 2016. I am authorized by the District Subcommittee to bring this Application. I have personal knowledge of the matters herein deposed to unless stated to be based on information, in which case I believe the same to be true.

THE REPRESENTATIVE ACTION CLASS

2. Based on information provided to me by the Monitor, there are a total of 988 depositors in the CEF.
3. 335 of the depositors opted out of the Representative Action, leaving a total of 653 depositors who are participants in the Representative Action (hereafter “the CEF RA Class”).
4. The CEF RA class represents 66.1% of all CEF depositors and 70.1% of the value of all outstanding CEF claims.
5. The CEF RA class consists of 566 individuals, 45 churches (out of a total of 89), 15 businesses and 27 estates.
6. The individual members of the CEF RA class are very elderly. The average age of the individuals in the CEF RA class is 72 years.
7. 75% of the individuals in the CEF RA class are in their retirement years (65 years or older).
8. 57% of the individuals in the CEF RA class are 75 years of age or older.
9. 29% of the individuals in the CEF RA class are 85 years of age or older.
10. As indicated by the number of estates, 27 individual members of the CEF RA class have passed away.
11. The individual members of the CEF RA class rely on their CEF deposits to support them in their retirement.
12. I am aware of many cases of profound financial hardship suffered by the individual members of the CEF RA class. Many are embarrassed to admit that they are in this situation because they trusted the church and they are reluctant to say anything.
13. Larry and Lorraine Giese are now 75 and 78 years old. I am informed by Lorraine Giese that their deposits in the CEF represented their life’s savings for retirement. They are anxious that steps be taken quickly to see a return of their deposits.
14. Mrs. Ruby Sherman, now deceased, relied on her CEF deposits to pay for her care at the Manor. When the CEF collapsed, she was unable to pay for her accommodation and care at the Manor. This was a significant source of stress and worry to her.
15. Magdalene Carr is 98 years of age and is currently a resident of the Manor. She has significant deposits in the CEF. She has been told by Sage representatives that her rent

will be increasing in February, 2017. Because of the collapse of the CEF, she only has enough money to take her through to the end of this year. She will then have to move to government assisted housing. She is very stressed by all of this and feels pressure from Sage. She is concerned about being able to pay for her funeral. Attached as **Exhibit "1"** to this my Affidavit is email correspondence dated March 8 and 9, 2017 from Jeanette and William Wood, friends of Magdalene, to Mr. Garber, counsel for the District Subcommittee.

16. I recently met with Herman and Herta Briese who live near Beaverlodge, Alberta. They are life-long, faithful members of the Lutheran Church. Herman is 81 and Herta is 85.
17. When Herman and Herta sold their farm, they eventually deposited their money with CEF. Herman told me "I was very happy to benefit the church this way." Their CEF deposit represented their life savings. They were living off the interest from their CEF deposits. They feel very hurt and betrayed by what has happened to the CEF.
18. Herta cannot cook because she had a stroke. She walks very slowly with the assistance of a walker. She cannot take stairs. She told me "I need to be in a senior's home." They told me that they need the money that they saved for this stage of their lives.
19. I described my own situation in my letter to Justice Romaine dated March 15, 2016. A copy of my letter is attached as **Exhibit "2"** to this my Affidavit. I wrote this letter completely on my own because I did not know what else to do.
20. I am aware of many other cases of financial hardship. They are reluctant to put their names and stories forward, as was I at one time.
21. Counsel for the Monitor has advised that after March 28, 2017, only **two** District properties remain outstanding:
 - a. The Shepherd of the Valley Lutheran Church in Canmore is waiting for a court decision, and
 - b. The sale of 8 acres of property in Calgary owned by the Foothills Lutheran Church in Calgary. This property was not owned by the ABC District and was not part of the CCAA proceedings. The Foothills Lutheran Church recently decided to donate these lands to the District on terms which I am not aware of.
22. There are also two loans to be realized: one involving Shepherd's Village Ministries Ltd and a small loan in the amount of \$30,000.00 involving First Lutheran Church, Kelowna.
23. Email correspondence from counsel to the Monitor to Mr. Garber pertaining to the outstanding issues is attached as **Exhibit "3"** to this my Affidavit.
24. I am advised by Mr. Garber and do believe that if the stay is lifted:

- a. Statements of Defence would not be required in the class proceedings at this time. They are not filed until **after** the Certification decision has been given; and
 - b. It will take approximately one year after the stay is lifted to have the Certification Application heard.
25. The delay in the District Subcommittee's ability to move forward so that the class members can access their funds for daily living has been very discouraging to the CEF RA class members. The age of the CEF RA class exacerbates the situation and requires the District Subcommittee to move forward with great urgency and dispatch.

REPRESENTATIVE ACTION: CLASS ACTION

26. Sharon Sherman and Marilyn Huber commenced a class proceeding in Alberta on February 22, 2016 (hereafter "the Alberta Action"). That action was stayed by order of the Court dated March 9, 2016.
27. The District Subcommittee was formed mid-October, 2016.
28. The District Subcommittee retained Mr. Garber on November 17, 2016.
29. The District Subcommittee instructed Mr. Garber to amend the Alberta Action rather than commence a new action in order to preserve an ultimate limitation date against Ronald Chowne and Prowse, Chowne which expired June 10, 2016.
30. The District Subcommittee relied on the following provision of the District Subcommittee Order filed August 5, 2016:
- 9 "The mandate of the District Subcommittee, in accordance with the District Plan shall include, but is not limited to:
 - a) Taking reasonable steps to maximize the amount of funds that are ultimately available for distribution to the District Representative Action Class under the District Representative Action
31. The District Subcommittee also took note of paragraph 21 of the Initial Order filed January 23, 2015 which permits actions to be taken in order to comply with statutory time limitations.
32. The District Subcommittee asked me to be the replacement for Marilyn Huber as a Plaintiff in the Alberta Action because Marilyn was appointed a member of the DIL Subcommittee and therefore could not continue as a Plaintiff in the Alberta Action.
33. Prior to amending the Alberta Action, Mr. Garber advised Mr. Oliver, counsel for the Monitor, of his intentions in this regard on two occasions. Mr. Oliver had no issue with our proceeding in this fashion. Copies of the email exchanges between Mr. Garber and

Mr. Oliver dated November 25 -November 29, 2016 and November 15 - December 16 are attached as **Exhibit “4”** to this my Affidavit.

34. The amended Alberta Action was filed December 16, 2016 by removing all claims pertaining to DIL, and adding as Defendants the Alberta-British Columbia District, Encharis Community Housing and Services, and their Directors and Officers.
35. The Alberta Action was amended again on December 23, 2016 by adding Prince of Peace Lutheran Church of Calgary as a Defendant. A copy of the Amended Amended Statement of Claim in the Alberta Action is attached as **Exhibit “5”** to this my Affidavit. An identical action was filed in the Supreme Court of British Columbia on December 21, 2016.
36. A minor amendment to the Alberta Action was filed February 13, 2017 to correct the date of the Encharis transaction. Paragraphs 64 and 208 was amended in this regard and are attached as **Exhibit “6”** to this my Affidavit.

REPRESENTATIVE ACTION: DERIVATIVE ACTION

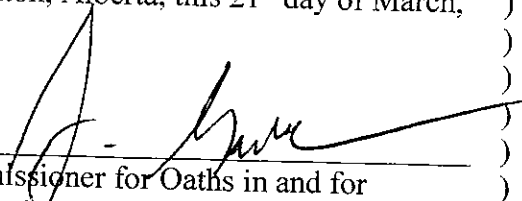
37. The Fifth Amended Plan of Compromise filed June 10, 2016 defines the “Representative Action Claim” as including:
 - e) any claim(s) which one or more of the District Depositors could have pursued in the name of the District, including without limitation, any derivative action (whether statutory or otherwise) or any Claim(s) which could be assigned to a creditor pursuant to s. 38 of the BIA, if such legislation were applicable.
38. The District Subcommittee authorized Mr. Garber to commence a derivative action in the name of the ABC District against the District’s auditors, Deloitte LLP and Rolfe, Benson. The action had to be filed before December 31, 2016 in order to preserve a limitation date.
39. A copy of the Notice of Civil Claim filed in the Supreme Court of British Columbia on December 28, 2016 is attached as **Exhibit “7”** to this my Affidavit.
40. I make this Affidavit in support of an Application for:
 - a. A Declaration that the amended Alberta Action is compliant with the Fifth Amended Plan of Compromise and Arrangement filed June 10, 2016 and the District Subcommittee Order filed August 5, 2016.
 - b. In the alternative, if the amended Alberta Action is found not to be compliant with the Fifth Amended Plan of Compromise and Arrangement, an Order amending the Fifth Amended Plan of Compromise and Arrangement by adding the words “and/or take up and continue Alberta action no. 1603-03142 as part of the District Representative Action” at the end of the first sentence of paragraph

5.1, and an identical amendment to paragraph 20 of the District Subcommittee Order.

- c. An Order lifting the stay of proceedings contained in the Initial Order, as amended from time to time.

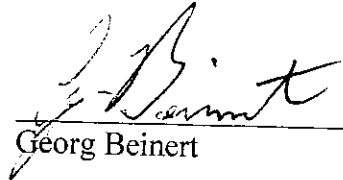
SWORN BEFORE ME at)

Edmonton, Alberta, this 21st day of March,)
2017.)



(Commissioner for Oaths in and for)
the Province of Alberta))

Allan A. Garber
Barrister and Solicitor)



Georg Beinert)

Exhibit

“1”

Allan Garber

From: William Wood <bwood@telusplanet.net>
Sent: March 9, 2017 8:45 AM
To: Allan Garber
Subject: Re: Magda's Rent Increase

Yes, she is a CEF depositor, and is in the class action lawsuit. With the payments she has received, she will be able to pay until the end of the year, but then she will have to move to government assisted housing, and she is 98 years old. Magda is concerned about being able to pay for her funeral, as she only has step grandchildren (2).

> On Mar 9, 2017, at 6:10 AM, Allan Garber <allan@garberlaw.ca> wrote:

>

> Is she a CEF depositor?

>

> Allan Garber

>

> Sent from my iPhone

>

>> On Mar 8, 2017, at 3:05 PM, William Wood <bwood@telusplanet.net> wrote:

>>

>> Some quick facts:

>>

>> Magda did not pay her rent in November and December of 2016

>>

>> In January Sage representatives came to her and had her sign an automatic withdrawal from her bank account for \$3,335.00 - said they were a new company and that she needed to pay rent. She signed.

>>

>> In February they approached her and told her the rent was increasing to \$3,435.00. They also told her that she owed them almost \$7000.00 for back rent.

>>

>> She said she couldn't pay and Sage agreed to talk with her regarding her finances. They also told her everyone's rent was being increased.

>>

>> Thursday morning at 11:00 she is to meet with them again to discuss this. She feels very pressured by their tactics, and wonders if she could stop payment altogether.

>>

>> Please advise her options.

>>

>> Thank you so very much.

>>

>> Jeanette Wood

This is Exhibit 1 referred to in the
Affidavit of
Georg Beinert
Oswin before me this 21 day
of March A.D. 2017.
[Signature]
A Notary Public, A Commissioner for Oaths
in and for the Province of Alberta

Allan A. Garber
Barrister and Solicitor

Exhibit

“2”

This is Exhibit * 2 * referred to in the
Affidavit of
Georg Belnert
Sworn to and subscribed on the 21 day
of March A.D. 2017
A. Garber
Attest: Public Notary for the State
of Minnesota for the Province of Alberta

March 15, 2016

Dear Honourable Madam Justice Romaine,

Allan A. Garber
Barrister and Solicitor

Please forgive and pardon me if I write to you presumptuously. I have never been inside a court room, and I have never needed to stand before a Judge. Therefore, I am also unfamiliar with the correct etiquette that should be followed as I approach you in this letter. Again, please forgive me.

I write the following, trusting that I will not be bringing legal injury or harm to myself in doing so. I am not versed in the legal wording and ways of the courts. Even so, I do feel that I need to raise my voice, as an ordinary citizen, for equity and justice to be served, as I believe that equity and justice are being lost in the 'legal' proceedings of some courts.

I write to you, to ask that you intervene and make a judgment to end the CCAA protection that is offered to the Applicants in the case of the Lutheran Church Canada – Alberta British Columbia District (LCC-ABC).

I realize that this is a bold request as it would likely be setting a precedent if you were to grant favor to this request. Yet, I believe that there is sufficient and compelling reason to do so, as it would enable truth to be revealed, fairness to be distributed, and justice to be served.

I hope that you will find merit in what I write to you. I write these statements from a position of my own understanding, belief, perceptions and convictions, and I am sure that these would be found to be supported by fact – if only there were opportunity to expose the truth.

Unlike other CCAA proceedings, the case of the LCC-ABC is not a case where a business has run into difficulties through its natural course of business. CCAA protection would certainly be an understandable route to take in such instance.

Instead, in the case of the LCC-ABC, I believe that there is much evidence that reveals that the Applicants have used the cloak of Christian values and Christian ministry, and have constructed a deceptive method of soliciting funds from trusting people. These trusting people have been led to believe that their investments were serving the purposes that aligned with their personal beliefs and convictions.

Evidence shows that the LCC-ABC financial involvements were, for the most part, grossly contradictory to what the LCC-ABC had claimed to be as their guiding principles when supposedly exercising stewardship over their investor's funds. (I have documents that I believe are compelling evidence of what I claim here.)

Investors were regularly persuaded to believe that funds were being used for Christian ministry expansion, and that more funds were needed.

I believe that the LCC-ABC's application for CCAA protection was not much more than an effort to gain time so that the Applicants could find a way, not to find greatest value for the investor, but rather to find a way to hide or obscure facts and provide a way to avoid the full and proper consequences of their doings.

The Applicant and Monitor have suggested that efforts are made to maximize the return to the investor through the CCAA process as (per their suggestion) less return would be realized through prompt liquidation. This is a contradiction, as prompt liquidation is taking place within the CCAA process, but the proceeds are being consumed by the processes that are at work, trying to afford more protection to the Applicant. The proceeds from liquidation rightfully belong to the investors.

The most recent 'Amended Amended Plan' (AAP) which the Applicants have submitted surely gives evidence that the ongoing CCAA protection is only serving to increasingly prejudice and injure the investors, and to bind them into this severe injury, with no hope of reasonable recovery.

The AAP appears to have become an instrument by which the applicants are seeking to unload their misdeeds, thereby burdening the significant investors with the problems of the failures that the Applicants have been unwilling to appropriately admit to, and be responsible for.

The AAP is highly un-equitable and therefore also very unfair, as it provides for total recovery for some (those, many, with very small investments) while providing a dubious instrument as a token of 'return' to those who have large investments. I am opposed to this concept of exchanging 'shares' in a failed capital asset, one with an historical and ongoing failing business performance, as being a 'fair' return for the reasonably liquid and very conservative cash deposits that I had made in the Church Extension Fund of the LCC-ABC.

The AAP is also clearly an instrument that gives no realistic option to the investors to seek alternative options of recovery. Any further action that 'might' be considered is severely constrained by other voices and processes and does not allow for individual investors to seek out what they believe to be the best way forward. I believe that the AAP is a dictatorial document and a constraining document, rather than the vehicle of fairness and options that the Applicants had begged the investor's patience for.

Also, I am aware that the Applicants and their supporters have used religious pretexts to try to persuade investors to avoid any form of class litigation and, instead, to suffer losses as part of the process of being faithful to the Church.

Clouding the real issues that need to be addressed, by creating a fear in the investor of being guilty of transgressing Biblical Scripture, is only one more way in which I believe that this CCAA protection process is subtly being abused by the Applicants.

Suggesting or implying (at meetings) that 'Christian' investors should express their faithfulness by suffering loss is a gross error and misapplication of Biblical Scripture. There are stronger Biblical Scriptures that speak of noble leadership, avoidance of wrongdoing, honesty, repentance, compassion, truth, justice, and restitution. These principles are also principles that are, or should be, at work in general society, without the need to make reference to Biblical Scripture. These are principles that the Applicants want the investors to embrace, but it appears that the Applicants consider themselves above the need to do the same. The Applicants speak from a supposed position of piety.

Even in litigation, I believe that Christians can be faithful to the spiritual 'Church' (capital 'C' Church) while seeking restitution from the leadership of the physical 'church' (small 'c' church). Processes that allow for the correction of civil wrongs should not be confused by, nor coerced by, spiritual persuasions (which are a personal choice and voluntary).

I believe that these CCAA proceedings also reveal error on the part of the Monitor. The Monitor has often indicated that the investors are not being prejudiced by this process. Yet, I fail to see how such statements can be made when the AAP shows great in-equity and gives no freedom to the investor. To me, it appears that the investors are being 'completely' prejudiced. The AAP works in the favor of the Applicants and the Monitor, and in the disfavor of the investors.

It is my understanding that certain groups wish to refrain from taking this case to a criminal court for fear of losing the ability to lay claims against insurance companies on the assumption that proof of criminal negligence would extinguish insurance coverage. It appears to me that the interest is more in insurance proceeds and less (if at all) in justice. It appears to me, also, that even the Monitor is unwilling to consider criminal possibilities. I have provided certain information to the Monitor, with no apparent further action on their part. (I realize that I am implying the possibility of criminal negligence being part of this circumstance. There are aspects about this situation that I can not interpret in any other way.)

We (my family and I) have been injured by the deception that I believe has been, and continues to be, at play in this situation. I am significantly invested in the Church Extension Fund (CEF) and also in the District Investments Limited (DIL) fund. This is not because of any personal affluence. On the contrary, it is quite the opposite. I have chosen a life of restraint, and have carefully gathered the little that I could. My investment choices have been a reflection of my values. My significant investment portion results from a windfall sale of a small parcel of land. The proceeds of this sale were to form my ability to fund some basic improvements to our living, to provide for the costs of education for my children as well as providing financial security for a reasonably dignified retirement. I sought to make a temporary deposit while we positioned ourselves to make use of these funds. I had placed these significant funds on deposit with CEF at a time when it was surely clear to the LCC-ABC group that a crisis was well underway. At that time, we were told, by a member of the Board of Directors for these investments, that

deposits with CEF were “excellent investments ... totally safe”. (I have 15 years participation with CEF and DIL, and I have always done my due diligence. I was satisfied with the information that I received, not having any reason to suspect any level of risk. Now, I believe that I was completely deceived by empty words – both spoken and written. I am not an ignorant or uneducated man.)

It has been more than one year, now, that this injury rests upon us. I have had to step out of my dream for early retirement. I have had to reconsider re-entering employment. My work opportunities are very limited, and I have no ‘secure’ work options. I married late in life, therefore I have a young family. I have a wonderful wife (who is joint account holder in our CEF deposits) and 5 bright and lovely children (ages 7, 10, 12, 14, 16). We enjoy a simpler life. Due to the LCC-ABC circumstance, we have had to start over again in our savings. This situation has been devastating, not just for seniors, but also for us.

Trying to ask for truth and justice in this circumstance is like trying to oppose troops of giants. I really can not afford a lawyer. I have a family to feed, and I have no margin for risk or error.

I write this, not to elicit pity from you, but rather, to describe that this crisis is very real and very devastating to many. We have waited patiently. I feel that now is the time for me to speak out, before any further hope is lost.

In summary:

I believe that the Applicants are using the CCAA protection to the detriment of the investors.

I believe that the Monitor has failed this process both in principle and in practice.

I believe that there is sufficient evidence of past deliberate deception and current lack of good faith, that this case should not receive further CCAA protection.

I understand that the court seeks to expose facts and therefore can not act on ‘belief’. Even so, I use the word ‘believe’, not as an expression of feeling or sentiment, but rather as an expression of full conviction that these things would be found to be true – if only given opportunity through a full process that is not concealed and protected within the CCAA proceedings.

Therefore I ask that the CCAA protection be removed from the Applicants.

I lay this request before you, with highest respect for your position.

I also bow in the presence of an Almighty and loving God, praying that He gives you all wisdom as you give consideration to my request.

Most sincerely and respectfully yours,

Georg Beinert

Exhibit

“3”

Allan Garber

From: Oliver, Jeffrey <joliver@casselsbrock.com>
Sent: March 14, 2017 3:17 AM
To: Allan Garber
Cc: Errin Poyner; Jeff Keeble; Joseph Sithole
Subject: Re: LCC

This is Exhibit 3 referred to in the
AFF of
George Beinert
March 21 2017
Allan A. Garber
Barrister and Solicitor
Allan A. Garber
Barrister and Solicitor

Here is more information.

District

Property - Shepherd of the Valley Lutheran Church, Canmore – waiting for a Court decision regarding entitlement to property, tax assessed value of approximately \$991,600

Property - Immanuel Lutheran Church, Elkford –property just sold for net proceeds of approximately \$250,000, closing date of March 28.

Property - Foothills Lutheran Church, Calgary – a settlement of \$2.3M is expected from the initial sale of 4 out of the 8 acres. The entire 8 acres were tax assessed for \$4.9M in 2016 before being subdivided and it is likely that the District will receive the remaining 4 acres to market and sell with the split of the proceeds still to be negotiated

Loan - Shepherd's Village Ministres Ltd. – loan balance of approximately \$2.0M, SVML's total assets valued at approximately \$300,000. District is working with SVML on realization strategies to settle loan

Loan - First Lutheran Church, Kelowna - loan balance of \$30,000 and currently in the process of being paid out

DIL

Mortgage - First Lutheran Church, Kelowna -loan balance of approximately \$5.6M, currently in foreclosure and 6 month redemption period, tax assessed value of approximately \$7.5M

Property - Prince of Peace Parsonage Lot –current list price of \$129,000 but not a lot of interest

Sent from my iPhone

On Mar 14, 2017, at 6:31 AM, Allan Garber <allan@garberlaw.ca> wrote:

Are the properties listed with a real estate agent?

Allan Garber
Barrister & Solicitor

108, 17707 – 105 Avenue NW

Edmonton, AB T5S 1T1
Telephone (587) 400-9310
Fax (587) 400-9313
Email allan@garberlaw.ca

Note: This email address is not a valid address for service pursuant to Rule 11.21 of the Alberta Rules of Court. If you need to serve legal documents on Allan A. Garber, as lawyer of record, please do so by courier, recorded mail or fax.

From: Oliver, Jeffrey [<mailto:joliver@casselsbrock.com>]
Sent: March 13, 2017 2:27 PM
To: Allan Garber <allan@garberlaw.ca>
Cc: Jeff Keeble <jkeeble@deloitte.ca>; Joseph Sithole <josithole@deloitte.ca>; Nied, Matthew <mnied@CasselsBrock.com>
Subject: Re: LCC

Here is a list of the non-core assets

District

Property - Shepherd of the Valley Lutheran Church, Canmore

Property - Immanuel Lutheran Church, Elkford

Property - Foothills Lutheran Church, Calgary

Loan - Shepherd's Village Ministres Ltd.

Loan - First Lutheran Church, Kelowna

DIL

Mortgage - First Lutheran Church, Kelowna

Property - Prince of Peace Parsonage Lot

In terms of the anticipated value, this is difficult to answer due to the nature of the properties, and difficult to provide out of concerns we may taint a sales process. I will get back to you on that

Sent from my iPhone

On Mar 13, 2017, at 11:53 PM, Allan Garber <allan@garberlaw.ca> wrote:

I would like to know by the end of this week. Thanks.

Allan Garber

Sent from my iPhone

On Mar 13, 2017, at 2:45 AM, Oliver, Jeffrey <joliver@casselsbrock.com> wrote:

We are in the process of replying and will respond when able

Sent from my iPhone

On Mar 12, 2017, at 10:25 AM, Allan Garber <allan@garberlaw.ca> wrote:

Further to your recent correspondence, how many non-core assets remain to be sold, and what is their anticipated value?

Best wishes,

Allan Garber
Barrister & Solicitor

108, 17707 – 105 Avenue NW
Edmonton, AB T5S 1T1
Telephone (587) 400-9310
Fax (587) 400-9313
Email allan@garberlaw.ca

Note: This email address is not a valid address for service pursuant to Rule 11.21 of the Alberta Rules of Court. If you need to serve legal documents on Allan A. Garber, as lawyer of record, please do so by courier, recorded mail or fax.

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Exhibit

“4”

Allan Garber

From: Oliver, Jeffrey <joliver@casselsbrock.com>
Sent: November 29, 2016 9:45 AM
To: Allan Garber
Subject: RE: LCC [IWOV-Legal.FID2316960]

This is Exhibit "4" referred to in the Affidavit of
Georg Bernert
21
March 21, 2017
Allan A. Garber
Allan A. Garber
Barrister and Solicitor

Allan,

I can advise that the Monitor has no issue with you proceeding in this fashion. Of course, we can't speak for any other party, but we understand the basis for the request and your desire to avoid any potential limitations risk.



Jeffrey Oliver
Direct: +1 403 351 2921 • Fax: +1 403 648 1151 • joliver@casselsbrock.com
Suite 1250 Millennium Tower, 440 – 2nd Avenue SW, Calgary, Alberta, T2P 5E9
www.casselsbrock.com

From: Allan Garber [mailto:allan@garberlaw.ca]
Sent: Friday, November 25, 2016 4:21 PM
To: Oliver, Jeffrey
Cc: Georg _
Subject: LCC

Jeffrey, I am looking at the Order of Justice Romaine dated March 22, 2016. I note from para. 3 that the actions we filed were stayed until the sanction applications had been heard.

For limitation reasons, I would like to amend the existing action by adding in the ABC District and certain officers and directors. Do you have a problem if I make these amendments, but not serve the amended statement of claim until the stay in the Initial Order has been lifted.

Allan Garber
Barrister & Solicitor

108, 17707 – 105 Avenue NW
Edmonton, AB T5S 1T1
Telephone (587) 400-9310
Fax (587) 400-9313
Email allan@garberlaw.ca

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Allan Garber

From: Oliver, Jeffrey <joliver@casselsbrock.com>
Sent: December 16, 2016 1:29 PM
To: Allan Garber
Cc: Keeble, Jeff (CA - Alberta)
Subject: RE: Lutheran Church [IWOV-Legal.FID2316960]

Thank you. Can you please provide us with a copy of the amended claim for our records?



Jeffrey Oliver
Direct: +1 403 351 2921 • Fax: +1 403 648 1151 • joliver@casselsbrock.com
Suite 1250 Millennium Tower, 440 – 2nd Avenue SW, Calgary, Alberta, T2P 5E9
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From: Allan Garber [<mailto:allan@garberlaw.ca>]
Sent: Friday, December 16, 2016 1:02 PM
To: Oliver, Jeffrey
Subject: RE: Lutheran Church [IWOV-Legal.FID2316960]

We will be amending the existing action in Alberta by adding in the ABC District, its Officers and Directors, Encharis, its Officers and Directors, in order to preserve limitation dates. We will be commencing a new action in BC against the same entities. Nobody will be served.

Allan Garber
Barrister & Solicitor

108, 17707 – 105 Avenue NW
Edmonton, AB T5S 1T1
Telephone (587) 400-9310
Fax (587) 400-9313
Email allan@garberlaw.ca

From: Oliver, Jeffrey [<mailto:joliver@casselsbrock.com>]
Sent: November 15, 2016 4:10 PM
To: Allan Garber <allan@garberlaw.ca>
Subject: RE: Lutheran Church [IWOV-Legal.FID2316960]

Under paragraph 21 of the Initial Order, you can file a claim to preserve a limitation period. Please review that order and let me know if that satisfies your concern.



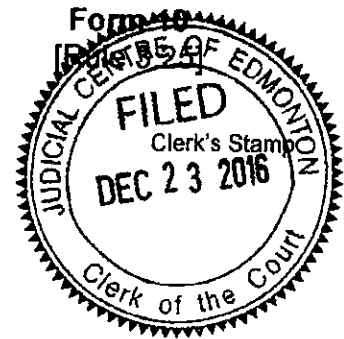
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From: Allan Garber [<mailto:allan@garberlaw.ca>]
Sent: Tuesday, November 15, 2016 3:43 PM
To: Oliver, Jeffrey
Subject: FW: Lutheran Church

Exhibit

“5”

COURT FILE NUMBER 1603-03142
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE EDMONTON



PLAINTIFFS Sharon Sherman, Sharon Sherman in her capacity as Personal Representative of the Estate of Ruby Sherman, and Georg Beinert

Amended pursuant to Rule 3.62.

DEFENDANTS

Donald Schiemann, Jim Kentel, William Ney, Harold Ruf, Mark Ruf, Harold Schmidt, James Schuelke, Mark Beiderweiden, Harold Haberstock, James Heinbuch, Cliff Haberstock, Gene Gabert, Richard Lutz, David Schick, Cindy Willisko, Daryl Becker, Randy Heide, Mark Sander, Judith Burns, Marj Plitt, Gerry Steinke, Keith Kruse, Forrest Stroup, Keith Haberstock, Melanie Kuhn, David Dressler, Philip Washeim, Greg Giese, Wayne Lunderby, Michael Gillingham, Craig Tufts, Rhonda Buck, Vic Esperanza, Lynn Gergens, Deloyce Weist, Janice Ruf, Candace Rivet, Darla Hennig, Kurt Robinson, Ted Ulmer, David Bode, Roland Kubke, Bill Morgan, John Mueller, Glenn Schaeffer, Marvin Mutschler, Steven Grande, Paul Eifert, Hans Heumann, Grant McMaster, James Werschler, David Schoepp, Encharis Community Housing and Services, Prince of Peace Lutheran Church of Calgary; Lutheran Church – Canada; Lutheran Church – Canada Financial Ministries; Lutheran Church – Canada, The Alberta-British Columbia District; Francis Taman; Bishop & McKenzie LLP; Ronald Chowne; Prowse Chowne LLP; Shepherd's Village Ministries Ltd.

This 23 day of DEC, 2016

This is Exhibit "5" referred to in the Affidavit of Georg Beinert sworn before me this 21 day of March A.D., 2017.
[Signature]
A Notary Public, A Commissioner for Oaths in and for the Province of Alberta.

Allan A. Garber
Barrister and Solicitor

DOCUMENT

AMENDED AMENDED STATEMENT OF CLAIM

ADDRESS FOR SERVICE Allan Garber Professional Corporation
AND Barrister and Solicitor
CONTACT INFORMATION Suite 108, 17707 105 Ave NW
OF Edmonton, Alberta T5S 1T1
PARTY FILING THIS Tel: (587) 400-9310
DOCUMENT Fax: (587) 400-9313
 Lawyer: Allan A. Garber

BROUGHT UNDER THE CLASS PROCEEDINGS ACT

NOTICE TO DEFENDANTS

You are being sued. You are a defendant.

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

Note: State below only facts and not evidence (Rule 13.6)

Statement of facts relied on:

1. The Plaintiff, Sharon Sherman, is approaching retirement and resides in the City of Edmonton, in the Province of Alberta. She is the personal representative of the estate of Ruby Sherman.
2. The Plaintiff, Georg Beinert, resides near Fairview, in the Province of Alberta.
3. The Defendant, the Lutheran Church – Canada, the Alberta-British Columbia District was incorporated as the Alberta and British Columbia District of the Evangelical Lutheran Synod of Missouri, Ohio and other States by way of a special Act of the Alberta Legislature, S.A. 1944, c. 82 *as am*. It was extra-provincially registered in British Columbia on June 19, 1944. In 1991 the District was continued and renamed the Lutheran Church – Canada, the Alberta-British Columbia District (the “ABC District”) pursuant to the *Lutheran Church – Canada, The Alberta British Columbia District Corporation Act*, SA 1991, c. 42. At all times material hereto the head office of the ABC District was 7100 Ada Blvd., Edmonton, Alberta, T5B 4E4.
4. The Defendants Donald Schiemann, Mark Ruf, Jim Kentel, Harold Ruf, James Schuelke, Mark Beiderweiden, Harold Haberstock, James Heinbuch, Cliff Haberstock, Gene Gabert, Richard Lutz, David Schick, Cindy Willisko, Daryl Becker, Randy Heide, Mark Sander, Judith Burns, Mari Plitt, Gerry Steinke, Harold Schmidt, Keith Kruse, William Ney, Forrest Stroup, Keith Haberstock, Melanie Kuhn, David Dressler, Philip Washeim, Greg Giese, Wayne Lunderby, Michael Gillingham, Craig Tufts, Rhonda Buck, Vic Esperanza, Lynn Gergens and Deloyce Weist were all Directors and additionally, Officers of the ABC District, as the case may be, in accordance with the table below:

ABC Directors

<i>June 1, 1997 - May 31, 2000</i>	
Position	Name
President	Harold Ruf
Vice President	James Schuelke
Vice President	Mark Beiderwieden
Vice President	Harold Haberstock
Secretary	James Heinbuch
Secretary	Cliff Haberstock
Director	Mark Ruf
Director	Gene Gabert
Director	Jim Kentel
Director	Richard Lutz
Director	David Schick
Director	Cindy Willisko
Director	Daryl Becker

<i>June 1, 2000 - May 31, 2003</i>	
Position	Name
President	Donald Schiemann
Vice President	Mark Beiderwieden
Vice President	Harold Haberstock
Vice President	James Schuelke
Secretary	Randy Heide
Secretary	Mark Sander
Director	Mark Ruf
Director	Kwang Soo Kim
Director	Gene Gabert
Director	Richard Lutz
Director	Marj Plitt
Director	Gerry Steinke
Director	Harold Schmidt
Director	Cindy Willisko
Director	Keith Kruse

<i>June 1, 2003 - May 31, 2006</i>	
Position	Name
President	Donald Schiemann
Vice President	Mark Beiderwieden
Vice President	Harold Haberstock
Vice President	William Ney
Secretary	Mark Sander
Director	Mark Ruf
Director	Kwang Soo Kim
Director	Jim Kentel
Director	Richard Lutz
Director	Harold Schmidt
Director	Judith Burns
Director	Marj Plitt
Director	Keith Kruse

<i>June 1, 2006 - May 31, 2009</i>	
Position	Name
President	Donald Schiemann
Vice President	Mark Ruf
Vice President	Harold Haberstock
Vice President	Forrest Stroup
Secretary	Wayne Lunderby
Director	Keith Haberstock
Director	Kwang Soo Kim
Director	Judith Burns
Director	Jim Kentel
Director	Melanie Kuhn
Director	Richard Lutz
Director	Harold Schmidt
Director	Keith Kruse

<i>June 1, 2009 - May 31, 2012</i>	
Position	Name
President	Donald Schiemann
Vice President	Mark Ruf
Vice President	Harold Haberstock
Vice President	David Dressler
Secretary	Wayne Lunderby
Director	Keith Haberstock
Director	Phillip Washeim
Director	Judith Burns
Director	Greg Giese
Director	Jim Kentel
Director	Melanie Kuhn
Director	Harold Schmidt
Director	Michael Gillingham

<i>June 1, 2012 - May 31, 2015</i>	
Position	Name
President	Donald Schiemann
Vice President	Mark Ruf
Vice President	David Dressler
Vice President	Craig Tufts
Secretary	Rhonda Buck
Director	Vic Esperanza
Director	Keith Haberstock
Director	Lynn Gergens
Director	Greg Giese
Director	Jim Kentel
Director	Melanie Kuhn
Director	Harold Schmidt
Director	Deloyce Weist

5. At all times material hereto the Defendants Janice Ruf, Candace Rivet, Darla Hennig, Ted Ulmer and Kurt Robinson were Officers of the ABC District and members of the ABC District Executive.

6. The Defendant, the Lutheran Church — Canada (the "LCC"), is a religious body incorporated under the *Act to Incorporate Lutheran Church-Canada 7-8 Eliz. II Chap. 68 S.C. 1959* with a registered office located at 3074 Portage Avenue, in the City of Winnipeg, in the Province of Manitoba.
7. The Defendant, the Lutheran Church – Canada Financial Ministries (the "LCCFM"), is a non-profit corporation registered under the laws of Canada and has a registered and records office located at 3074 Portage Avenue, in the City of Winnipeg, in the Province of Manitoba.
8. The Defendant, Prince of Peace Lutheran Church of Calgary, is a religious society incorporated under the laws of Alberta on February 25, 1964 and has a registered office located at 243209 Garden Road NE, Calgary Alberta ("POP Congregation"). It carries on operations as the Prince of Peace Lutheran Church and School.
9. The Defendant Francis Taman ("Taman") is a Barrister and Solicitor and a partner in the law firm of Bishop & McKenzie LLP, which is located at 1700 – 530 8th Avenue, in the City of Calgary, in the Province of Alberta.
10. The Defendant Bishop & McKenzie LLP ("Bishop & McKenzie") is a partnership of barristers and solicitors located at 1700 – 530 8th Avenue, in the City of Calgary, in the Province of Alberta.
11. The Defendant Prowse Chowne LLP ("Prowse Chowne") is a partnership of barristers and solicitors located at 1300-10020 101A Avenue NW, in the City of Edmonton, in the Province of Alberta.
12. The Defendant Ronald Chowne ("Chowne") is a Barrister and Solicitor and a partner in the law firm of Prowse Chowne, which is located at 1300-10020 101A Avenue NW, in the City of Edmonton, in the Province of Alberta.
13. The Defendant Shepherd's Village Ministries Ltd. ("SVML") is a company registered under the laws of Alberta with a registered office located at 1700 – 530 8th Avenue SW, in the City of Calgary, in the Province of Alberta.
14. The Defendants Donald Schiemann, Harold Ruf, Mark Ruf, Ted Ulmer, Gerry Steinke, Steven Grande, Paul Eifert, Hans Heumann, Grant McMaster, James Werschler and David Schoepp were Officers and Directors of SVM at times material to this action.
15. The Defendant Encharis Community Housing and Services ("ECHS") was incorporated November 9, 2005 under the laws of the Province of Alberta with a registered office at 1700 – 530 8 Avenue SW, in the City of Calgary, in the Province of Alberta.

16. The Defendants Donald Schiemann, Mark Ruf, Jim Kentel, David Bode, Roland Kubke, Bill Morgan, John Mueller, Glenn Schaeffer and Marvin Mutschler were at all times material hereto Officers and Directors of ECHS.
17. At all times material hereto the Defendant Donald Schiemann, while serving as the President and a Director of ABC District, was also a Director of LCC and ECHS, and the Vice-President and a Director of SVML.
18. All of the Officers and Directors of the ABC District, ECHS and SVML were at all times material hereto members of a congregation of the LCC.
19. The Defendants Donald Schiemann, Harold Ruf, Mark Ruf, James Schuelke, Mark Beiderwieden, Harold Haberstock, Cliff Haberstock, Keith Haberstock, James Heinbuch, Randy Heide, William Ney, Mark Sander, Forrest Stroup, David Dressler, Wayne Lunderby, Phillip Washeim, Craig Tufts and Vic Esperanza were at all times material hereto ordained ministers in the LCC.

A. The Lutheran Church – Canada [“LCC”]

20. LCC is a statutorily incorporated national religious body operating through and having three separately incorporated Districts as LCC agencies or instrumentalities: the Alberta and British Columbia District, the Central District and the East District.
21. LCC has developed and implemented a program whereby congregations are encouraged to purchase lands upon which to construct churches and schools wherein to carry out the ministry of the Lutheran faith, using funds borrowed from their respective Districts. The source of those funds is deposits made with the Districts by the congregations within those Districts, and by individual members of those congregations, as well as by non-members. LCC refers to this program as “Church Planting” and/or “Church Extension” (the “LCC Church Extension Program”).

B. Lutheran Church – Canada Financial Ministries (“LCCFM”)

22. LCC has delegated the administration of the LCC Church Extension Program to LCCFM.
23. LCCFM was formed to assist LCC districts and member congregations to finance the acquisition of sites and the erection of facilities to aid expansion for programs of ministry, witness, outreach and service or for any other programs of the LCC and/or LCCFM through the LCC Church Extension Program and other activities.
24. The LCCFM is responsible for establishing policies and programs for maintaining, supervising and enlarging the LCC Church Extension Program. It is responsible for

administering those policies and programs on a sound financial basis.

25. LCC and its Districts, including the Alberta and British Columbia District, are members of LCCFM.

C. Taman and Bishop & McKenzie LLP

26. At all times material to these proceedings, Taman was a member of the Prince of Peace Congregation located at or near Calgary of the ABC District, and a partner in the law firm of Bishop & McKenzie LLP.

D. The LCC/ABC District Church Extension Fund

27. In or about 1921 and prior to its incorporation in 1944, the ABC District created a Church Extension Program (the "ABC District Church Extension Program") to advance the Church Extension objectives and policies of its parent organization, which was then the Lutheran Church – Missouri Synod ("LCMS") and as of its incorporation in 1959, the LCC.

28. The ABC District operates the ABC District Church Extension Program as a joint enterprise with LCC and/or LCCFM in furtherance of a common purpose, in that:

- a. The ABC District is able to maintain the ABC District Church Extension Program only with the approval of LCC;
- b. The ABC District is required to operate the ABC Church Extension Program in conformity with policies established by the LCC and/or LCCFM;
- c. The LCC and/or LCCFM aids the ABC District in motivating individuals, congregations and organizations to place deposits with the ABC District Church Extension Program in a systematic manner;
- d. The LCC and/or LCCFM provides leadership in advance site acquisition for further expansion of the ministry of the LCC;
- e. The ABC District was required to provide to the LCC and/or LCCFM, on an annual basis, a complete financial statement of the ABC District Church Extension Program, including monies borrowed and received, total amount of loans outstanding, and any amounts delinquent;
- f. ABC District, LCC and/or LCCFM all receive direct or indirect financial and other benefits from the ABC District's Church Extension Program, in that:
 - (i) The acquisition and erection of new churches and schools in which to carry out the ministry of the Lutheran faith increases church membership at the congregation level;

- (ii) Increased church membership at the congregation level results in increased member donations to the congregation. Those donations are shared with the District, which in turn shares those donations with the LCC and/or LCCFM;
- 29. The ABC District, together with the LCC and/or LCCFM as set out above, established two funds:
 - a. The Church Extension Fund (the “CEF”) is a non-registered fund held by ABC District which offered term deposits, savings accounts and a children’s savings program; and
 - b. The Lutheran Church Canada, The Alberta-British Columbia District Investment Ltd. (“DIL”), is an incorporated tax-sheltered investment fund offering registered RRSP, RRIF and TFSA investments.
- 30. At all times material hereto one or all of the Defendants Janice Ruf, Candace Rivet, and Darla Hennig were Managers or in the alternative Administrators of the Church Extension Fund.
- 31. All of the funds deposited to the ABC District’s CEF were held in trust for the depositors by the ABC District as trustee (the “CEF Trust”), on the following terms:
 - a. that the monies on deposit in the CEF Trust would be used solely for the purpose of building churches and schools, and would be invested by the ABC District in accordance with the mandate and policies of the ABC District’s Church Extension Program; and
 - b. that the monies deposited to the CEF Trust would be repaid to the depositors on demand, or alternatively upon maturity if in the form of a term deposit, and with interest.
- 32. The ABC District and the CEF depositors intended to create, and did create, either expressly or by implication, the CEF Trust on the terms stated above. The CEF Depositors were the beneficiaries of the CEF Trust.
- 33. Further, or in the alternative, all funds deposited to the ABC District’s CEF were impressed with a resulting trust (the “CEF Quistclose Trust”) whereby, either expressly or by implication:
 - a. Funds on deposit in the CEF were to be used specifically and exclusively for the stated purpose of providing assistance in the mission and ministry of congregations and agencies of the Lutheran Church-Canada;
 - b. All deposits in the CEF remained the property of the CEF depositors; and
 - c. Deposits in the CEF would be invested by the ABC District in a safe and prudent

manner.

34. The ABC District and the CEF depositors intended to create and did create, either expressly or by implication, the CEF Quistclose Trust on the terms stated above. The CEF depositors were the beneficiaries of the CEF Quistclose Trust.
35. In the further alternative, depositors to the CEF entered into contracts with the ABC District which contained the following express or implied terms:
 - a. That the monies on deposit would be used solely for the purposes of investment in accordance with the mandate and policies of the ABC District Church Extension Program;
 - b. That the monies would be repaid to the depositors on demand, or alternatively upon maturity of the depositor's deposit term, and with interest; and
 - c. That the monies on deposit with the CEF were guaranteed by the ABC District.
36. The ABC District's Department of Stewardship and Financial Ministries (the "DSFM") established Loan Eligibility Policies in respect of the CEF funds which conformed to the policies established by the LCC and/or LCCFM for that purpose. Those Policies limited eligibility for loans to:
 - a. congregations of the ABC District "in good standing," defined as "those congregations which support the mission and ministry of the District and Synod in a responsible way, function under a district approved constitution and comply with the policy and practice established by the Lutheran Church – Canada"; and
 - b. institutions and entities of the LCC, whose constitutions, policies and practices are consistent with those of LCC.
37. Further, according to the Loan Eligibility Policies set by the DSFM, the LCC and/or the LCCFM, loans were to be made for capital projects only, including acquisition of land, purchase or construction of building facilities, major renovations to existing facilities or expansion of existing facilities.
38. The DSFM also set Loan Criteria for the CEF funds in conformity with policies established by the LCC and/or LCCFM for that purpose, including (but not limited to) the following:
 - a. The need for facilities, renovations or property in which to carry out the ministry of the Lutheran faith;
 - b. Need for financing of existing debt;
 - c. Relationship of total loan to property values and/or total assets;

- d. Financial history of congregation and financial projections for future;
 - e. Growth potential of area and membership;
 - f. The existence of a pledge program for the building project;
 - g. Indebtedness per communicant;
 - h. Ability of congregation to service debt;
 - i. Percentage of total income for debt service; and
 - j. Continuity of the debtor congregation's financial support to the ABC District and the LCC.
39. The DSFM also set Loan Conditions for the CEF funds in conformity with policies established by the LCC and/or LCCFM for that purpose, which required debtor congregations to provide certain items before loan funds would be disbursed, including (but not limited to) the following:
- a. Security documentation appropriate to the size and conditions of the loan;
 - b. Loan Repayment Agreement signed by the officers of the debtor congregation;
 - c. Commitment to promoting Church Extension investments among the members of the debtor congregation; and
 - d. Financial statements submitted annually to the DSFM.
40. All loans in excess of \$100,000.00 required the approval of the ABC District's Board of Directors.
41. At times material hereto, the following Officers and Directors of the ABC District were also members of the DSFM, and were thus in an untenable conflict of interest: Jim Kentel, William Ney, Mark Ruf, Harold Schmidt, Mark Beiderweiden, Richard Lutz, Mark Sander, Greg Giese, Darla Hennig and Kurt Robinson.
42. As a result of the ABC District's Church Extension Program and the implementation of the Loan Eligibility Policies, Loan Criteria and Loan Conditions, by the early 1990s the ABC District had built a diverse portfolio of mortgage loans to more than 65 congregations for the construction of churches and schools in which to carry out the ministry of the Lutheran faith. The ABC District guaranteed the investments of depositors in the CEF.

E. The Prince of Peace Village Loans

43. In or about 1993, the ABC District and its Officers and Directors, and/or the POP Congregation, on the advice and with the assistance of Chowne and/or Taman acting as counsel to ABC District and/or the POP Congregation, purchased 156 acres of real property near Calgary, Alberta for \$1,007,700 for the purpose of building a church and a school.
44. The ABC District and/or the POP Congregation set aside certain lands within the POP Village Lands for the location and construction of a church and school for the Prince of Peace Congregation (the "POP Congregation").
45. In or about June 1997, the POP Congregation established a \$26.6 million budget for the construction of a 174 duplex and fourplex unit seniors' housing project called the Prince of Peace Village ("POP Village") to be constructed on a portion of the 156 acres ("the POP Village Lands").
46. The POP Congregation proposed the POP Village development to the ABC District, which approved it on the understanding that the monies for the POP Village would be borrowed from the bank.
47. When sufficient construction loans were not obtainable from the bank, ABC District advanced monies from the CEF Trust or alternatively the CEF Quistclose Trust to develop the POP Village. The ABC District developed the POP Village on its own behalf or alternatively in partnership with the POP Congregation.
48. The POP Village was expanded to include a seniors' assisted living residence ("The Manor"), and an Alzheimer's care centre ("The Harbour").
49. The decision of the ABC District to embark upon the speculative real estate development of the Prince of Peace Village on its own behalf, funded by the CEF, was contrary to the purposes of the ABC District Church Extension Program, which was to provide mortgage financing for congregations to build churches and schools in which to carry out the ministry of the Lutheran faith.
50. The decision of the ABC District and its Officers and Directors to embark upon the speculative real estate development of the POP Village Lands was particularly reckless because the ABC District and its Officers and Directors knew that the POP Village Lands were not supplied with municipal water pipeline services and that the POP Village Lands had no immediate or near-term prospect of being so serviced. As of December 16, 2016, the POP Village Lands are still not serviced with municipal water pipeline services and there is no immediate prospect of such services being available.
51. LCC and/or LCCFM were aware of and approved the ABC District's decision to utilize the CEF monies for the purpose of developing the POP Village. Alternatively, they were willfully blind to the use of the CEF monies as aforesaid.

52. The POP Village development commenced in 1993 and was carried on by the ABC District from 1993 through 2006.
53. At all times material to these proceedings Taman was the Chairman of the POP Congregation's Housing Committee, and was responsible for advancing the POP Village development on behalf of the POP Congregation.
54. At times material hereto, the Defendants Keith Haberstock and Kurtis Robinson were members of, and held leadership positions in, the POP Congregation. At the same time, Haberstock was an Officer and Director of the ABC District and Robinson was an Officer of the ABC District. As a result, their duties to the ABC District and the CEF depositors were in conflict with their duties and responsibilities to the POP Congregation.
55. The POP Village opened in or about 1998. However, at that time the development was operating at a financial deficit, and continued to do so. The ABC District financed those deficits through additional input of funds from the CEF, and increased its promotion of the CEF to its congregations and their members for the purpose of increasing deposits with which to fund the POP Village deficits.
56. Between 1993 and 2006, the ABC District utilized \$71,800,000.00 of funds on deposit in the CEF for the purchase and construction of the Prince of Peace Village and the lands upon which it was built, including subsidies for high-cost hauled water services provided to the POP Village (the "CEF POP Village Advances").
57. LCC and/or LCCFM were aware of and approved the extension of the CEF POP Village Advances. Alternatively, they were willfully blind to the CEF POP Village Advances.
58. ABC District began selling life leases in the POP Village in 1998. However, it failed to return any part of the proceeds of those sales to the CEF in payment of the CEF POP Village Advances.
59. The CEF POP Village Advances contravened the ABC District's Church Extension Program Loan Eligibility Policies, Loan Criteria and Loan Conditions in respect of the CEF Trust in that:
- a. The POP Village development was not for the purpose of building churches or schools;
 - b. The POP Village development was a highly speculative real estate adventure;
 - c. The POP Village development was commenced and continued in the absence of any, or any reliable, financial projections;
 - d. The ABC District lacked the experience and qualifications to bring the POP Village

to successful completion; and

- e. The CEF POP Village Advances were used in part to fund operating deficits.
60. Further, or in the alternative, the CEF POP Village Advances contravened the terms of the CEF Quistclose Trust in that the POP Village development:
- a. Was not for the purpose of providing assistance to a mission or ministry of a congregation or agency of the LCC;
 - b. The POP Village development was a highly speculative real estate adventure;
 - c. The POP Village development was commenced and continued in the absence of any, or any reliable, financial projections; and
 - d. The ABC District lacked the experience and qualifications to bring the POP Village to successful completion.

F. Transfer of the POP Village Lands to Encharis

61. On November 9, 2005, ABC District, on the advice and with the assistance of Taman, incorporated Encharis Community Housing and Services (“ECHS”) to act as the developer of the POP Village.
62. At all times material to these proceedings, ABC District and ECHS were under common control, in that several members of ECHS’s Board of Directors were also members of ABC District’s Board of Directors, including but not limited to:
 - a. Donald Schiemann;
 - b. Mark Ruf; and
 - c. Jim Kentel.
63. Further, the Defendant Ted Ulmer, an Officer of the ABC District, was also a member of the ECHS Board of Directors.
64. In January, 2006, the ABC District transferred to ECHS all of its interest in the POP Village Lands in exchange for a mortgage loan in the amount of approximately \$38,000,000.00 (the “POP Village CEF Mortgage Loan”) and the assumption of ABC District’s contingent liabilities of approximately \$33,000,000.00 with respect to the POP Village life leases. The POP Village CEF Mortgage Loan was secured by a mortgage registered against the POP Village Lands and a 101 acre parcel of real property in Chestermere, Alberta.
65. On February 17, 2006, ABC District, on the advice and with the assistance of Taman, also incorporated Encharis Management Support and Services (“EMSS”) to provide operational

services to The Manor and the The Harbour.

66. LCC and LCCFM were aware of and approved the transfer of the POP Village Lands from ABC District to ECHS, and the extension of the POP Village CEF Mortgage Loan. Alternatively they were willfully blind to said facts.
67. The ABC District, its Officers and Directors, did not inform the depositors to the CEF that it had transferred to ECHS all of its interest in the POP Village Lands in exchange for the Mortgage Loan.
68. The ABC District transferred its interest in the POP Village lands to ECHS and authorized the POP Village CEF Mortgage Loan and the POP Village CEF Unsecured Loans for the sole purpose of divesting ABC District of the failing POP Village development and its associated financial liabilities and instead recording the POP Village CEF Mortgage Loan as an asset in the CEF's mortgage portfolio.
69. However, to the knowledge of ABC District, its Officers and Directors, LCC and/or LCCFM, and ECHS and its Officers and Directors, ECHS was insolvent from its inception and continued to operate at a deficit.
70. Subsequent to the transfer of ABC District's interest in the POP Village to ECHS, ECHS was unable to service its mortgage debt to ABC District. Despite this, ABC District approved additional advances of approximately \$7,000,000.00 to ECHS under the POP Village CEF Mortgage Loan and also made unsecured loans to ECHS from the CEF Trust or in the alternative from the CEF Quistclose Trust in the amount of approximately \$28,500,000.00 (the "POP Village CEF Unsecured Loans") in order to allow ECHS to service its mortgage debt and finance its operating deficit in respect of the POP Village.
71. The ABC District, its Officers and Directors approved the POP Village CEF Unsecured Loans in circumstances where they knew or were willfully or recklessly blind to the fact that:
 - a. ECHS was insolvent; and
 - b. ECHS was operating at a deficit.
72. LCC and LCCFM were aware of and approved the initial and further advances made to ECHS under the POP Village CEF Mortgage Loan and the extension of the POP Village CEF Unsecured Loans to ECHS in circumstances where LCC and LCCFM knew or were willfully blind to the fact that:
 - a. ECHS was insolvent, and
 - b. ECHS was operating at a deficit.
73. The POP Village CEF Mortgage Loan and the POP Village CEF Unsecured Loans (collectively, the "POP Village CEF Loans") contravened the mandate of the ABC

District's Church Extension Program and the terms of the CEF Trust, in that they were not made for the purpose of building churches and/or schools in which to carry out the ministry of the Lutheran faith, but rather for the purpose of enabling ECHS to engage in speculative real estate development.

74. The POP Village CEF Loans contravened the terms of the CEF Quistclose Trust in that the CEF funds were not used to provide assistance to a congregation or agency of the LCC, but rather for the purpose of enabling ECHS to engage in speculative real estate development.
75. The Officers and Directors of the ABC District knew or were willfully or recklessly blind to the fact that the CEF POP Village Loans contravened the terms of the CEF Trust or in the alternative the terms of the CEF Quistclose Trust.
76. At all times material to these proceedings, Taman was a director, trustee or like official of ECHS, and also counsel to both ECHS and ABC District.
77. Further, at all times material to these proceedings, Taman was a member of the POP Congregation. As such:
 - a. he knew or was willfully blind to the existence of the CEF Trust;
 - b. he knew or was willfully blind to the existence of the CEF Quistclose Trust; and
 - c. he had a personal stake in the development of the POP Village.
78. The POP Village CEF Loans contravened the ABC District's Church Extension Program Loan Eligibility Policies, Loan Criteria and Loan Conditions in respect of the CEF Trust in that:
 - a. ECHS was not a "congregation of the ABC District in good standing" nor an institution or entity of the LCC whose constitution, policies and practices were consistent with those of LCC;
 - b. The loan-to-value ratio in respect of each of the Loans was greater than that which would be commercially acceptable, or alternatively was based on an inflated valuation of the POP Village Lands;
 - c. The POP Village development was commenced and continued in the absence of any, or any reliable, financial projections;
 - d. ECHS lacked the experience and qualifications to bring the POP Village to successful completion;
 - e. ECHS had no ability to service the POP Village Loans;
 - f. ECHS did not and was not required to provide financial support to ABC District and/or LCC in exchange for the POP Village Loans;

- g. The POP Village Loans were unsecured or alternatively inadequately secured;
- h. The officers of ECHS were not required or alternatively failed to sign Loan Repayment Agreements with ABC District in respect of the POP Village Loans;
- i. ECHS was not required or alternatively failed to make a commitment to promote Church Extension deposits among its members or others;
- j. ECHS was not required or alternatively failed to submit financial statements to the ABC District or alternatively the ABC District failed to scrutinize those financial statements to assess the risk to the POP Village Loans.

79. Further, the POP Village CEF Loans contravened the terms of the CEF Quistclose Trust in that:

- a. ECHS was not a congregation or agency of the LCC;
- b. The loan-to-value ratio in respect of each of the Loans was greater than that which would be commercially acceptable, or alternatively was based on an inflated valuation of the POP Village Lands;
- c. The POP Village development was commenced and continued in the absence of any, or any reliable, financial projections;
- d. ECHS lacked the experience and qualifications to bring the POP Village to successful completion;
- e. ECHS had no ability to service the POP Village Loans;
- f. ECHS did not and was not required to provide financial support to ABC District and/or LCC in exchange for the POP Village Loans;
- g. The POP Village CEF Loans were unsecured or alternatively inadequately secured;

80. The POP Village development was ultimately unsuccessful and ECHS defaulted on the POP Village CEF Loans. There is insufficient equity in ECHS's interest in the POP Village Lands to satisfy the POP Village CEF Loans.

81. By March, 2004, the ABC District, its Officers and Directors, knew or were willfully blind to the fact that the POP Village was losing money every month and that the POP Village was in significant financial difficulty. By 2006, the ABC District, its Officers and Directors knew or were willfully blind to the fact that ECHS was insolvent and was operating at a deficit. Acting in bad faith, and in league with each other, the ABC District, its Officers and Directors from 2004 until 2015;

- a. failed to advise the depositors to the CEF that the POP Village was in significant financial difficulty;
- b. failed to advise the depositors to the CEF that ECHS was insolvent and was operating at a deficit;
- c. willfully concealed the ABC District's financial difficulties from the CEF depositors; and
- d. misrepresented the ABC District's financial situation to the CEF depositors.

G. The POP Congregation Loan

82. The POP Congregation was a small congregation of about 230 members and consistently ran operating deficits. By about 2005, the POP Congregation operating deficit was \$1,200,000.00. It was unable to meet its operational financial requirements and its obligations to ABC District in respect of previous mortgage loans from the CEF.
83. POP Congregation deficits continued to increase and were met by further loans from the ABC District. By about 2008, ABC District advances to the POP Congregation for construction of the church and school and operating deficits had accumulated to \$8,000,000.00 (the "POP Congregation Loan").
84. The LCC and/or LCCFM were aware of and approved the POP Congregation Loan. Alternatively they were willfully blind to the POP Congregation Loan.
85. The POP Congregation Loan violated the mandate of the ABC District's Church Extension Program and the terms of the CEF Trust in that it was granted, in whole or in part, to pay off the POP Congregation debts and to finance its operating deficit and not for the purposes of building churches and schools in which to carry out the ministry of the Lutheran Church.
86. Further, the Prince of Peace Congregation Loan violated the Loan Eligibility Policies, Loan Criteria and Loan Conditions of the ABC District, and the terms of the CEF Trust, in that:
 - a. The POP Congregation was not financially a "congregation in good standing" within the meaning of the ABC District Loan Eligibility Policy;
 - b. The Prince of Peace Congregation Loan was in whole or in part for operating purposes rather than a capital project;
 - c. The POP Congregation had no ability to service the debt;
 - d. The Prince of Peace Congregation Loan was unsecured or alternatively inadequately secured;
 - e. The Prince of Peace Congregation Loan was not accompanied by a Loan

Repayment Agreement signed by the officers of the congregation;

- f. The POP Congregation was operating at a deficit and could not meet its existing financial obligations to the ABC District to repay a previous mortgage loan;
- g. The POP Congregation did not and could not make a commitment to promoting Church Extension deposits among its members; and
- h. The ABC District did not require the POP Congregation to submit its financial statements on an annual basis, or alternatively failed to scrutinize those financial statements to assess the risk that the Prince of Peace Congregation Loan would not be repaid.

87. Further, or in the alternative, the Prince of Peace Congregation Loan violated the terms of the CEF Quistclose Trust, in that:

- a. The POP Congregation Loan was very risky in that the POP Congregation had no ability to service the debt;
- b. The Prince of Peace Congregation Loan was unsecured or alternatively inadequately secured;
- c. The POP Congregation was operating at a deficit and could not meet its existing financial obligations to the ABC District to repay a previous mortgage loan; and
- d. The POP Congregation Loan was used to subsidize operating deficits.

88. In or about 2009, the ABC District on the advice and with the assistance of Taman, forgave \$6,000,000.00 of the \$8,000,000.00 POP Loan in exchange for the right to receive proceeds from the future sale of certain property owned by the POP Congregation (the "POP Congregation Land Sale Proceeds Assignment Agreement").

89. The LCC and/or LCCFM were aware of and approved the POP Congregation Land Sale Proceeds Assignment Agreement. Alternatively they were willfully blind to the Assignment Agreement

90. The POP Congregation Land Sale Proceeds Assignment Agreement does not stipulate a date nor any deadline for the sale of the subject property, and the ABC District has no recourse in the event that the eventual sale proceeds are insufficient to discharge the \$6,000,000.00 loan receivable in full. Accordingly, the POP Congregation Land Sale Proceeds Assignment Agreement is wholly inadequate consideration for ABC District's forgiveness of the POP Congregation's \$6,000,000.00 debt to the CEF Trust or the CEF Quistclose Trust.

H. The Strathmore Loan

91. In or about August 2007, the ABC District approved a CEF mortgage loan of approximately \$5,850,000.00 to ECHS for the purpose of purchasing real property in Strathmore, Alberta (the "Strathmore Lands") and constructing a 50-unit seniors' condominium development (the "Strathmore Loan").
92. The Strathmore Loan contravened the mandate of the ABC District's Church Extension Program and the terms of the CEF Trust, in that it was not made for the purpose of building churches and/or schools in which to carry out the ministry of the Lutheran faith, but rather for the purpose of enabling ECHS to engage in speculative real estate development.
93. Further, the Strathmore Loan was contrary to the policies and procedures of the ABC District Church Extension Fund, and the CEF Trust, in that:
 - a. ECHS was not a "congregation of the ABC District in good standing" nor an institution or entity of the LCC whose constitution, policies and practices were consistent with those of LCC;
 - b. ECHS lacked the experience and qualifications to bring the Strathmore development to successful completion;
 - c. ECHS had no ability to service or repay the Strathmore Loan;
 - d. ECHS did not and was not required to provide financial support to ABC District and/or LCC in exchange for the Strathmore Loan;
 - e. The Strathmore Loan was very risky and inadequately secured;
 - f. The officers of ECHS were not required to sign Loan Repayment Agreements with ABC District in respect of the Strathmore Loan;
 - g. ECHS was not required to make a commitment to promote Church Extension deposits among its members or others; and
 - h. ECHS was not required to submit financial statements to the ABC District, or alternatively the ABC District failed to scrutinize those financial statements to assess the risk to the Strathmore Loan.
94. Further, or in the alternative, the Strathmore Loan was contrary to the terms of the CEF Quistclose Trust in that:
 - a. ECHS was not a congregation or agency of the LCC;

- b. ECHS lacked the experience and qualifications to bring the Strathmore development to successful completion;
 - c. ECHS had no ability to service or repay the Strathmore Loan; and
 - d. The Strathmore Loan was very risky and inadequately secured.
95. In or about August 2008, ECHS transferred the title to the Strathmore Lands to ABC District for consideration of \$1.00. Concurrently, ABC District purported to “extinguish” the Strathmore Loan payable by ECHS to the CEF, thereby simultaneously obtaining the Strathmore Lands on its own account and depriving the CEF Trust or in the alternative the CEF Quistclose Trust of the Strathmore Loan receivable.
96. The LCC and/or LCCFM were aware of the Strathmore Loan and the “extinguishment” of that Loan in exchange for the transfer of the Strathmore Property to ABC District. In the alternative they were willfully blind to said facts.

I. The Shepherd’s Village Loans

97. On July 28, 1999, Shepherd’s Village Ministries Ltd. (“SVML”) was incorporated for the purpose of acquiring acreages of real property in and about Valleyview, Alberta, and developing 75 seniors’ condominium housing units (the “Shepherd’s Village Lands”).
98. From 2004 to 2005, Chowne and Prowse Chowne were the solicitors for both SVML and ABC District
99. From 2006 to 2013, Taman and Bishop & McKenzie were the solicitors for both SVML and ABC District.
100. Between 1999 and 2014, ABC District advanced to SVML either directly or indirectly through ECHS, CEF monies in the total amount of approximately \$17,000,000.00 for the purpose of acquiring and developing the Shepherd’s Village lands (the “Shepherd’s Village CEF Loans”).
101. LCC and/or LCCFM were aware of and approved the ABC District’s decision to make the Shepherd’s Village CEF Advances to SVML. Alternatively they were willfully blind to the said decision.
102. Beginning in 2005, ABC District and SVML were under common control, in that officers and/or directors of ABC District were also officers, directors and/or members of SVML, including (but not limited to): Mark Ruf, Judith Burns, Harold Haberstock and Kwang Soo Kim in 2005, Harold Haberstock, Judith Burns and Kwang Soo Kim in 2006, Donald Schiemann, Harold Haberstock and Judith Burns in 2007, Donald Schiemann and Mark Ruf in 2008, Donald Schiemann and Jim Kentel in 2009, and Donald Schiemann, Mark Ruf and Jim Kentel from 2010 through 2013. Further, from 2007 through 2013, Donald Schiemann

was the President of the ABC District and at the same time the Vice-President of SVML.

103. By virtue of the foregoing, the ABC District, and its Officers and Directors including Mark Ruf, Judith Burns, Harold Haberstock, Kwang Soo Kim, Donald Schiemann and Jim Kentel were in a conflict of interest with respect to the ABC District's dealings with SVML and failed to protect, or in the alternative adequately protect, the interests of the depositors to the CEF.

104. As of November 6, 2006, Taman was the solicitor for SVML.

105. The Shepherd's Village CEF Loans were contrary to the mandate of the ABC District Church Extension Program and the terms of the CEF Trust, in that they were not made for the purpose of building churches and/or schools in which to carry out the ministry of the Lutheran faith, but rather for the purpose of enabling SVML to engage in speculative real estate development.

106. Further, the Shepherd's Village CEF Loans were contrary to the policies and procedures of the ABC District Church Extension Fund, in that:

- a. SVML was not a "congregation of the ABC District in good standing" nor an institution or entity of the LCC whose constitution, policies and practices were consistent with those of LCC;
- b. The loan-to-value ratio in respect of the Shepherd's Village CEF Loans was greater than that which would be commercially acceptable;
- c. The Shepherd's Village development was commenced and continued in the absence of any, or any reliable, financial projections;
- d. SVML lacked the experience and qualifications to bring the Shepherd's Village development to successful completion;
- e. SVML had no ability to service or repay the Shepherd's Village CEF Loans;
- f. SVML did not and was not required to provide financial support to ABC District and/or LCC in exchange for the Shepherd's Village CEF Loans;
- g. The Shepherd's Village CEF Loans were unsecured or alternatively inadequately secured;
- h. The officers of SVML were not required to sign Loan Repayment Agreements with ABC District in respect of the Shepherd's Village CEF Loans;
- i. Shepherd's Village was not required to make a commitment to promote Church Extension deposits among its members or others;

- j. SVML was not required to submit financial statements to the ABC District, or alternatively the ABC District failed to scrutinize those financial statements to assess the risk to the Shepherd's Village CEF Loans.

107. Further, the Shepherd's Village CEF Loans were contrary to the terms of the CEF Quistclose Trust in that:

- a. SVML was not a congregation or agency of the LCC;
- b. The loan-to-value ratio in respect of the Shepherd's Village CEF Loans was greater than that which would be commercially acceptable;
- c. The Shepherd's Village development was commenced and continued in the absence of any, or any reliable, financial projections;
- d. SVML lacked the experience and qualifications to bring the Shepherd's Village development to successful completion; and
- e. SVML had no ability to service or repay the Shepherd's Village CEF Loans;

108. Between 2011 and 2014, ABC District and/or ECHS, forgave \$12,575,685.00 of the Shepherd's Village CEF Loans, thereby depriving the CEF Trust and the CEF Quistclose Trust of those funds.

109. LCC and/or LCCFM were aware of and approved the forgiveness of the Shepherd's Village CEF Loans. In the alternative they were willfully blind to said facts

J. The CCAA Proceedings

110. As a result of the events set out herein, the ABC District was unable to meet its obligations to the depositors to the CEF.

111. Knowing they were unable to meet their obligations to the CEF depositors, the ABC District, its Officers and Directors, acting in bad faith, nevertheless continued to encourage and accept or renew deposits to the CEF up to and including December 31, 2014, and deliberately failed to take any steps to inform the depositors to the CEF that their deposits were at risk.

112. The LCC and/or LCCFM were aware of the insolvency of the ABC District and the impending CCAA application. However, LCC and/or LCCFM took no steps to halt the operations of the CEF, or to inform the depositors to the CEF that their deposits were at risk.

113. On January 2, 2015 ABC District, DIL, ECHS and EMSS (the "Applicants") sought protection from their creditors under the *Company's Creditors Arrangement Act*, RSC 1985, c.C-36, as amended (the "CCAA Proceedings"). An Order to that effect was granted by the Court of Queen's Bench of Alberta on January 23, 2015 in Court of Queen's Bench Action No. 1501-00955.
114. Taman and Bishop McKenzie acted as counsel for the Applicants in the CCAA Proceedings
115. The assets of the ABC District are not sufficient to satisfy its approximately \$97,000,000.00 in total outstanding obligations to its members who have made deposits to the CEF.
116. The unlawful actions of each of the Defendants herein described caused or in the alternative contributed to the insolvency of the ABC District.

K. The Plaintiffs

(i) The Plaintiff Georg Beinert

117. Georg Beinert is 57 years of age and currently resides near Fairview, Alberta.
118. Mr. Beinert was baptized a member of the Trinity Lutheran Church in Fairview, Alberta on Nov. 22, 1959 and later became a communicant member of that church through the solemn rite of Confirmation. He is currently a member of Bethel Lutheran Church in Sherwood Park, Alberta.
119. During the early years of his membership at Bethel Lutheran Church, Mr. Beinert was introduced to the ABC District's Church Extension Program. He understood that money deposited in the CEF would be used to build churches for the purpose of gospel ministry.
120. Mr. Beinert was encouraged in church and ABC District bulletins to deposit money in the CEF and DIL trusts. Many congregations had a member who was a CEF representative. The CEF representative also encouraged deposits.
121. In February of 2001, Mr. Beinert inquired about ABC District options, and how safe they were. The Officers of the ABC District represented to Mr. Beinert that:
- a. The CEF deposits were not insured, but that they were very safe because they were backed by the entire assets of the ABC District.
 - b. The CEF had been in existence for 80 years and no one had ever lost a penny.
 - c. The CEF deposits were "more certain than the guarantee of a government."
122. Relying on these representations, and his understanding of the purpose of the CEF, Mr.

Beinert began to place deposits in the CEF in February of 2001.

123. Mr. Beinert received regular marketing materials thereafter, such as "7 for 7 for 7" indicating an increasing need for more deposits to "Share the Gospel of Jesus Christ."
124. In February of 2013, Mr. Beinert and his wife sold a parcel of agricultural land for \$300,000.00 net of real estate commissions. After the completion of the sale, they met with the Defendant Harold Schmidt, who was the realtor they had selected to handle the real estate negotiations.
125. During the course of their meeting with Harold Schmidt, Mr. Beinert learned that the Defendant Schmidt was a member of the King of Kings Lutheran Church in St. Albert, Alberta. The Defendant Schmidt advised Mr. Beinert that he was also a long-term member of the Board of Directors of the ABC District.
126. Mr. Beinert advised the Defendant Schmidt that he held deposits in the CEF, and inquired where the best place would be for him to place the \$300,000.00 from the sale of the land. Mr. Beinert was eager to learn about the health of the CEF since he was speaking with a member of the Board of Directors of the ABC District.
127. The Defendant Schmidt advised Mr. Beinert that the CEF was "an excellent investment" and that his deposits in the CEF were "totally safe."
128. On the basis of the Defendant Schmidt's representations, and the marketing materials provided to him by the ABC District, Mr. Beinert proceeded to deposit the sum of \$300,000.00 with the CEF. On February 19, 2013, Mr. Beinert spoke with the Defendant Candace Rivet of the ABC District to make arrangements for the deposit, and was given no indication that there were any problems or risks with the CEF Fund. After speaking with the Defendant Rivet, Mr. Beinert then mailed a cheque in the sum of \$300,000.00 to the Church Extension Fund of the ABC District.
129. In January of 2014, Mr. Beinert received a newsletter/marketing flyer from the ABC District with an entire article about the CEF entitled "A Partner in Ministry ... How and Why it Works." There were no indications that the CEF was in financial difficulty, or that the ABC District had suffered losses on its mortgages, loans or other investments.
130. As of December 31, 2014, Mr. Beinert's CEF account balance was approximately \$380,000.00.
131. On the morning of January 15, 2015, Mr. Beinert learned over CBC radio news that the ABC District was insolvent.
132. By letter dated January 5, 2015, which Mr. Beinert received later in the day of January 15, 2015, the ABC District advised Mr. Beinert that it was "facing some hardships" because

“a number of congregations and other ministries have been unable to pay their mortgages ...” Mr. Beinert was further advised that a moratorium was being placed on withdrawals from and deposits to the Church Extension Fund.

133. The current value of his deposits is not currently known, but is substantially less than the book value.

(ii) The Plaintiff Sharon Sherman

134. Sharon Sherman is 65 years of age and resides in Edmonton, Alberta. She is a Christian but is not a member of a Lutheran Church.

135. In 2007, Sharon Sherman and her mother Ruby Sherman made inquiries about Ruby Sherman becoming a resident of the Prince of Peace Manor. Ruby Sherman had been married to a pastor in another Christian denomination, who was now deceased. Ruby Sherman wanted to spend her remaining days living in a Christian environment. Sharon Sherman and Ruby Sherman understood that the Prince of Peace Manor was owned or operated by the Lutheran Church, and made inquiries about Ruby becoming a resident of the Prince of Peace Manor.

136. Sharon and Ruby Sherman were advised by representatives of the Prince of Peace Manor that interest earned on deposits to the CEF would be used to help pay for Ruby Sherman’s accommodation charge at the Prince of Peace Manor. Reduced rent was promoted by the Prince of Peace Manor as an inducement to encourage residency and contributions to the CEF.

137. When inquiring about the safety of CEF deposits, they were told by representative of the POP Manor:

- a. The CEF had operated for over 80 years and had never lost a penny.
- b. The CEF works with congregations to ensure that the congregations are able to meet their repayment obligations, and
- c. “If you can’t trust the Lutheran Church, who can you trust”

138. Relying on these representations, Ruby Sherman placed two CEF deposits with the CEF. The first, in the amount of \$75,000.00, was placed in July, 2007. In October, 2007, she deposited a further \$220,286.00.

139. Ruby Sherman, moved into the Prince of Peace Manor on August 1, 2007. Ruby Sherman was 86 years of age at the time. The monthly charge for accommodation, meals, weekly laundry services and weekly housekeeping was initially \$2,650.00 per month. There were subsequent increases.

140. In October, 2008, Sharon Sherman became a joint owner of Ruby Sherman's two CEF accounts for the purpose of allowing her to assist her mother in handling her financial affairs.
141. As of December 31, 2014, the balance in the first CEF account was \$75,000.00. The balance in the second CEF account was \$220,286.00.
142. By letter dated January 5, 2015, the ABC District advised Ruby Sherman that it was "facing some hardships" because "a number of congregations and other ministries have been unable to pay their mortgages ..." Ruby Sherman was further advised that a moratorium was being placed on withdrawals from and deposits to the Church Extension Fund.
143. Since January, 2015, Ruby Sherman received no interest on her deposits. The current value of her deposits is not currently known, but is substantially less than the book value.
144. Mrs. Ruby Sherman passed away on October 22, 2016. Sharon Sherman is the personal administrator of the estate of Ruby Sherman.

L. PROPOSED CLASS

145. This is a proposed class proceeding on behalf of the Plaintiffs and all depositors in the Lutheran Church – Canada, Alberta and British Columbia District's Church Extension Fund on January 2, 2015 on behalf of the following putative Classes and Sub-classes:
- a. The "Alberta Lutheran Class" consisting of:
- (i) persons resident in Alberta, and the estates of such persons, who are (or were, prior to their death), members of a congregation of the Lutheran-Church Canada;
 - (ii) corporations and societies incorporated under the laws of Alberta and controlled by persons who are members of a congregation of the Lutheran-Church Canada, or controlled by congregations or other institutions based in Alberta which are affiliated with the Lutheran-Church Canada;
 - (iii) sole proprietorships or partnerships carrying on business in Alberta which are owned or controlled by members of a congregation of the Lutheran-Church Canada; and
 - (iv) congregations and other institutions based in Alberta which are affiliated with the Lutheran-Church Canada.
- b. The "Extra-Provincial Lutheran Class" consisting of:
- (i) persons resident outside of Alberta, and the estates of such persons, who are (or were, prior to their death), members of a congregation of the Lutheran-Church Canada;

- (ii) corporations and societies incorporated under the laws of jurisdictions other than Alberta and controlled by members of a congregation of the Lutheran-Church Canada, or controlled by congregations or other institutions based in Alberta which are affiliated with the Lutheran-Church Canada;
 - (iii) sole proprietorships or partnerships carrying on business outside of Alberta which are owned or controlled by a member of a congregation of the Lutheran-Church Canada; and
 - (iv) congregations and other institutions based outside of Alberta which are affiliated with the Lutheran-Church Canada.
- c. The “Alberta Non-Lutheran Sub-class” consisting of:
- (i) persons resident in Alberta, and the estates of such persons, who were not members of a congregation of the Lutheran-Church Canada;
 - (ii) corporations and societies incorporated under the laws of Alberta which are controlled by persons who were not members of a congregation of the Lutheran-Church Canada; and
 - (iii) sole proprietorships or partnerships carrying on business in Alberta which are not owned or controlled by members of a congregation of the Lutheran-Church Canada; and
 - (iv) any other depositor resident in or carrying on business in Alberta.
- d. The “Extra-Provincial Non-Lutheran Class” consisting of:
- (i) persons resident outside of Alberta, and the estates of such persons, who were not members of a congregation of the Lutheran-Church Canada;
 - (ii) corporations and societies incorporated under the laws of jurisdictions other than Alberta which are controlled by persons who were not members of a congregation of the Lutheran-Church Canada;
 - (iii) sole proprietorships or partnerships carrying on business outside of Alberta which are not owned or controlled by members of a congregation of the Lutheran Church – Canada.
 - (iv) any other depositor resident or carrying on business outside of Alberta.

but excluding all members of the putative Classes or Sub-classes who submitted no later than December 15, 2016 an opt-out form in the manner prescribed by the District Sanction Order filed August 5, 2016 in Alberta Court of Queen’s Bench Action No. 1501-00955.

M. Liability of ABC District, LCC and LCCFM

(a) Breach of Trust: ABC District/LCC/LCCFM

146. The funds on deposit in the CEF were impressed with an express or implied trust in favour of the Plaintiffs and the putative Class and Sub-class members (the "CEF Trust").
147. As trustee of the CEF Trust, ABC District had a duty to utilize those monies in accordance with the terms of the CEF Trust, which required it to invest the funds in accordance with the ABC District Church Extension Program mandate, policies and procedures.
148. The ABC District failed to utilize the assets of the CEF Trust in accordance with the terms of the Trust, as follows:
- (a) Utilizing the CEF Trust funds to develop the POP Village Lands on its own account or in partnership with the POP Congregation through the POP Village Advances as set out in paras. 43 - 49, 52, 55 - 56 and 59 herein;
 - (b) Transferring the POP Village Lands to ECHS as set out in paras. 64 - 68 herein;
 - (c) Authorizing the POP Village CEF Mortgage Loan and the POP Village CEF Unsecured Loans to ECHS as set out in paras. 61 - 81 herein;
 - (d) Authorizing the Prince of Peace Congregation Loan as set out in paras. 82 - 87 herein;
 - (e) Entering into the POP Congregation Land Sale Proceeds Assignment Agreement as set out in paras. 88 - 90 herein;
 - (f) Authorizing and extinguishing the Strathmore Loan to ECHS in exchange for title to the Strathmore Lands for its own use as set out in paras. 91 - 95 herein;
 - (g) Authorizing and forgiving the Shepherd's Village CEF Loans as set out in paras. 97 - 108 herein.
 - (h) Lending monies on deposit to the CEF to the LCC to fund the LCC's unfunded pension liabilities.
149. Further, or in the alternative, the funds deposited to the ABC District's CEF were impressed with an express or implied resulting trust in favour of the Plaintiffs and the putative Class and Sub-Class members, the CEF Quistclose Trust.
150. As trustee of the CEF Quistclose Trust, ABC District had a duty to utilize those monies

in accordance with the terms of the CEF Quistclose Trust for the benefit of the CEF depositors.

151. The ABC District failed to utilize the assets of the CEF Quistclose Trust in accordance with the terms of the Trust, as follows:

- a. Using funds on deposit to the CEF for purposes of speculative real estate development of the POP Village on its own account, and not for the purpose of providing assistance to congregations and agencies of the Lutheran Church-Canada;
- b. Utilizing the CEF Quistclose Trust funds to develop the POP Village Lands on its own account through the POP Village Advances as set out in paras. 43 – 58 and 60 herein;
- c. Transferring the POP Village Lands to ECHS as set out in paras. 64 – 68 herein;
- d. Authorizing the POP Village CEF Mortgage Loan and the POP Village CEF Unsecured Loans to ECHS as set out in paras. 61 – 81 herein;
- e. Authorizing the Prince of Peace Congregation Loan as set out in paras. 82 – 87 herein;
- f. Entering into the POP Congregation Land Sale Proceeds Assignment Agreement as set out in paras. 88 – 90 herein;
- g. Authorizing and extinguishing the Strathmore Loan to ECHS in exchange for title to the Strathmore Lands for its own use as set out in para. 91 - 95 herein; and
- h. Authorizing and forgiving the Shepherd's Village CEF Loans as set out in paras. 97 - 108 herein.

152. Further, as trustee of the CEF Trust and the CEF Quistclose Trust, the ABC District owed a legal duty to the CEF depositors, pursuant to s. 3(2) of the *Trustee Act*, RSA 2000 c T-8, to invest the trust funds with a view to obtaining a reasonable return while avoiding undue risks, having regard to the nature of the trust. For the reasons stated herein, the ABC District breached its duties under the *Trustee Act*, as a result of which the Plaintiffs and the Class and Sub-class members have suffered damages and loss.

153. The POP Village CEF Loans were fraudulent and dishonest schemes, in that they were knowingly advanced by the ABC District to ECHS for the purpose of divesting the ABC District of the failing POP Village Development and its associated financial liabilities, and instead recording the POP Village CEF Mortgage Loan as an asset in the CEF mortgage portfolio, for the benefit of ECHS and not for the benefit of the beneficiaries of the CEF and CEF Quistclose Trusts, and constituted a risk and prejudice to the interests of the beneficiaries of the CEF and CEF Quistclose Trusts that the ABC District knew it was not

entitled to take.

154. The POP Congregation Loan was a fraudulent and dishonest scheme, in that it was advanced by the ABC District to the POP Congregation for the purpose of enabling the POP Congregation to pay for its operating deficits, and to meet its debt obligations to the ABC District under a previous mortgage which was in default, for the benefit of the POP Congregation and not for the benefit of the beneficiaries of the CEF and CEF Quistclose Trusts, and constituted a risk and prejudice to the interests of the beneficiaries of the CEF and CEF Quistclose Trusts that the ABC District knew it was not entitled to take.
155. The POP Congregation Land Sale Proceeds Assignment Agreement was a knowingly fraudulent and dishonest scheme, in that the forgiveness of \$6 million of the POP Congregation Loan in exchange for the right to receive proceeds from the future sale of land owned by the POP Congregation was wholly inadequate consideration for the ABC District's forgiveness of the debt, and it deprived the CEF of a \$6 million loan receivable. The Sale Proceeds Assignment Agreement was for the benefit of the POP Congregation and not for the benefit of the beneficiaries of the CEF and CEF Quistclose Trusts, and constituted a risk and prejudice to the interests of the beneficiaries of the CEF and CEF Quistclose Trusts that the ABC District knew it was not entitled to take.
156. The transfer of the Strathmore Lands to the ABC District for \$1.00, and the extinguishment of the Strathmore Loan payable by ECHS to the CEF, was a knowingly fraudulent and dishonest scheme, in that it deprived the CEF of the Strathmore Loan receivable, it was for the benefit of ECHA and not for the benefit of the beneficiaries of the CEF and CEF Quistclose Trusts, and it constituted a risk and prejudice to the interests of the beneficiaries of the CEF and CEF Quistclose Trusts that the ABC District knew it was not entitled to take.
157. The forgiveness of the Shepherd's Village CEF Loans by the ABC District was a fraudulent and dishonest scheme, in that it deprived the CEF Trust or the CEF Quistclose Trust of those funds, it was for the benefit of SVML and not for the benefit of the beneficiaries of the CEF and CEF Quistclose Trusts, and constituted a risk and prejudice to the interests of the beneficiaries of the CEF and CEF Quistclose Trusts that the ABC District knew it was not entitled to take.
158. By reason of the foregoing, the ABC District breached the CEF Trust and the CEF Quistclose Trust, causing damages to the Plaintiffs and the putative Class and Sub-class members.
159. As participants in the joint enterprise that is the ABC District's Church Extension program, LCC and/or LCCFM are jointly and severally liable to the Plaintiffs and putative class and Sub-class members for ABC District's breaches of the CEF Trust and CEF Quistclose Trust as set out herein.
160. In the alternative, LCC and/or LCCFM knowingly assisted ABC District to breach the

CEF Trust and the CEF Quistclose Trust and are therefore jointly and severally liable to the Plaintiffs and the putative Class and Sub-class members for rendering knowing assistance to a breach of trust.

161. Further, or in the alternative, LCC and/or LCCFM knowingly received proceeds from the CEF Trust as a result of ABC District's breach of trust by way of payments made by District to the LCC and/or LCCFM. Accordingly, LCC and/or LCCFM are jointly and severally liable to the Plaintiffs and Class and Sub-class members and are constructive trustees of those monies for the benefit of the Plaintiffs and the putative Class and Sub-class members.

(b) Breach of Contract: ABC District/LCC/LCCFM

162. In the alternative, upon receiving monies from the Plaintiffs and putative Class and Sub-class members for the purpose of deposit to the CEF, the ABC District agreed to repay those monies to the Plaintiffs and putative Class and Sub-class members,

- a. With respect to savings accounts, on demand and with interest at a rate set by the ABC District from time to time; and
- b. With respect to term deposits, on the maturity date with interest at a rate set by the ABC District at the date of deposit.

163. In breach of its agreements with the Plaintiffs and putative Class and Sub-class members, the ABC District has failed or refused to pay to the Plaintiffs and putative Class and Sub-class members their monies held on deposit with the CEF plus accrued interest,

- a. With respect to term deposits, on the maturity date(s); and
- b. With respect to savings accounts, at all.

164. On January 2, 2015 ABC District breached its agreements with the Plaintiffs and putative Class and Sub-class members when it notified them that withdrawals from the CEF had been suspended, and it sought protection from its creditors in the *CCAA* proceedings.

165. As participants in the joint enterprise that was the ABC District Church Extension Program, LCC and LCCFM are jointly and severally liable to the Plaintiffs and putative Class and Sub-class members for ABC District's breach of contract.

(c) Breach of Fiduciary Duty: ABC District/LCC/LCCFM

166. Further, by virtue of its position as trustee of the CEF Trust and or in the alternative the CEF Quistclose Trust, the ABC District was in a position to unilaterally exercise power or discretion over the monies of the Plaintiff Beinert and the putative Alberta Lutheran Class

and Extra-provincial Lutheran Class members deposited in the CEF Trust and the CEF Quistclose Trust so as to significantly affect their interests.

167. Further, the Plaintiff Beinert and the putative Alberta Lutheran Class and Extra-provincial Lutheran Class members were particularly vulnerable to ABC District's exercise of power or discretion by virtue of the ABC District's position of religious leadership and moral authority over them. Accordingly, and by its own admission, the ABC District owed fiduciary duties to the Plaintiff Beinert and the putative Alberta Lutheran Class and Extra-provincial Lutheran Class members in respect of their deposits to the CEF Trust and the CEF Quistclose Trust, including duties of loyalty, honesty, good faith, and avoidance of any conflict between its duty to the Plaintiffs and putative Class members and its own self-interest.
168. The ABC District breached its fiduciary duties to the Plaintiff Beinert and putative Alberta Lutheran Class and Extra-provincial Lutheran Class members in respect of the CEF Trust by:
- a. Using funds on deposit to the CEF Trust for purposes of speculative real estate development of the POP Village on its own account, or alternatively in partnership with the POP Congregation, and not for the purposes of investment in accordance with the ABC District Church Extension Program mandate as set out in paras. 43 – 60 herein;
 - b. Failing to repay the CEF POP Village Advances to the CEF from the proceeds of sale of life leases in the POP Village as set out in para. 58 herein;
 - c. Authorizing the POP Village CEF Mortgage Loan and the POP Village CEF Unsecured Loans to ECHS, a company under common control with ABC District, for purposes of speculative real estate development contrary to the ABC District Church Extension Program mandate, policies and procedures as set out in paras. 61 - 81 herein;
 - d. Transferring the POP Village Lands to ECHS and authorizing the POP Village CEF Mortgage Loan and the POP Village CEF Unsecured Loans for the sole purpose of avoiding disclosure of the POP Village development's finances to the Plaintiff Beinert and putative Alberta Lutheran Class and Extra-provincial Lutheran Class members as set out in paras. 61 -68 herein;
 - e. Preferring the interests of the POP Congregation to those of its depositors and the beneficiaries to the CEF Trust, including the Plaintiff Beinert and putative Alberta Lutheran Class and Extra-provincial Lutheran Class members, by entering into the POP Congregation Land Sale Proceeds Assignment Agreement as set out in paras. 88 – 90 herein;
 - f. Acquiring the Strathmore Lands from ECHS for its own use by "extinguishing"

\$6,000,000.00 of mortgage debt payable by ECHS to the CEF as set out in paras. 91 - 95 herein;

- g. Authorizing the Shepherd's Village CEF Loans as set out in paras. 97 - 106 herein;
- h. Forgiving \$12,575,685.00 of the Shepherd's Village CEF Loans as set out in para. 108 herein;
- i. Continuing to solicit and accept deposits to the CEF when ABC District knew or was willfully blind to the fact that it was insolvent and unable to meet its obligations to depositors to the CEF as set out in para. 111 herein; and
- j. Lending monies on deposit to the CEF to the LCC to fund the LCC's unfunded pension liabilities.

all of which caused damages and loss to the Plaintiff Beinert and putative Alberta Lutheran Class and Extra-provincial Lutheran Class members.

169. Further, or in the alternative, the ABC District breached its fiduciary duties to the Plaintiff Beinert and putative Alberta Lutheran Class and Extra-provincial Lutheran Class members in respect of the CEF Quistclose Trust by:

- a. Using funds on deposit to the CEF Quistclose Trust for purposes of speculative real estate development of the POP Village on its own account, and not for the purpose of providing assistance in the mission and ministry of congregations and agencies of Lutheran Church-Canada as set out in paras. 43 – 58 and 60 herein.
- b. Failing to repay the CEF POP Village Advances to the CEF from the proceeds of sale of life leases in the POP Village as set out in para. 58 herein;
- c. Authorizing the POP Village CEF Mortgage Loan and the POP Village CEF Unsecured Loans to ECHS, a company under common control with ABC District, for purposes of speculative real estate development contrary to the terms of the CEF Quistclose Trust, as set out in paras. 61 – 81 herein;
- d. Transferring the POP Village Lands to ECHS and authorizing the POP Village CEF Mortgage Loan and the POP Village CEF Unsecured Loans for the sole purpose of avoiding disclosure of the POP Village development's finances to the Plaintiff Beinert and putative Alberta Lutheran Class and Extra-provincial Lutheran Class members as set out in para. 67 herein;
- e. Preferring the interests of the POP Congregation to those of the CEF depositors and the beneficiaries to the CEF Quistclose Trust, including the Plaintiff Beinert and the putative Alberta Lutheran Class and Extra-provincial Lutheran Class members, by

entering into the POP Congregation Land Sale Proceeds Assignment Agreement as set out in paras. 88 - 90 herein;

- f. Acquiring the Strathmore Lands from ECHS for its own use by “extinguishing” \$6,000,000.00 of mortgage debt payable by ECHS to the CEF as set out in paras. 91 – 95 herein;
- g. Authorizing the Shepherd’s Village CEF Loans as set out in paras. 97 = 105 and 107 herein;
- h. Forgiving \$12,575,685.00 of the Shepherd’s Village CEF Loans as set out in para. 108 herein;
- i. Continuing to solicit and accept or renew deposits to the CEF when ABC District knew or was willfully blind to the fact that it was insolvent and unable to meet its obligations to depositors to the CEF as set out in para. 111 herein

all of which caused damages and loss to the Plaintiff Beinert and the putative Alberta Lutheran Class and Extra-provincial Lutheran Class members.

170. As participants in the joint enterprise that was the ABC District Church Extension Program, LCC and/or LCCFM are jointly and severally liable to the Plaintiff Beinert and putative Alberta Lutheran Class and Extra-provincial Lutheran Class members for ABC District’s breaches of fiduciary duty as set out herein.

171. Further, or in the alternative, LCC and/or LCCFM knowingly assisted ABC District to breach its fiduciary duty to the Plaintiff Beinert and putative Alberta Lutheran Class and Extra-provincial Lutheran Class members and accordingly are jointly and/or severally liable for that breach.

(d) Negligence: ABC District/LCC/LCCFM

172. It was reasonably foreseeable to the ABC District that failure to take reasonable care in the investment of the monies received from the Plaintiffs and putative Class and Sub-class members for deposit into the CEF would result in the loss of those monies and damage to the Plaintiffs and putative Class and Sub-Class members.

173. Further:

- a. the ABC District had a distinctly religious purpose;
- b. funds deposited to the CEF were to be used for religious purposes, namely building churches and schools to carry out the ministry of the Lutheran faith or to support the mission and ministry of congregations or agencies of the LCC.

- c. The depositors in the CEF, to the knowledge of the ABC District, were members of the Lutheran or other Christian faiths, or in the case of businesses, were owned or controlled by members of the Lutheran Faith.

174. Accordingly, the ABC District owed a duty of care to the Plaintiffs and putative Class and Sub-class members to take reasonable care in the investment of the monies received from the Plaintiffs and putative Class and Sub-class members for deposit into the CEF.

175. The ABC District breached its duty of care to the Plaintiffs and putative Alberta Class and Sub-class members by way of conduct including but not limited to:

- a. With respect to the POP Village Lands and the CEF POP Village Advances and the POP Village CEF Loans, by way of the conduct set out in paras. 43 - 81 herein;
- b. With respect to the Prince of Peace Congregation Loan, by way of the conduct set out in paras. 82 - 90 herein;
- c. With respect to the Strathmore Loan, by way of the conduct set out in paras. 91 - 95 herein;
- d. With respect to the Shepherd's Village CEF Loans, by way of the conduct set out in paras. 97 - 108 herein;

thereby causing damages and loss to the Plaintiffs and putative Alberta District Class and Sub-class and Extra-provincial District Class and Sub-class members.

176. As participants in the joint enterprise that was the ABC District's Church Extension Program, LCC and LCCFM are jointly and severally liable to the Plaintiffs and putative Class and Sub-class members for ABC District's negligence in the operation of the Church Extension Program.

(e) Vicarious Liability of LCC

177. In the alternative, at all times material to these proceedings the ABC District acted as the agent of LCC and/or LCCFM in the operation and administration of the ABC District's Church Extension Program. The acts, omissions and breaches of duty of ABC District as set out herein occurred within the normal course of the business of LCC and/or LCCFM, and were within the actual or ostensible authority granted to ABC District by LCC and/or LCCFM. Accordingly, LCC and/or LCCFM are vicariously liable for the acts, omissions and breaches of duty of ABC District set out herein.

N. Liability of Encharis Community Housing and Services and the Officers and Directors of ECHS.

178. ECHS and the ABC District were at all times material hereto under common control.

179. Further:

- a. ECHS and the ABC District and their respective Officers and Directors were subject to the same governance and administration policies established by LCCFM with respect to funds deposited in the CEF;
- b. ECHS and their Officers and Directors knew of, or were willfully blind to, the existence of the CEF Trust or in the alternative, the existence of the CEF Quistclose Trust; and
- c. All of the Officers and Directors of ECHS were members of a Lutheran congregation.

180. ECHS and its Officers and Directors knew or were willfully blind to the fact that:

- a. ECHS was insolvent and operating at a deficit, and that ECHS had no reasonable prospect of repaying the POP Village CEF Loans;
- b. The POP Village Lands had been purchased and developed with monies from the CEF Trust or from the CEF Quistclose Trust, that the proceeds of the POP Village CEF Loans originated in the CEF Trust or alternatively with the CEF Quistclose Trust, that the POP Village Lands had been transferred to ECHS, and the POP Village CEF Loans made to it by ABC District, in breach of the CEF Trust or alternatively the CEF Quistclose Trust;
- c. The POP Village CEF Mortgage Loans were fraudulent and dishonest schemes, in that they were knowingly advanced by the ABC District to ECHS for the purpose of divesting the ABC District of the failing POP Village Development and its associated financial liabilities, and instead recording the POP Village CEF Mortgage Loan as an asset in the CEF mortgage portfolio for the benefit of ECHS and not for the benefit of the beneficiaries of the CEF and CEF Quistclose Trusts;
- d. The proceeds of the Strathmore Loan originated in the CEF Trust or the CEF Quistclose Trust, and that the extinguishment of the Strathmore Loan deprived the CEF Trust of the CEF Quistclose Trust of the Strathmore Loan receivable, in breach of the CEF Trust and the CEF Quistclose Trust.
- e. The transfer of the Strathmore Lands to the ABC District for \$1.00, and the extinguishment of the Strathmore Loan payable by ECHS to the CEF, was a fraudulent and dishonest scheme, in that it deprived the CEF Trust of the Strathmore Loan receivable, it was for the benefit of ECHS and not for the benefit of the

beneficiaries of the CEF and CEF Quistclose Trusts,

all of which was done pursuant to a dishonest and fraudulent scheme which was for the benefit of ECHS and not for the benefit of the beneficiaries of the CEF Trust and the CEF Quistclose Trust, and which constituted a risk and a prejudice to the interests of the beneficiaries of the CEF and Quistclose Trusts that ECHS and its Officers and Directors knew that the ABC District was not entitled to take.

181. ECHS and its Officers and Directors are liable to the Plaintiffs and the Class and Sub-class members for knowingly participating in and facilitating the breach of trust by the ABC District.

182. Further, ECHS and its Officers and Directors are liable to the Plaintiffs and the Class and Sub-class members for knowing receipt of the POP Village Lands and the proceeds of the POP Village CEF Loans acquired in breach of trust, and are a constructive trustee or alternatively a resulting trustee of the POP Village Lands and the proceeds of the POP Village CEF Loans for the benefit of the Plaintiffs and the Class and Sub-class members.

O. Liability of Shepherd's Village Ministries Ltd. and the Officers and Directors of Shepherd's Village Ministries Ltd.

183. SVML and the ABC District were at all times material hereto under common control.

184. Further:

a. SVML and the ABC District and their respective Officers and Directors were subject to the same governance and administration policies established by LCCFM with respect to funds deposited in the CEF;

b. SVML and its Officers and Directors knew of, or were willfully blind to, the existence of the CEF Trust or in the alternative, the existence of the CEF Quistclose Trust.

c. All of the Officers and Directors of SVML were members of a Lutheran congregation.

185. SVML and its Officers and Directors knew or were willfully blind to the fact that the Shepherd's Village Lands had been purchased with monies obtained from the CEF Trust or the CEF Quistclose Trust, that the proceeds of the Shepherd's Village CEF Loans originated in the CEF Trust or in the alternative in the CEF Quistclose Trust, that the Loans made to it by ABC District were in breach of the CEF Trust or alternatively the CEF Quistclose Trust, and that the ABC District had forgiven \$12 million of the Shepherd's Village CEF Loans, all of which was done pursuant to a dishonest and fraudulent scheme which was for the benefit of SVML and not for the benefit of the beneficiaries of the CEF

Trust and the CEF Quistclose Trust, and which constituted a risk and prejudice to the interests of the beneficiaries of the CEF and Quistclose Trusts that SVML and its Officers and Directors knew that the ABC District was not entitled to take.

186. SVML and its Officers and Directors knowingly participated in and facilitated the breach of trust by the ABC District.

187. Further, SVML and its Officers and Directors are liable to the Plaintiffs and putative Class and Sub-class members for knowing receipt of the Shepherd's Village Lands and the proceeds of the SVML CEF Loans acquired in breach of trust, and are a constructive trustee or alternatively a resulting trustee of the Shepherd's Village Lands and the proceeds of the SVML CEF Loans for the benefit of the Plaintiffs and putative Class and Sub-class members.

P. Liability of Taman and Bishop & McKenzie LLP

188. At all times material to these proceedings Taman was a member of the POP Congregation, the Chairman of the POP Congregation's Housing Committee, and counsel for both ABC District and ECHS.

189. Taman knew of the existence of the CEF Trust and the CEF Quistclose Trust or alternatively was willfully or recklessly blind to the existence of the CEF Trust and the CEF Quistclose Trust.

190. Taman knew or was willfully blind to the fact that the use of CEF monies to finance the purchase and development of the POP Village Lands contravened the intent and purpose of the ABC District Church Extension Program and the terms of the CEF Trust or alternatively the CEF Quistclose Trust.

191. Acting in bad faith, and for an improper purpose, Taman advised ABC District with respect to, and knowingly facilitated, the following breaches of duty by ABC District for his own direct and/or indirect personal financial benefit in :

- a. The ABC District's breaches of trust as set out in paras. 146 – 161 herein, and
- b. The ABC District's breaches of fiduciary duty as set out in para. 166 – 168 herein,

in order to preserve the relationship between his law firm and the ABC District, to generate legal work and legal fees for himself and his law firm, and to garner future legal work, all of which caused the Plaintiffs and putative Class and Sub-class members to suffer damages and loss.

192. Accordingly, Taman is jointly and severally liable along with the ABC District for the damages and loss caused to the Plaintiffs and putative Class and Sub-class members as a result of those breaches of duty.
193. Acting in bad faith, and for an improper purpose, Taman advised SVML with respect to, and knowingly facilitated, SVML's receipt of the Shepherd's Village Lands and the proceeds of the SVML CEF Loans in breach of the CEF Trust and the CEF Quistclose Trust.
194. Taman knew or was willfully blind to the fact that
- a. the use of CEF monies to finance the purchase and development of the Shepherd's Village Lands contravened the intent and purpose of the ABC District Church Extension Program and the terms of the CEF Trust or alternatively the CEF Quistclose Trust; and
 - b. The forgiveness of the Shepherd's Village CEF Loans by the ABC District was a fraudulent and dishonest scheme, in that it deprived the CEF Trust or the CEF Quistclose Trust of those funds, it was for the benefit of SVML and not for the benefit of the beneficiaries of the CEF and CEF Quistclose Trusts, and constituted a risk and prejudice to the interests of the beneficiaries of the CEF and CEF Quistclose Trusts that Taman knew it was not entitled to take.
195. Taman advised SVML with respect to the receipt of the Shepherd's Village Lands and the proceeds of the SVML CEF Loans, and knowingly facilitated the breaches of the CEF Trust and the CEF Quistclose Trust in order to preserve the relationship between his law firm and SVML, and to generate legal work and fees for himself and his firm.
196. Accordingly, Taman is jointly and severally liable with SVML to the Plaintiffs and the members of the putative Class and Sub-class members for breach of trust, rendering knowing assistance to the breach of the CEF Trust or alternatively the CEF Quistclose Trust and/or knowing receipt of the Shepherd's Village Lands and the proceeds of the SVML CEF Loans in breach of the CEF Trust or alternatively the CEF Quistclose Trust.
197. Taman advised the POP Congregation and/or the ABC District with respect to the POP Congregation Land Sale Proceeds Assignment Agreement referenced in paras. 88 – 90 herein.
198. Taman knew or was willfully blind to the fact that:
- a. The POP Congregation Land Sale Proceeds Assignment Agreement was a fraudulent and dishonest scheme, in that the forgiveness of \$6 million of the POP Congregation Loan in exchange for the right to receive proceeds from the future sale of land owned by the POP Congregation was wholly inadequate consideration for the ABC District's forgiveness of the debt, and it deprived the CEF of a \$6

million loan receivable, and

- b. The Sale Proceeds Assignment Agreement was for the benefit of Taman's own congregation, the POP Congregation, and not for the benefit of the beneficiaries of the CEF and CEF Quistclose Trusts, and constituted a risk and prejudice to the interests of the beneficiaries of the CEF and CEF Quistclose Trusts that the ABC District knew it was not entitled to take.
 199. Taman advised the ABC District and/or the POP Congregation with respect to the POP Congregation Land Sale Proceeds Assignment Agreement, and knowingly facilitated the breaches of the CEF Trust and the CEF Quistclose Trust in order to preserve the relationship between his law firm and SVML, and to generate legal work and fees for himself and his firm.
 200. Accordingly, Taman is jointly and severally liable with the ABC District and/or the POP Congregation to the Plaintiffs and the members of the putative Class and Sub-class members for breach of trust, rendering knowing assistance to the breach of the CEF Trust or alternatively the CEF Quistclose Trust.
 201. Further, at all times material to this proceeding Taman was acting in the ordinary course of the business of Bishop & McKenzie LLP or with the authority of his partners therein. Accordingly, Bishop & McKenzie LLP is vicariously liable for Taman's breaches of duty and wrongful acts as set out in paras. 188 - 199 herein.
 202. In the alternative, Bishop & McKenzie LLP had actual knowledge of the wrongful conduct of Taman as set out herein, or was reckless or willfully blind thereto. Therefore, Bishop & McKenzie LLP is liable to the Plaintiffs and the putative Class and Sub-class members for the wrongful conduct of Taman as set out in paras. 188 - 199 herein.
- Q. Liability of Chowne and Prowse Chowne**
203. Between 2002 and 2005, Ronald Chowne Q.C. of Prowse Chowne advised SVML with respect to, and knowingly facilitated, SVML's receipt of the Shepherd's Village Lands and the proceeds of the SVML CEF Loans from ABC District.
 204. Chowne knew of the existence of the CEF Trust and the CEF Quistclose Trust. Alternatively, he was willfully or recklessly blind to the existence of the CEF and CEF Quistclose Trusts.
 205. Chowne knew or was willfully blind to the fact that the use of the CEF monies to finance the purchase and development of the Shepherd's Village Lands contravened the intent and purpose of the ABC District Church Extension Program and the terms of the CEF Trust or alternatively the CEF Quistclose Trust, and was a dishonest and fraudulent scheme.
 206. Acting in bad faith, and for an improper purpose, Chowne knowingly facilitated the

breach of the CEF Trust or alternatively the CEF Quistclose Trust by the ABC District, or was willfully blind to the breach of the CEF Trust or alternatively the CEF Quistclose Trust, in order to preserve the relationship between his law firm and SVML, to generate legal work and legal fees for himself and his law firm, and to garner future legal work, all of which caused the Plaintiffs and putative Class and Sub-class members to suffer damages and loss.

207. Accordingly, Chowne and Prowse Chowne are jointly and severally liable with SVML and the ABC District to the Plaintiffs and the members of the putative Alberta District Class and Sub-class and the Extra-provincial District Class and Sub-class for breach of trust, rendering knowing assistance to the breach of the CEF Trust or alternatively the CEF Quistclose Trust and/or knowing receipt of the Shepherd's Village Lands and the proceeds of the SVML CEF Loans in breach of the CEF Trust or alternatively the CEF Quistclose Trust.
208. In January 2006, Ronald Chowne, Q.C. of Prowse Chowne was counsel to ABC District in respect of the POP Village CEF Mortgage Loan to ECHS.
209. Chowne knew or was willfully blind to the fact that:
- a. the CEF Mortgage Loan contravened the intent and purpose of the ABC District Church Extension Program and the terms of the CEF Trust or alternatively the CEF Quistclose Trust, and that the POP Village CEF Mortgage Loans were fraudulent and dishonest schemes; and
 - b. The POP Village CEF Mortgage Loans were knowingly advanced by the ABC District to ECHS for the purpose of divesting the ABC District of the failing POP Village Development and its associated financial liabilities, and instead recording the POP Village CEF Mortgage Loan as an asset in the CEF mortgage portfolio for the benefit of ECHS and not for the benefit of the beneficiaries of the CEF and CEF Quistclose Trusts, and constituted a risk and prejudice to the interests of the beneficiaries of the CEF and CEF Quistclose Trusts that the ABC District knew it was not entitled to take.
210. Acting in bad faith, and for an improper purpose, Chowne advised the ABC District with respect to the CEF Mortgage Loan and knowingly facilitated the breach of the CEF Trust or alternatively the CEF Quistclose Trust by the ABC District in order to preserve the relationship between his law firm and the ABC District, to generate legal work and legal fees for himself and his law firm, and to garner future legal work, all of which caused the Plaintiffs and putative Class and Sub-class members to suffer damages and loss.
211. At all times material to this proceeding Chowne was acting in the ordinary course of the business of Prowse Chowne LLP and/or with the authority of his partners therein. Accordingly, Prowse Chowne LLP is vicariously liable for Chowne's breaches of duty and wrongful acts as set out in paras. 203 - 210 herein.

212. In the alternative, Prowse Chowne LLP had actual knowledge of the wrongful conduct of Chowne as set out herein, or was reckless or willfully blind thereto. Therefore, Prowse Chowne is liable to the Plaintiffs and putative Class and Sub-class members for the conduct of Chowne as set out in paras. 203 - 210 herein.

213. Further, at all times material to this proceeding Chowne was acting in the ordinary course of the business of Prowse Chowne LLP and/or with the authority of his partners therein. Accordingly, Prowse Chowne LLP is vicariously liable for Chowne's breaches of duty and wrongful acts as set out in paras. 203 - 210 herein.

R. Liability of ABC District Officers and Directors

a. Negligence

214. It was reasonably foreseeable that failure to take reasonable precautions with respect to the investment of monies received from the Plaintiffs and the putative Class and Sub-class members would result in the loss of those monies and damage to the Plaintiffs and the Class and Sub-class members.

215. Further:

- a. all of the ABC Officers and Directors were members of congregations of the LCC and held positions of leadership in their congregations;
- b. at all times material hereto, all of the Presidents, Vice Presidents and Secretaries of the ABC District were Directors of the ABC District and ordained ministers in the LCC, save and except for Rhonda Buck, who was secretary from 2012-2015;
- c. the Officers and Directors of the ABC District knew, or were willfully blind to the fact that funds deposited to the CEF had a uniquely religious purpose and that the funds were to be used for building churches and schools to carry out the ministry of the Lutheran faith (the CEF Trust) and, or in the alternative, to support the mission and ministry of congregations and agencies of the LCC (the CEF Quistclose Trust).
- d. the Officers and Directors of the ABC District knew that the vast majority of the depositors to the CEF were fellow members of Lutheran congregations, and that those who were not Lutheran were members of other Christian faiths.

216. By virtue of the foregoing, the ABC Officers and Directors owed the Plaintiffs and the putative Class and Sub-class members a common law duty of care to exercise the care, skill and diligence of a reasonably prudent person in comparable circumstances and specifically, to use the monies on deposit in the CEF for the purposes of:

- a. investment in accordance with the mandate and policies of the ABC District's Church Extension Program, and, or in the alternative,
- b. assisting in the mission and ministry of congregations and agencies of the LCC.

Liability of 1997-2000 ABC Board of Directors and Officers

217. The 1997-2000 ABC Board of Directors and Officers breached their duty of care to the Plaintiffs and the Class and Sub-class members by way of conduct including, but not limited to:
- a. With respect to the POP Village Lands and the CEF POP Village Advances, by way of authorizing, directing and approving the conduct set out in paras. 43 - 60 herein;
 - b. With respect to the Shepherd's Village CEF Loans, by way of authorizing, approving and directing the conduct set out in paras. 97 - 107 herein;

Liability of 2000-2003 ABC Board of Directors and Officers

218. The 2000-2003 ABC Board of Directors and Officers breached their duty of care to the Plaintiffs and the Class and Sub-class members by way of conduct including, but not limited to:
- a. With respect to the POP Village Lands and the CEF POP Village Advances, by way of authorizing, directing and approving the conduct set out in paras. 43 - 60 herein;
 - b. With respect to the Shepherd's Village CEF Loans, by way of authorizing, directing and approving the conduct set out in paras. 97 - 107 herein;

Liability of 2003-2006 ABC Board of Directors and Officers

219. The 2003-2006 ABC Board of Directors and Officers breached their duty of care to the Plaintiffs, the Class and Sub-class members by way of conduct including, but not limited to:
- a. With respect to the POP Village Lands and the CEF POP Village Advances, by way of authorizing, directing and approving the conduct set out in paras. 43 - 60 herein;
 - b. With respect to the Shepherd's Village CEF Loans, by way of authorizing, directing and approving the conduct set out in paras. 97 - 107 herein;
 - c. With respect to the transfer of the POP Village Lands to ECHS, and the extension of the POP Village CEF Loans, by authorizing, directing and approving the conduct set out in paras. 61 - 81 herein.

Liability of 2006-2009 ABC Board of Directors and Officers

220. The 2006-2009 ABC Board of Directors and Officers breached their duty of care to the Plaintiffs and putative Class and Sub-class members by way of conduct including but not limited to:
- a. With respect to the transfer of the POP Village Lands to ECHS, and the extension of the POP Village CEF Loans, by authorizing, directing and approving the conduct set out in paras. 61 – 81 herein;
 - b. With respect to the Prince of Peace Congregation Loan, by authorizing, directing and approving the conduct set out in paras. 82 - 90 herein;
 - c. With respect to the Strathmore Loan, by authorizing, directing and approving the conduct set out in paras. 91 – 95 herein; and
 - d. With respect to the Shepherd's Village CEF Loans, by authorizing, directing and approving the conduct set out in paras. 97 – 107 herein.

Liability of 2009-2012 ABC Board of Directors and Officers

221. The 2009-2012 ABC Board of Directors breached their duty of care to the Plaintiffs and putative Class and Sub-class members by way of conduct including but not limited to:
- a. With respect to the Prince of Peace Congregation Loan, by authorizing, directing and approving the conduct set out in para. 88 – 90 herein;
 - b. With respect to the Shepherd's Village CEF Loans, by authorizing, directing and approving the conduct set out in paras. 97 – 108 herein.

Liability of 2012-2015 ABC Board of Directors and Officers

222. The 2012-2015 ABC Board of Directors and Officers breached their duty of care to the Plaintiffs and Class and Sub-class members by way of conduct including but not limited to:
- a. With respect to the Shepherd's Village CEF Loans, by authorizing, directing and approving the conduct set out in paras. 97 - 108 herein.
223. The ABC Board of Directors and Officers breached their duty of care to the putative Class and Sub-class members by authorizing, directing and approving actions and schemes of the ABC District which they knew were dishonest and fraudulent, or in the alternative they were willfully blind to the dishonest and fraudulent schemes of the ABC District, for

the purpose of preferring or promoting their own personal interests and, or in the alternative, the interests of the POP Congregation and, or in the alternative, the interests of SVML and, or in the alternative, the interests of ECHS, and not the interests of the ABC District or the CEF depositors. Further, the ABC District Officers and Directors who were in conflicts of interest as previously described failed to disclose them.

224. Further, the actions of the Officers and the Board of Directors of the ABC District were themselves dishonest and fraudulent in that they knowingly authorized, directed and approved risks which they knew that the ABC District had no right to take, resulting in prejudice to the CEF depositors, in circumstances where the Officers and Directors were in undisclosed conflicts of interest.

225. As a result of the foregoing, the Plaintiffs and the putative Class and Sub-Class members have suffered damages and loss.

b. Knowing Participation in a Breach of Trust

226. The Officers and Directors of the ABC District knew of the existence of the CEF Trust and the CEF Quistclose Trust. Alternatively, they were willfully or recklessly blind to the existence of the CEF Trust and the CEF Quistclose Trust.

227. The Officers and Directors of the ABC District caused, facilitated or participated in the breach of trust by the ABC District by knowingly approving, directing and assisting in the dishonest and fraudulent schemes of the ABC District described in paragraphs 153 - 157 herein, or by authorizing, directing and approving knowingly wrongful risks which they knew the ABC District had no right to take, resulting in prejudice, loss and damages to the Plaintiffs and the Class and Sub-class members.

228. In the alternative, the Officers and Directors of the ABC District caused or facilitated the breach of trust by the ABC District by approving, assisting and participating in the ABC District's schemes in circumstances where they were willfully or recklessly blind to the dishonest and fraudulent nature of the ABC District's schemes, resulting in prejudice, loss and damages to the Plaintiffs and the Class and Sub-class members.

229. By virtue of the foregoing, the Plaintiffs and the Class and Sub-Class members have suffered damages and losses.

S. Oppression

230. By virtue of the religious character of the ABC District, its Officers and Directors, and the unique nature and purpose of the CEF Trust and the CEF Quistclose Trust, the Plaintiffs and the putative Class and Sub-class members had a reasonable expectation that the ABC District and its Officers and Directors would avoid conflicts of interest and would not:

a. engage in dishonest and fraudulent conduct;

- b. unfairly disregard the interests of the Plaintiffs and the putative Classes and Sub-classes;
 - c. conceal the true state of the financial affairs of the ABC District and the CEF;
 - d. misrepresent the state of the financial affairs of the ABC District and the CEF;
 - e. solicit, accept or renew deposits in the CEF when they knew or were willfully blind to the fact that the District was insolvent or on the eve of insolvency.
231. The ABC District and its Officers and Directors engaged in conduct that was oppressive, burdensome, harsh and unfair to the Plaintiffs and the putative Class and Sub-class members, and which failed to comply with the reasonable expectations of the Plaintiffs and the putative Class and Sub-class members by:
- a. Engaging in dishonest and fraudulent conduct;
 - b. Unfairly disregarding the interests of the Plaintiffs and the putative Class and Sub-class members;
 - c. Concealing or misrepresenting the true state of the financial affairs of the ABC District and the CEF;
 - d. Allowing, directing or permitting the ABC District to solicit, accept or renew deposits in the CEF when the District and its Officers and Directors knew or were willfully blind to the fact that the District was insolvent or approaching insolvency; and
 - e. Placing themselves in untenable conflicts of interests by serving as Directors of the ABC District while at the same time serving as:
 - (i) Members of the DSFM;
 - (ii) Directors and Officers of ECHS;
 - (iii) Directors and Officers of SVML, all as herein described, and
 - f. Failing to disclose their conflicts of interest,

with the result that the legitimate interests of the Plaintiffs and the Class and Sub-class members in the CEF were not protected and were unfairly prejudiced and unfairly disregarded.

232. The conduct of the ABC District and the Officers and Directors of the ABC District constitutes a visible departure from the standards of fair dealing, and demonstrates oppression, or unfair prejudice, or unfair disregard for the interests of the Plaintiff and the putative Class and Sub-class members.

Remedy sought:

240. The Plaintiffs claim on their own behalf and on behalf of the Alberta Lutheran Class, the Extra-provincial Lutheran Class, the Alberta Non-Lutheran Class and the Extra-Provincial Non-Lutheran Class, the following relief as against the Defendants the ABC District, LCC and LCCFM, jointly and severally:

- (i) Damages for breach of contract;
- (ii) Damages for breach of trust;
- (iii) General damages;
- (iv) Damages for rendering knowing assistance to breach of trust;
- (v) Damages for knowing receipt of trust property;
- (vi) A constructive trust;
- (vii) A resulting trust;
- (viii) Special damages;
- (ix) Punitive damages;
- (x) Damages for oppression;
- (xi) Pre-judgment interest in accordance with the *Judgment Interest Act*;
- (xii) Costs of this proceeding on a solicitor and own client full indemnity basis;
- (xiii) Such further and other relief as this Court deems just.

241. The Plaintiff Beinert claims on his own behalf and on behalf of the Alberta Lutheran Class and the Extra-provincial Lutheran Class, the following relief as against the Defendants the ABC District, LCC and LCCFM, jointly and severally:

- (i) Damages for breach of fiduciary duty.

242. The Plaintiffs claim on their own behalf, and on behalf of Alberta Lutheran Class, the Extra-provincial Lutheran Class, the Alberta Non-Lutheran Class and the Extra-Provincial Non-Lutheran Class, the following relief:

a. As against Taman and Bishop & McKenzie, jointly and severally:

- (i) Damages for breach of trust;
- (ii) Damages for rendering knowing assistance to breach of trust;
- (iii) Pre-judgment interest in accordance with the *Judgment Interest Act*;
- (iv) Costs of this proceeding on a solicitor and own client full indemnity basis;
- (v) Such further and other relief as this Court deems just.

b. As against Shepherd's Village Ministries Ltd. and the Officers and Directors of Shepherd's Village Ministries Ltd., jointly and severally:

- (i) Damages for knowing receipt of the SVML Lands and the proceeds of the SVML CEF Loans trust in breach of trust;
- (ii) Damages for rendering knowing assistance to breach of trust;
- (iii) Damages for knowing receipt of trust property;
- (iv) A constructive trust;
- (v) A resulting trust;

- (vi) Pre-judgment interest in accordance with the *Judgment Interest Act*;
 - (vii) Costs of this proceeding on a solicitor and own client full indemnity basis;
 - (viii) Such further and other relief as this Court deems just.
- c. As against Shepherd's Village Ministries Ltd., Taman and Bishop & McKenzie, jointly and severally:
- (i) Damages for knowing receipt of the SVML Lands and the proceeds of the SVML CEF Loans in breach of trust;
 - (ii) Damages for rendering knowing assistance to breach of trust;
 - (iii) Pre-judgment interest in accordance with the *Judgment Interest Act*;
 - (iv) Costs of this proceeding on a solicitor and own client full indemnity basis;
 - (v) Such further and other relief as this Court deems just.
- d. As against the ABC District, the POP Congregation., Taman and Bishop & McKenzie, jointly and severally:
- (i) Damages for knowing receipt of trust funds acquired in breach of trust;
 - (ii) Damages for rendering knowing assistance to breach of trust with respect to the Sale Proceeds Assignment Agreement;
 - (iii) Pre-judgment interest in accordance with the *Judgment Interest Act*;
 - (iv) Such further and other relief as this Court deems just.
- e. As against Prowse and Prowse Chown, jointly and severally:
- (i) Damages for breach of trust;
 - (ii) Damages for rendering knowing assistance to breach of trust;
 - (iii) Pre-judgment interest in accordance with the *Judgment Interest Act*;
 - (iv) Costs of this proceeding on a solicitor and own client full indemnity basis;
 - (v) Such further and other relief as this Court deems just.
- f. As against Encharis Community Housing and Services and the Officers and Directors of Encharis Community Housing and Services, jointly and severally:
- (i) Damages for knowing receipt of the POP Village Lands and the POP Village CEF Loans in breach of trust;
 - (ii) Damages for rendering knowing assistance to breach of trust;
 - (iii) Damages for knowing receipt of trust property;
 - (iv) A constructive trust;
 - (v) A resulting trust;
 - (vi) Pre-judgment interest in accordance with the *Judgment Interest Act*;
 - (vii) Costs of this proceeding on a solicitor and own client full indemnity basis;
 - (viii) Such further and other relief as this Court deems just.
- g. As against Encharis Community Housing and Services, Prowse and Prowse Chown, jointly and severally:

- (i) Damages for knowing receipt of the POP Village Lands and the POP Village CEF Loans acquired in breach of trust;
 - (ii) Damages for breach of trust;
 - (iii) Damages for rendering knowing assistance to breach of trust;
 - (iv) Pre-judgment interest in accordance with the *Judgment Interest Act*;
 - (v) Such further and other relief as this Court deems just.
- h. As against the ABC District Officers and Directors, jointly and severally:
- (i) Damages for negligence;
 - (ii) Damages for rendering knowing assistance to breach of trust;
 - (iii) Damages for oppression;
 - (iv) Punitive damages;
 - (v) Pre-judgment interest in accordance with the *Judgment Interest Act*;
 - (vi) Costs of this proceeding on a solicitor and own client full indemnity basis;
 - (vii) Such further and other relief as this Court deems just.
- i. As against the Prince of Peace Congregation:
- (i) Damages for knowing receipt of the POP Congregation Loan and trust funds acquired in breach of trust;
 - (ii) Damages for rendering knowing assistance to breach of trust;
 - (iii) Damages for knowing receipt of trust property;
 - (iv) A constructive trust;
 - (v) A resulting trust;
 - (vi) Pre-judgment interest in accordance with the *Judgment Interest Act*;
 - (vii) Such further and other relief as this Court deems just.

NOTICE TO THE DEFENDANTS

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Edmonton, Alberta, AND serving your statement of defence or a demand for notice on the Plaintiff's address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.

Exhibit

“6”

COURT FILE NUMBER 1603-03142

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

PLAINTIFFS Sharon Sherman, Sharon Sherman in her capacity as Personal Representative of the Estate of Ruby Sherman, and Georg Beinert

DEFENDANTS Donald Schiemann, Jim Kentel, William Ney, Harold Ruf, Mark Ruf, Harold Schmidt, James Schuelke, Mark Beiderweiden, Harold Haberstock, James Heinbuch, Cliff Haberstock, Gene Gabert, Richard Lutz, David Schick, Cindy Willisko, Daryl Becker, Randy Heide, Mark Sander, Judith Burns, Marj Plitt, Gerry Steinke, Keith Kruse, Forrest Stroup, Keith Haberstock, Melanie Kuhn, David Dressler, Philip Washeim, Greg Giese, Wayne Lunderby, Michael Gillingham, Craig Tufts, Rhonda Buck, Vic Esperanza, Lynn Gergens, Deloyce Weist, Janice Ruf, Candace Rivet, Darla Hennig, Kurt Robinson, Ted Ulmer, David Bode, Roland Kubke, Bill Morgan, John Mueller, Glenn Schaeffer, Marvin Mutschler, Steven Grande, Paul Eifert, Hans Heumann, Grant McMaster, James Werschler, David Schoepp, Encharis Community Housing and Services, Prince of Peace Lutheran Church of Calgary; Lutheran Church – Canada; Lutheran Church – Canada Financial Ministries; Lutheran Church – Canada, The Alberta-British Columbia District; Francis Taman; Bishop & McKenzie LLP; Ronald Chowne; Prowse Chowne LLP; Shepherd's Village Ministries Ltd.



AMENDED THIS 13 DAY OF FEB A.D. 2017
 IN ACCORDANCE WITH RULE 3.25(2)

This is Exhibit 6 referred to in the Affidavit of Georg Beinert
 Sworn before me this 21 day of March A.D. 2017
 [Signature]
 A Notary Public, A Commissioner for Oaths in and for the Province of Alberta

DOCUMENT

AMENDED AMENDED AMENDED
STATEMENT OF CLAIM

any, or any reliable, financial projections;

- d. The ABC District lacked the experience and qualifications to bring the POP Village to successful completion; and
- e. The CEF POP Village Advances were used in part to fund operating deficits.

60. Further, or in the alternative, the CEF POP Village Advances contravened the terms of the CEF Quistclose Trust in that the POP Village development:

- a. Was not for the purpose of providing assistance to a mission or ministry of a congregation or agency of the LCC;
- b. The POP Village development was a highly speculative real estate adventure;
- c. The POP Village development was commenced and continued in the absence of any, or any reliable, financial projections; and
- d. The ABC District lacked the experience and qualifications to bring the POP Village to successful completion.

F. Transfer of the POP Village Lands to Encharis

61. On November 9, 2005, ABC District, on the advice and with the assistance of Taman, incorporated Encharis Community Housing and Services (“ECHS”) to act as the developer of the POP Village.

62. At all times material to these proceedings, ABC District and ECHS were under common control, in that several members of ECHS’s Board of Directors were also members of ABC District’s Board of Directors, including but not limited to:

- a. Donald Schiemann;
- b. Mark Ruf; and
- c. Jim Kentel.

63. Further, the Defendant Ted Ulmer, an Officer of the ABC District, was also a member of the ECHS Board of Directors.

64. On June 10, 2006, the ABC District transferred to ECHS all of its interest in the POP Village Lands in exchange for a mortgage loan in the amount of approximately \$38,000,000.00 (the “POP Village CEF Mortgage Loan”) and the assumption of ABC District’s contingent liabilities of approximately \$33,000,000.00 with respect to the POP Village life leases. The POP Village CEF Mortgage Loan was secured by a mortgage registered against the POP Village Lands and a 101 acre parcel of real property in Chestermere, Alberta.

Q. Liability of Chowne and Prowse Chowne

203. Between 2002 and 2005, Ronald Chowne Q.C. of Prowse Chowne advised SVML with respect to SVML's receipt of the Shepherd's Village Lands and the proceeds of the SVML CEF Loans from ABC District.
204. Chowne knew of the existence of the CEF Trust and the CEF Quistclose Trust or in the alternative was willfully blind to the existence of the CEF Trust and the CEF Quistclose Trust.
205. ◇.
206. ◇.
207. ◇.
208. In June, 2006, Ronald Chowne, Q.C. of Prowse Chowne was counsel to ABC District in respect of the POP Village CEF Mortgage Loan to ECHS referenced in paragraph 64 herein.
209. Chowne knew or was willfully blind to the fact that:
- a. ECHS was insolvent and operating at a deficit, and that ECHS had no reasonable prospect of repaving the POP Village CEF Loans;
 - b. the CEF Mortgage Loan contravened the intent and purpose of the ABC District Church Extension Program and the terms of the CEF Trust or alternatively the CEF Quistclose Trust, and that the POP Village CEF Mortgage Loans were fraudulent and dishonest schemes; and
 - c. The POP Village CEF Mortgage Loans were knowingly advanced by the ABC District to ECHS for the purpose of divesting the ABC District of the failing POP Village Development and its associated financial liabilities, and instead recording the POP Village CEF Mortgage Loan as an asset in the CEF mortgage portfolio for the benefit of ECHS and not for the benefit of the beneficiaries of the CEF and CEF Quistclose Trusts, and constituted a risk and prejudice to the interests of the beneficiaries of the CEF and CEF Quistclose Trusts that the ABC District knew it was not entitled to take.
210. Acting in bad faith, and for an improper purpose, Chowne advised the ABC District with respect to the CEF Mortgage Loan and knowingly facilitated the breach of the CEF Trust or alternatively the CEF Quistclose Trust by the ABC District in order to preserve the relationship between his law firm and the ABC District, to generate legal work and legal fees for himself and his law firm, and to garner future legal work, all of which caused the

Exhibit

“7”

**SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY**

S1611966
No.
Vancouver Registry

DEC 28 2016



THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

Lutheran Church – Canada, the Alberta-British Columbia District

PLAINTIFF

AND:

Deloitte LLP/Deloitte S.E.N.C.R.L./S.R.L.; Rolfe, Benson; Rolfe, Benson LLP,

DEFENDANTS

NOTICE OF CIVIL CLAIM

This action has been started by the Plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

This is Exhibit 7 referred to in the
Affidavit of
Georg Beinert
Sworn before me this 21 day
of March, A.D. 2017.
[Signature]
A Notary Public & Commissioner for Oaths
in and for the Province of Alberta

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff(s),

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

Claim of the Plaintiff

Part 1: Statement of facts relied on:

1. The Plaintiff, the Lutheran Church – Canada, the Alberta-British Columbia District (“the ABC District”) was incorporated as the Alberta and British Columbia District of the Evangelical Lutheran Synod of Missouri, Ohio and other States by way of a special Act of the Alberta Legislature, S.A. 1944, c. 82 *as am*.
2. The ABC District was extra-provincially registered in British Columbia on June 19, 1944. In 1991 the ABC District was continued and renamed the Lutheran Church – Canada, the Alberta-British Columbia District pursuant to the *Lutheran Church – Canada, The Alberta British Columbia District Corporation Act*, SA 1991, c. 42.
3. The registered attorney for the ABC District in British Columbia is Ross Langford, 1800 – 1631 Dickson Avenue, Kelowna, BC V1Y 0B5.
4. The Defendant Deloitte LLP/Deloitte S.E.N.C.R.L./S.R.L. is an Extra-Provincial Limited Liability Partnership whose head office is in Toronto, Ontario, Canada. It was extra-provincially registered in British Columbia on March 11, 2005 with a registered office at 2800 – 1055 Dunsmuir Street, Vancouver, B.C. V7X 1P4. It formerly carried on business under the name and style of Deloitte & Touche LLP or Deloitte LLP and is the successor of Deloitte & Touche LLP or Deloitte LLP (hereafter referred to as “Deloitte”).
5. Deloitte was the accountant and auditor of the Plaintiff from 1993 – 1999 and provided audit opinions and audit reports to the Plaintiff from its office in Edmonton, Alberta.
6. The Defendant Rolfe, Benson LLP, is an accounting firm with a registered office at 1400 – 900 West Hastings Street, Vancouver, British Columbia. It is the successor of Rolfe, Benson and/or John Doe 2, (hereafter collectively referred to as Rolfe, Benson).
7. From 2000 until 2010, Rolfe Benson was the accountant and auditor of the Plaintiff and provided audit opinions and audit reports to the Plaintiff.
8. The District Subcommittee appointed pursuant to the District Subcommittee Order filed August 5, 2016 in the Court of Queen’s Bench of Alberta in Action No. 1501-00955 brings this action in the name of the Plaintiff as a derivative action with leave of the Court pursuant to sections 5.1 and 5.3 of the Fifth Amended Plan of Compromise and Arrangement of the Lutheran Church - Canada, the Alberta-British Columbia District filed on June 10, 2016 in the Court of Queen’s Bench of Alberta and approved by the Court pursuant to the District Sanction Order filed on August 5, 2016.

A. The ABC District Church Extension Fund

9. In or about 1921 and prior to its incorporation in 1944, the ABC District created a Church Extension Program (the “ABC District Church Extension Program”) to advance the Church Extension objectives and policies of its parent organization, which was then the Lutheran Church – Missouri Synod (“LCMS”) and as of its incorporation in 1959, the LCC.
10. The ABC District established The Church Extension Fund (the “CEF”) as a non-registered fund held by ABC District which offered term deposits, savings accounts and a children’s savings program.
11. All of the funds deposited to the ABC District’s CEF were held in trust for the depositors by the ABC District as trustee (the “CEF Trust”), on the following terms:
 - a. that the monies on deposit in the CEF Trust would be used solely for the purpose of building churches and schools, and would be invested by the ABC District in accordance with the mandate and policies of the ABC District’s Church Extension Program; and
 - b. that the monies deposited to the CEF Trust would be repaid to the depositors on demand, or alternatively upon maturity if in the form of a term deposit, and with interest.
12. The ABC District and the CEF depositors intended to create, and did create, either expressly or by implication, the CEF Trust on the terms stated above. The CEF Depositors were the beneficiaries of the CEF Trust.
13. Further, or in the alternative, all funds deposited to the ABC District’s CEF were impressed with a resulting trust (the “CEF Quistclose Trust”) whereby, either expressly or by implication:
 - a. Funds on deposit in the CEF were to be used specifically and exclusively for the stated purpose of providing capital assistance in the mission and ministry of congregations and agencies of the Lutheran Church-Canada;
 - b. All deposits in the CEF remained the property of the CEF depositors; and
 - c. Deposits in the CEF would be invested by the ABC District in a safe and prudent manner.
14. The ABC District and the CEF depositors intended to create and did create, either expressly or by implication, the CEF Quistclose Trust on the terms stated above. The CEF depositors were the beneficiaries of the CEF Quistclose Trust.
15. The ABC District’s Department of Stewardship and Financial Ministries (the “DSFM”) established Loan Eligibility Policies in respect of the CEF funds. Those Policies limited

eligibility for loans to:

- a. congregations of the ABC District “in good standing,” defined as “those congregations which support the mission and ministry of the District and Synod in a responsible way, function under a district approved constitution and comply with the policy and practice established by the Lutheran Church – Canada”; and
 - b. institutions and entities of the LCC, whose constitutions, policies and practices are consistent with those of LCC.
16. Further, according to the Loan Eligibility Policies set by the DSFM, loans were to be made for capital projects only, including acquisition of land, purchase or construction of building facilities, major renovations to existing facilities or expansion of existing facilities.
17. The DSFM also set Loan Criteria for the CEF funds in conformity with policies established by the LCC and/or LCCFM for that purpose, including (but not limited to) the following:
- a. The need for facilities, renovations or property in which to carry out the ministry of the Lutheran faith;
 - b. Need for financing of existing debt;
 - c. Relationship of total loan to property values and/or total assets;
 - d. Financial history of congregation and financial projections for future;
 - e. Growth potential of area and membership;
 - f. The existence of a pledge program for the building project;
 - g. Indebtedness per communicant;
 - h. Ability of congregation to service debt;
 - i. Percentage of total income for debt service; and
 - j. Continuity of the debtor congregation’s financial support to the ABC District and the LCC.
18. The DSFM also set Loan Conditions for the CEF funds in conformity with policies established by the Lutheran Church – Canada which required debtor congregations to provide certain items before loan funds would be disbursed, including (but not limited to) the following:
- a. Security documentation appropriate to the size and conditions of the loan;

- b. Loan Repayment Agreement signed by the officers of the debtor congregation;
 - c. Commitment to promoting Church Extension investments among the members of the debtor congregation; and
 - d. Financial statements submitted annually to the DSFM.
19. All loans in excess of \$100,000.00 required the approval of the ABC District's Board of Directors.
20. As a result of the ABC District's Church Extension Program and the implementation of the Loan Eligibility Policies, Loan Criteria and Loan Conditions, by the early 1990s the ABC District had built a diverse portfolio of mortgage loans to more than 65 congregations for the construction of churches and schools in which to carry out the ministry of the Lutheran faith. The ABC District guaranteed the investments of depositors in the CEF.
21. The Defendants knew or were willfully blind to the existence of the CEF Trust and the CEF Quistclose Trust.
22. Further, the Defendants knew of or were willfully blind to the terms and mandate of the CEF Trust or alternatively the terms of the CEF Quistclose Trust, and the Loan Eligibility Policies, Loan Conditions and Loan Criteria for the CEF funds as described in paragraphs 11 – 20, above.

B. The Prince of Peace Village Loans

23. In or about 1994, the ABC District and/or the Prince of Peace Lutheran Church Calgary purchased 156 acres of real property near Calgary, Alberta for \$1,007,700 for the purpose of building a church and a school.
24. The ABC District and/or the POP Congregation set aside or designated certain lands within the 156 acre parcel of land for the construction of a church and school.
25. In or about June 1997, the POP Congregation established a \$26.6 million budget for the construction of a 174 duplex and fourplex unit seniors' housing project called the Prince of Peace Village ("POP Village") to be constructed on a portion of the 156 acres ("the POP Village Lands").
26. The POP Congregation proposed the POP Village development to the ABC District, which approved it on the understanding that the monies for the POP Village would be borrowed from the bank.
27. When sufficient construction loans were not obtainable from the bank, ABC District, to the knowledge of the Defendants at times material to their retainers, advanced monies from the

CEF Trust or alternatively the CEF Quistclose Trust to develop the POP Village. The ABC District developed the POP Village on its own behalf or alternatively in partnership with the POP Congregation.

28. The POP Village was expanded to include a seniors' assisted living residence ("The Manor"), and an Alzheimer's care centre ("The Harbour").
29. The decision of the ABC District to embark upon the speculative real estate development of the Prince of Peace Village on its own behalf, or in partnership with the POP Congregation, with funding from the CEF, was contrary to the purposes of the ABC District Church Extension Program, which was to provide mortgage financing for congregations to build churches and schools in which to carry out the ministry of the Lutheran faith.
30. The POP Village development commenced in 1993 and was carried on by the ABC District or by the ABC District from 1993 through 2006.
31. The POP Village opened in or about 1998. The development operated at a financial deficit and continued to do so. The ABC District, to the knowledge of the Defendants at all times material to their retainers, financed those deficits through additional input of funds from the CEF.
32. Between 1993 and 2006, to the knowledge of the Defendants at all times material to their retainers, the ABC District utilized \$71,800,000.00 of funds on deposit in the CEF for the purchase and construction of the Prince of Peace Village and the lands upon which it was built, including subsidies for high-cost hauled water services provided to the POP Village (the "CEF POP Village Advances").
33. ABC District began selling pre-paid life leases in the POP Village in 1998. However, to the knowledge of the Defendants at all times material to their retainers, it failed to return any part of the proceeds of those sales to the CEF in payment of the CEF POP Village Advances.
34. The CEF POP Village Advances contravened the ABC District's Church Extension Program Loan Eligibility Policies, Loan Criteria and Loan Conditions in respect of the CEF Trust in that:
 - a. The POP Village development was not for the purpose of building churches or schools;
 - b. The POP Village development was a highly speculative real estate venture;
 - c. The POP Village development was commenced and continued in the absence of any, or any reliable, financial projections;
 - d. The ABC District lacked the experience and qualifications to bring the POP Village

to successful completion; and

- e. The CEF POP Village Advances were used in part to fund operating deficits.
35. Further, or in the alternative, the CEF POP Village Advances contravened the terms of the CEF Quistclose Trust in that the POP Village development:
- a. Was not for the purpose of providing capital assistance to a congregation or agency of the LCC to carry out its mission or ministry;
 - b. The POP Village development was a highly speculative real estate venture;
 - c. The POP Village development was commenced and continued in the absence of any, or any reliable, financial projections; and
 - d. The ABC District lacked the experience and qualifications to bring the POP Village to successful completion.
36. The Defendants knew or ought to have known that the use of the CEF funds to develop the POP Village Lands contravened the mandate and terms of the CEF Trust or in the alternative the CEF Quistclose Trust.

C. Transfer of the POP Village to Encharis

37. On November 9, 2005, ABC District incorporated Encharis Community Housing and Services ("ECHS") to act as the developer of the POP Village.
38. At all times material to these proceedings, ABC District and ECHS, to the knowledge of the Defendant Rolfe, Benson, were under common control, in that several members of ECHS's Board of Directors were also members of ABC District's Board of Directors, including but not limited to:
- a. Donald Schiemann;
 - b. Mark Ruf; and
 - c. Jim Kentel.
39. Further, Ted Ulmer, an Officer of the ABC District, was also a member of the ECHS Board of Directors.
40. In January, 2006, the ABC District transferred to ECHS all of its interest in the POP Village Lands in exchange for a mortgage loan in the amount of approximately \$38,000,000.00 (the "POP Village CEF Mortgage Loan") and the assumption of ABC District's contingent liabilities of approximately \$33,000,000.00 with respect to the POP Village life leases. The POP Village CEF Mortgage Loan was secured by a mortgage registered against the POP Village Lands and a 101 acre parcel of real property in Chestermere, Alberta.

41. The ABC District transferred its interest in the POP Village lands to ECHS and authorized the POP Village CEF Mortgage Loan and the POP Village CEF Unsecured Loans for the sole purpose of divesting ABC District of the failing POP Village development and its associated financial liabilities and instead recording the POP Village CEF Mortgage Loan as an asset in the CEF's mortgage portfolio.
42. Subsequent to the transfer of ABC District's interest in the POP Village to ECHS, ECHS was unable to service its mortgage debt to ABC District. Despite this, ABC District, to the knowledge of Rolfe, Benson, approved additional advances of approximately \$7,000,000.00 to ECHS under the POP Village CEF Mortgage Loan and also made unsecured loans to ECHS from the CEF Trust or in the alternative from the CEF Quistclose Trust in the amount of approximately \$28,500,000.00 (the "POP Village CEF Unsecured Loans") in order to allow ECHS to service its mortgage debt and finance its operating deficit in respect of the POP Village.
43. The ABC District approved the POP Village CEF Mortgage Loan and the POP Village CEF Unsecured Loans (hereafter collectively the "POP Village CEF Loans) in circumstances where the Defendant Rolfe, Benson knew or ought to have known that:
 - a. ECHS was insolvent; and
 - b. ECHS was operating at a deficit.
44. The POP Village CEF Loans contravened the ABC District's Church Extension Program Loan Eligibility Policies, Loan Criteria and Loan Conditions in respect of the CEF Trust in that:
 - a. they were not made for the purpose of building churches and/or schools in which to carry out the ministry of the Lutheran faith, but rather for the purpose of enabling ECHS to engage in speculative real estate development.
 - b. ECHS was not a "congregation of the ABC District in good standing" nor an institution or entity of the LCC whose constitution, policies and practices were consistent with those of LCC;
 - c. The loan-to-value ratio in respect of each of the Loans was greater than that which would be commercially acceptable, or alternatively was based on an inflated valuation of the POP Village Lands;
 - d. The POP Village development was commenced and continued in the absence of any, or any reliable, financial projections;
 - e. ECHS lacked the experience and qualifications to bring the POP Village to successful completion;
 - f. ECHS had no ability to service the POP Village Loans;

- g. ECHS did not and was not required to provide financial support to ABC District and/or LCC in exchange for the POP Village Loans;
- h. The POP Village Loans were unsecured or alternatively inadequately secured;
- i. The officers of ECHS were not required or alternatively failed to sign Loan Repayment Agreements with ABC District in respect of the POP Village Loans;
- j. ECHS was not required or alternatively failed to make a commitment to promote Church Extension deposits among its members or others;
- k. ECHS was not required or alternatively failed to submit financial statements to the ABC District or alternatively the ABC District failed to scrutinize those financial statements to assess the risk to the POP Village Loans.

45. Further, the POP Village CEF Loans contravened the terms of the CEF Quistclose Trust in that:

- a. ECHS was not a congregation or agency of the LCC;
- b. The loan-to-value ratio in respect of each of the Loans was greater than that which would be commercially acceptable, or alternatively was based on an inflated valuation of the POP Village Lands;
- c. The POP Village development was commenced and continued in the absence of any, or any reliable, financial projections;
- d. ECHS lacked the experience and qualifications to bring the POP Village to successful completion;
- e. ECHS had no ability to service the POP Village Loans;
- f. ECHS did not and was not required to provide financial support to ABC District and/or LCC in exchange for the POP Village Loans;
- g. The POP Village CEF Loans were unsecured or alternatively inadequately secured;

46. The Defendants knew or ought to have known that the POP Village CEF Loans contravened the terms and mandate of the CEF Trust or alternatively the CEF Quistclose Trust as stated above.

47. The POP Village development was ultimately unsuccessful and ECHS defaulted on the POP Village CEF Loans. There is insufficient equity in ECHS's interest in the POP Village Lands to satisfy the POP Village CEF Loans.

D. The Strathmore Loan

48. In or about August 2007, the ABC District, to the knowledge of the Defendant Rolfe, Benson, approved a CEF mortgage loan of approximately \$5,850,000.00 to ECHS for the purpose of purchasing real property in Strathmore, Alberta (the "Strathmore Lands") and constructing a 50-unit seniors' condominium development (the "Strathmore Loan").
49. The Strathmore Loan contravened the mandate of the ABC District's Church Extension Program and the terms of the CEF Trust, in that it was not made for the purpose of building churches and/or schools in which to carry out the ministry of the Lutheran faith, but rather for the purpose of enabling ECHS to engage in speculative real estate development.
50. Further, the Strathmore Loan was contrary to the policies and procedures of the ABC District Church Extension Fund, and the CEF Trust, in that:
 - a. ECHS was not a "congregation of the ABC District in good standing" nor an institution or entity of the LCC whose constitution, policies and practices were consistent with those of LCC;
 - b. ECHS lacked the experience and qualifications to bring the Strathmore development to successful completion;
 - c. ECHS had no ability to service or repay the Strathmore Loan;
 - d. ECHS did not and was not required to provide financial support to ABC District and/or LCC in exchange for the Strathmore Loan;
 - e. The Strathmore Loan was very risky and inadequately secured;
 - f. The officers of ECHS were not required to sign Loan Repayment Agreements with ABC District in respect of the Strathmore Loan;
 - g. ECHS was not required to make a commitment to promote Church Extension deposits among its members or others; and
 - h. ECHS was not required to submit financial statements to the ABC District, or alternatively the ABC District and its Department of Stewardship and Financial Ministries failed to scrutinize those financial statements to assess the risk to the Strathmore Loan.
51. Further, or in the alternative, the Strathmore Loan was contrary to the terms of the CEF Quistclose Trust in that:
 - a. ECHS was not a congregation or agency of the LCC;

- b. ECHS lacked the experience and qualifications to bring the Strathmore development to successful completion;
 - c. ECHS had no ability to service or repay the Strathmore Loan; and
 - d. The Strathmore Loan was very risky and inadequately secured.
52. The Defendant Rolfe, Benson knew or ought to have known that the Strathmore Loan contravened the terms and mandate of the CEF Trust or alternatively the CEF Quistclose Trust as stated above.
53. In or about August 2008, ECHS, to the knowledge of the Defendant Rolfe, Benson, transferred the title to the Strathmore Lands to ABC District for consideration of \$1.00. Concurrently, ABC District, to the knowledge of the Defendant Rolfe, Benson, purported to “extinguish” the Strathmore Loan payable by ECHS to the CEF, thereby simultaneously obtaining the Strathmore Lands on its own account and depriving the CEF Trust or in the alternative the CEF Quistclose Trust of the Strathmore Loan receivable.

E. The POP Congregation Loan

54. The POP Congregation was a small congregation of about 230 members and consistently ran operating deficits. By about 2005, the POP Congregation operating deficit was \$1,200,000.00. It was unable to meet its operational financial requirements and its obligations to ABC District in respect of previous mortgage loans from the CEF.
55. POP Congregation deficits continued to increase and were met by further loans from the ABC District. By about 2008, ABC District advances to the POP Congregation for construction of the church and school and operating deficits had, to the knowledge of Rolfe, Benson, accumulated to \$8,000,000.00 (the “POP Congregation Loan”).
56. The POP Congregation Loan violated the mandate of the ABC District’s Church Extension Program and the terms of the CEF Trust in that it was granted, in whole or in part, to pay off the POP Congregation debts and to finance its operating deficit and not for the purposes of building churches and schools in which to carry out the ministry of the Lutheran Church.
57. Further, the Prince of Peace Congregation Loan violated the Loan Eligibility Policies, Loan Criteria and Loan Conditions of the ABC District, and the terms of the CEF Trust, in that:
- a. The POP Congregation was not financially a “congregation in good standing” within the meaning of the ABC District Loan Eligibility Policy;
 - b. The Prince of Peace Congregation Loan was in whole or in part for operating purposes rather than a capital project;

- c. The POP Congregation had no ability to service the debt;
 - d. The Prince of Peace Congregation Loan was unsecured or alternatively inadequately secured;
 - e. The Prince of Peace Congregation Loan was not accompanied by a Loan Repayment Agreement signed by the officers of the congregation
 - f. The POP Congregation was operating at a deficit and could not meet its existing financial obligations to the ABC District to repay a previous mortgage loan;
 - g. The POP Congregation did not and could not make a commitment to promoting Church Extension deposits among its members; and
 - h. The ABC District did not require the POP Congregation to submit its financial statements on an annual basis, or alternatively failed to scrutinize those financial statements to assess the risk that the Prince of Peace Congregation Loan would not be repaid; and
 - i. The POP Congregation Loan was used to fund operating deficits.
58. Further, or in the alternative, the Prince of Peace Congregation Loan violated the terms of the CEF Quistclose Trust, in that:
- a. The POP Congregation Loan was extremely risky in that the POP Congregation had no ability to service the debt;
 - b. The Prince of Peace Congregation Loan was unsecured or alternatively inadequately secured;
 - c. The POP Congregation was operating at a deficit and could not meet its existing financial obligations to the ABC District to repay a previous mortgage loan;
 - d. The POP Congregation Loan was used to subsidize operating deficits.
59. The Defendant Rolfe, Benson knew or ought to have known that the POP Congregation Loan contravened the terms and mandate of the CEF Trust or alternatively the CEF Quistclose Trust as stated above.
60. In or about 2009, the ABC District, to the knowledge of the Defendant Rolfe, Benson, forgave \$6,000,000.00 of the \$8,000,000.00 POP Congregation Loan in exchange for the right to receive proceeds from the future sale of certain property owned by the POP Congregation (the "POP Congregation Land Sale Proceeds Assignment Agreement").
61. The POP Congregation Land Sale Proceeds Assignment Agreement, to the knowledge of

- c. The Shepherd's Village development was commenced and continued in the absence of any, or any reliable, financial projections;
- d. SVML lacked the experience and qualifications to bring the Shepherd's Village development to successful completion;
- e. SVML had no ability to service or repay the Shepherd's Village CEF Loans;
- f. SVML did not and was not required to provide financial support to ABC District and/or LCC in exchange for the Shepherd's Village CEF Loans;
- g. The Shepherd's Village CEF Loans were unsecured or alternatively inadequately secured;
- h. The officers of SVML were not required to sign Loan Repayment Agreements with ABC District in respect of the Shepherd's Village CEF Loans;
- i. Shepherd's Village was not required to make a commitment to promote Church Extension deposits among its members or others;
- j. SVML was not required to submit financial statements to the ABC District, or alternatively the ABC District failed to scrutinize those financial statements to assess the risk to the Shepherd's Village CEF Loans.

67. Further, the Shepherd's Village CEF Loans were contrary to the terms of the CEF Quistclose Trust in that:

- a. SVML was not a congregation or agency of the LCC;
- b. The loan-to-value ratio in respect of the Shepherd's Village CEF Loans was greater than that which would be commercially acceptable;
- c. The Shepherd's Village development was commenced and continued in the absence of any, or any reliable, financial projections;
- d. SVML lacked the experience and qualifications to bring the Shepherd's Village development to successful completion; and
- e. SVML had no ability to service or repay the Shepherd's Village CEF Loans;

68. The Defendants knew or ought to have known that the Shepherds Village CEF Loans contravened the terms and mandate of the CEF Trust or alternatively the CEF Quistclose Trust as stated above.

69. Between 2011 and 2014, ABC District and/or ECHS, to the knowledge of the Defendant

the Defendant Rolfe, Benson, does not stipulate a date nor any deadline for the sale of the subject property, and the ABC District has no recourse in the event that the eventual sale proceeds are insufficient to discharge the \$6,000,000.00 loan receivable in full. Accordingly, the POP Congregation Land Sale Proceeds Assignment Agreement is wholly inadequate consideration for ABC District's forgiveness of the POP Congregation's \$6,000,000.00 debt to the CEF Trust or the CEF Quistclose Trust.

F. The Shepherd's Village Loans

62. On July 28, 1999, Shepherd's Village Ministries Ltd. ("SVML") was incorporated for the purpose of acquiring acreages of real property in and about Valleyview, Alberta, and developing 75 seniors' condominium housing units (the "Shepherd's Village Lands").
63. Between 1997 and 2014, ABC District, to the knowledge of the Defendants at all times material to their retainers, advanced to SVML either directly or indirectly through ECHS, CEF monies in the total amount of \$16.9 million for the purpose of acquiring and developing the Shepherd's Village lands (the "Shepherd's Village CEF Loans").
64. Beginning in 2005, ABC District and SVML, to the knowledge of the Defendant Rolfe Benson, were under common control, in that officers and/or directors of ABC District were also officers, directors and/or members of SVML, including (but not limited to): Mark Ruf, Judith Burns, Harold Haberstock and Kwang Soo Kim in 2005, Harold Haberstock, Judith Burns and Kwang Soo Kim in 2006, Donald Schiemann, Harold Haberstock and Judith Burns in 2007, Donald Schiemann and Mark Ruf in 2008, Donald Schiemann and Jim Kentel in 2009, and Donald Schiemann, Mark Ruf and Jim Kentel from 2010 through 2013. Further, from 2007 through 2013, Donald Schiemann was the President of the ABC District and at the same time the Vice-President of SVML.
65. The Shepherd's Village CEF Loans were contrary to the mandate of the ABC District Church Extension Program and the terms of the CEF Trust, in that they were not made for the purpose of building churches and/or schools in which to carry out the ministry of the Lutheran faith, but rather for the purpose of enabling SVML to engage in speculative real estate development.
66. Further, the Shepherd's Village CEF Loans were contrary to the policies and procedures of the ABC District Church Extension Fund, in that:
 - a. SVML was not a "congregation of the ABC District in good standing" nor an institution or entity of the LCC whose constitution, policies and practices were consistent with those of LCC;
 - b. The loan-to-value ratio in respect of the Shepherd's Village CEF Loans was greater than that which would be commercially acceptable;

Rolfe, Benson, forgave \$12,575,685.00 of the Shepherd's Village CEF Loans, thereby depriving the CEF Trust and the CEF Quistclose Trust of those funds.

70. Between 1993 and 2014, the ABC District loaned money from the CEF to the Lutheran-Church Canada to fund the Lutheran-Church Canada's unfunded pension liabilities.

G. The CCAA Proceedings

71. As a result of the events set out herein, the ABC District was unable to meet its obligations to the depositors to the CEF.

72. On January 2, 2015 ABC District, ECHS and other related entities (the "Applicants") sought protection from their creditors under the *Company's Creditors Arrangement Act*, RSC 1985, c.C-36, as amended (the "CCAA Proceedings"). An Order to that effect was granted by the Court of Queen's Bench of Alberta on January 23, 2015 in Court of Queen's Bench Action No. 1501-00955.

73. Deloitte Restructuring Inc., a related, affiliated or sister company of Deloitte, was the Monitor of the District in the CCAA proceedings even though it knew of, and acknowledged, its potential conflict of interest by virtue of the auditing functions performed by Deloitte as described herein.

74. The assets of the ABC District are not sufficient to satisfy its approximately \$97,000,000.00 in total outstanding obligations to its members who have made deposits to the CEF.

75. The actions of the Defendants herein caused or in the alternative contributed to, the insolvency of the ABC District.

Part 2: RELIEF SOUGHT

76. The Plaintiff claims the following relief as against each of the Defendants, jointly and severally:

- (i) Damages for breach of contract;
- (ii) Damages for negligence;
- (iii) Costs on an enhanced party and party basis;
- (iv) Pre-judgment interest in accordance with the *Court Order Interest Act*;
- (v) Such further and other relief as this Court deems just.

Part 3: LEGAL BASIS

H. Breach of Contract or in the alternative Negligence

77. It was a term of the contracts between the Plaintiff and each of the Defendants, express or implied, that the Defendants would perform accounting and auditing services for the Plaintiff, and would provide audit opinions and audit reports in a professional, diligent and workmanlike manner, and in accordance with generally accepted standards and procedures.
78. In the alternative, it was foreseeable that if the Defendants failed to perform or provide or render their accounting and auditing services in a professional, diligent and workmanlike manner, and in accordance with generally accepted standards and procedures, the Plaintiff would suffer damages and loss.
79. Accordingly, each of the Defendants owed the Plaintiff a duty of care to prepare audit opinions and audit reports in a professional, diligent and workmanlike manner, and in accordance with generally accepted standards and procedures.
80. At all times material hereto, the Defendants were aware or ought to have been aware of the DFSM's Loan Eligibility Policies, and the Loan Criteria and Loan Conditions with respect to CEF deposits.

Liability of Deloitte:

81. In breach of its contract with the Plaintiff, or in the alternative in breach of its duty of care, the Defendant Deloitte in its audit opinions and audit reports:
 - A. With respect to the POP Village lands:
 - a. Failed to identify and report upon the misappropriation and misuse by the District of CEF trust funds to finance the POP Village Lands between 1993 and 1999;
 - b. Failed to independently verify and report upon the value of the POP Village Lands;
 - c. Failed to report that proceeds of the pre-paid life leases in the POP Village were not being used to pay back the CEF POP Village Advances;
 - B. With respect to Shepherd's Village Ministries:
 - a. Failed to identify and report upon the misappropriation and misuse by the District of CEF funds by way of loans advanced to SVML;
 - b. Failed to independently verify and report upon the value of the SVML Lands taken as security for the loans advanced to SVML;
 - c. Failed to identify and report upon the relationship between District and SVML;
 - d. Failed to issue consolidated financial statements of the District and SVML.

C. Generally:

- a. Failed to report that funds on deposit to the CEF were loaned to the Lutheran-Church Canada to fund its unfunded pension liabilities. The Lutheran Church — Canada is a religious body incorporated under the *Act to Incorporate Lutheran Church-Canada 7-8 Eliz. II Chap. 68 S.C. 1959*

Liability of Rolfe, Benson:

82. In breach of its contract with the Plaintiff, or in the alternative in breach of its duty of care, the Defendant Rolfe, Benson in its audit opinions and audit reports:

A. With respect to the POP Village Lands and the transfer of the POP Village Lands to ECHS:

- a. Failed to review Deloitte & Touche's working papers for 1999 prior to issuing its 2000 audit report;
- b. Failed to report that proceeds of the pre-paid life leases in the POP Village were not being used to pay back the CEF POP Village Advances;
- c. Failed to identify and report upon the misappropriation and misuse by the District of CEF trust funds to finance the POP Village Lands between 2000 and 2006;
- d. Failed to independently verify and report upon the value of the POP Village Lands as security for the mortgage loans advanced to ECHS between 2006 and 2010;
- e. Failed to identify and report upon the risk to the District in respect of the mortgage loans advanced to ECHS;
- f. Failed to identify and report upon the relationship between the District and ECHS;
- g. Failed to issue consolidated financial statements of the District and ECHS.

B. With respect to the Strathmore Loan:

- b. Failed to identify and report upon the misappropriation and misuse by ABC District of CEF funds by extinguishing a CEF mortgage loan to ECHS in the amount of \$5,850,000 in exchange for title to the Strathmore Lands.

C. With respect to the POP Congregation Loan:

- a. Failed to identify and report upon the District's misuse of CEF funds to make an

Plaintiffs' address for service:

Allan Garber

108, 17707 – 105 Ave.

Edmonton, Alberta

T5S 1T1

Fax number address for service (if any):

(587) 400-9313

E-mail address for service (if any):

None

Place of trial:

Vancouver, British Columbia

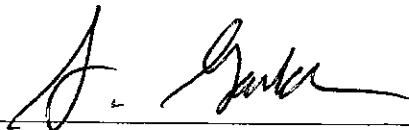
The address of the registry is:

800 Smithe Street

Vancouver, B.C.

V6Z 2E1 CANADA

Dated: Dec. 23, 2016



Allan A. Garber, Solicitor for the Plaintiff

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

Appendix

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

This is a claim for breach of trust, breach of contract and negligence in respect of audit opinions prepared by the Defendants on behalf of the Plaintiff.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

a motor vehicle accident

medical malpractice

another cause

A dispute concerning:

contaminated sites

construction defects

real property (real estate)

personal property

the provision of goods or services or other general commercial matters

investment losses

the lending of money

an employment relationship

a will or other issues concerning the probate of an estate

a matter not listed here

Part 3: THIS CLAIM INVOLVES:

a class action

maritime law

aboriginal law

constitutional law

conflict of laws

none of the above

do not know

Part 4:

Court Order Interest Act, R.S.B.C. 1996, c. 79.