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COURT

COURT OF QUEEN'S BENCH OF  
ALBERTA

JUDICIAL CENTRE

EDMONTON

PLAINTIFFS

REID GLENN AND MARILYN HUBER

DEFENDANTS

Concentra Trust/La Societe de Fiducie  
Concentra, Lutheran Church—Canada,  
Lutheran Church - Canada Financial  
Ministries, Lutheran Church - Canada, The  
Alberta - British Columbia District,  
Lutheran Church - Canada, The Alberta-  
British Columbia District Investments Ltd.,  
Encharis Community Housing and  
Services, Francis Taman, Bishop &  
McKenzie LLP, a Partnership, John  
Williams, Ronald Chowne, Prowse Chowne  
LLP, a Partnership, Donald Schiemann,  
Harold Haberstock, Keith Haberstock,  
Forrest Stroup, Mark Ruf, Kurtis Robinson,  
Jim Kentel, Richard Lutz, Harold Schmidt,  
Judith Burns, Melanie Kuhn, Keith Kruse,  
David Dressler, Wayne Lunderby, Phillip  
Washeim, Greg Giese, Michael Gillingham,  
Craig Tufts, Rhonda Buck, Vic Esperanza,  
Lynn Gergens, Deloyce Weist, Frank Kobie,  
Marvin Mutschler, Darla Henning also  
known as Darla Hennig, Stan Lee, Janice  
Ruf, Candace Rivet, Brian Lewis, Hans  
Heumann, James Werschler, David Schoepp,  
Grant McMaster, Don Haberstock, and Mark  
Wolgram



DOCUMENT

STATEMENT OF CLAIM

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**STATEMENT OF CLAIM**

ADDRESS FOR SERVICE      Errin Poyner  
AND                              Sugden McFee & Roos LLP  
CONTACT INFORMATION      Barristers and Solicitors  
OF                                Suite 700 – 375 Water Street,  
PARTY FILING THIS        Vancouver, British Columbia  
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***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, Reid Glenn, is Retired and resides at 4 Grenier, in the Hamlet of St. Isadore, in the Province of Alberta.
2. The Plaintiff, Marilyn Huber, is a Manager and resides at 18164 96 Ave, Edmonton, Alberta T5T 3N3
3. 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.
4. The Defendant, the Lutheran Church – Canada Financial Ministries (the "LCCFM"), is a non-profit corporation registered under the *Canada Not-for-profit Corporations Act, S.C. 2009, c. 23, as am.*, and has a registered and records office located at 3074 Portage Avenue, in the City of Winnipeg, in the Province of Manitoba.
5. The Defendant, the Lutheran Church – Canada, the Alberta-British Columbia District (the "ABC District") is a corporation incorporated or continued pursuant to the *Lutheran Church – Canada, the Alberta - British Columbia District Corporation Act, SA 1991, c. 42 as am.*, and has a head office located at 10039 – 117<sup>th</sup> Street, in the City of Edmonton, in the Province of Alberta.
6. The Defendant, the Lutheran Church – Canada, the Alberta-British Columbia District Investments Ltd. ("DIL") is a company incorporated pursuant to the laws of Alberta and

has a registered and records office located at 2300, 10180 – 101 Street, in the City of Edmonton, in the Province of Alberta.

7. Encharis Community Housing and Services (“ECHS”) is a company incorporated under the laws of Alberta and has a registered and records office located at 1700 – 530 8 Avenue S.W., in the City of Calgary, in the Province of Alberta.
8. 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.
9. The Defendant John Williams (“Williams”) 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.
10. 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.
11. The Defendant Bishop & McKenzie LLP (“Bishop & McKenzie”) is a partnership of barristers and solicitors located at 1700 – 530 8<sup>th</sup> Avenue, in the City of Calgary, in the Province of Alberta.
12. The Defendant Francis Taman (“Taman”) is a Barrister and Solicitor and a partner in the law firm of Bishop & McKenzie, which is located at 1700 – 530 8<sup>th</sup> Avenue, in the City of Calgary, in the Province of Alberta.
13. The Defendant Concentra Trust/La Societe de Fiducie Concentra (“Concentra”), is an extraprovincial trust company incorporated, continued or amalgamated under the *Trust and Loan Companies Act*, RS 1991, c. 45 laws of Canada, with a an attorney in Alberta located at 2500, 10155 – 102 Street, in the City of Edmonton, in the Province of Alberta.
14. Donald Schiemann (“Schiemann”) is a Pastor and resides at 4617 – 57 Avenue, in the City of Stoney Plain, in the Province of Alberta.
15. Harold Haberstock (“H. Haberstock”) is a Pastor and resides at 1115 Regina Street, in the City of Creston, in the Province of British Columbia.
16. Keith Haberstock (“K. Haberstock”) is a Pastor and resides at 160 Springmere Way, in the City of Chestermere, in the Province of Alberta.
17. Forrest Stroup (“Stroup”) is a Pastor and resides at RR 2 Site 260 Comp 33, in the City of Stony Plain, in the Province of Alberta.
18. Mark Ruf (“M. Ruf”) is a Pastor and resides at 144 Riverwood Circle, in the City of

Calgary, in the Province of Alberta.

19. Kurtis Robinson (“Robinson”), was at all times material to these proceedings the Executive Assistant to the ABC District, the President of DIL, and the General Manager of ECHS. Robinson resides at 403 Lakeside Green, in the City of St. Albert, in the Province of Alberta.
20. Jim Kentel (“Kentel”), whose occupation is unknown to the Plaintiffs, resides at 1194 Trevor Drive, in the City of Kelowna, in the Province of British Columbia.
21. Richard Lutz (“Lutz”), whose occupation is unknown to the Plaintiffs, resides at 10 Greenwood Drive, in the City of Spruce Grove, in the Province of Alberta.
22. Harold Schmidt (“Schmidt”), whose occupation is unknown to the Plaintiffs, resides at 39 Lamartine Crescent, in the City of St. Albert, in the Province of Alberta.
23. Judith Burns (“Burns”), whose occupation is unknown to the Plaintiffs, resides at box 2724, in the City of High Prairie, in the Province of Alberta.
24. Melanie Kuhn (“Kuhn”), whose occupation is unknown to the Plaintiffs, resides at in RR3, the City of Red Deer, in the Province of Alberta.
25. Keith Kruse (“Kruse”), whose occupation is unknown to the Plaintiffs, resides at 10703 – 38<sup>th</sup> Street, in the City of Edmonton, in the Province of Alberta.
26. David Dressler (“Dressler”) is a Pastor and resides at 1166 Prestwick Circle, in the City of Calgary, in the Province of Alberta.
27. Wayne Lunderby (“Lunderby”) is a Pastor and resides at 46575 Extrom Road, in the City of Chilliwack, in the Province of British Columbia.
28. Phillip Washeim (“Washeim”) is a Pastor and resides at 6574 Arranwood Drive, in the City of Sooke, in the Province of British Columbia.
29. Greg Giese (“Giese”), whose occupation is unknown to the Plaintiffs, resides at 1207 Decker Way, in the City of Edmonton, in the Province of Alberta.
30. Michael Gillingham (“Gillingham”), whose occupation is unknown to the Plaintiffs, resides at 88 Summerfield Wynd, in the City of Sherwood Park, in the Province of Alberta.
31. Craig Tufts (“Tufts”), whose occupation is unknown to the Plaintiffs, resides at 11709 Lochhaven Drive, in the City of Coldstream, in the Province of British Columbia.
32. Rhonda Buck (“Buck”), whose occupation is unknown to the Plaintiffs, resides at 25

Campbell Drive, in the City of Stony Plain, in the Province of Alberta.

33. Vic Esperanza (“Esperanza”), is a Pastor and resides at 17416 64<sup>th</sup> Avenue, in the City of Surrey, in the Province of British Columbia.
34. Lynn Gergens (“Gergens”), whose occupation is unknown to the Plaintiffs, resides at 91, 8930 Walnut Grove Drive, in the City of Langley, in the Province of British Columbia.
35. Deloyce Weist (“Weist”), whose occupation is unknown to the Plaintiffs, resides at 1055 Foxwood Crescent, in the City of Sherwood Park, in the Province of Alberta.
36. Frank Kobie (“Kobie”), whose occupation is unknown to the Plaintiffs, resides at 1320 Thompson Court, in the City of Edmonton, in the Province of Alberta.
37. Marvin Mutschler (“Mutschler”) is the Manager of ECHS, and resides at 438 Prospect Drive, in the City of Medicine Hat, in the Province of Alberta.
38. Darla Henning, also known as Darla Hennig (“Henning”) is the ABC District Church Extension Fund Manager and resides at Box 156, in the City of Tomahawk, in the Province of Alberta.
39. Stan Lee (“Lee”), Chartered Professional Accountant, resides at 4878 Selkirk Street, in the City of Vancouver, in the Province of British Columbia.
40. Janice Ruf (“J. Ruf”) is the Senior Manager of ABC District Services and the Secretary/Treasurer of DIL. She resides at 90 Groveland Road, in the City of Sherwood Park, in the Province of Alberta.
41. Candace Rivet (“Rivet”) is the ABC District Church Extension Fund Administrator and the Vice-President of DIL. She resides at 15 Hamilton Crescent, in the City of Edmonton, in the Province of Alberta.
42. Brian Lewis (“Lewis”), whose occupation is unknown to the Plaintiffs, resides at 975 Pigeon Avenue, in the City of Williams Lake, in the Province of British Columbia.
43. Hans Heumann (“Heumann”), whose occupation is unknown to the Plaintiffs, resides at 800, 715 – 5<sup>th</sup> Avenue, in the City of Calgary, in the Province of Alberta.
44. James Werschler (“Werschler”), whose occupation is unknown to the Plaintiffs, resides at 2050 Halifax Street, in the City of Regina, in the Province of Saskatoon.
45. David Schoepp (“Schoepp”), whose occupation is unknown to the Plaintiffs, resides at 900, 285030 Luther Rose Blvd., in the City of Calgary, in the Province of Alberta.

46. Grant McMaster (“McMaster”), whose occupation is unknown to the Plaintiffs, resides at 225, 20316 – 56<sup>th</sup> Avenue, in the City of Langley, in the Province of British Columbia.
47. Don Haberstock (“D. Haberstock”), whose occupation is unknown to the Plaintiffs, resides at 17819 – 108 Street, in the City of Edmonton, in the Province of Alberta.
48. Mark Wolgram (“Wolgram”), whose occupation is unknown to the Plaintiffs, resides at 28 Gatewood Avenue, in the City of St. Albert, in the Province of Alberta.

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

49. LCC is a statutorily incorporated national religious body divided into three separately incorporated Districts: the Alberta and British Columbia District, the Central District and the East District.
50. 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”)***

51. LCC has delegated the administration of the LCC Church Extension Program to LCCFM.
52. 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.
53. 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.
54. LCC and its Districts, including the ABC District, are members of LCCFM.

***C. The Lutheran Church Canada – The Alberta-British Columbia District (the “ABC District”)***

55. In 1944, 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.* 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.

**D. *The LCC/ABC District Church Extension Program***

56. 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, as set out in para. 50 herein.
57. 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 in acquiring investments for 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. All revenues earned by ABC District as a result of its Church Extension Program activities are shared with the LCC and/or LCCFM;
  - g. 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.
58. At all times material to these proceedings, Schiemann was both the President and a director of the ABC District, and a director of the LCC.



59. The ABC District, together with the LCC and/or LCCFM as set out above, established two funds in furtherance of the ABC District Church Extension Program:
- a. The Church Extension Fund (the “CEF”) is a non-registered fund held by ABC District which offered term investments, 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.
60. At all times material to these proceedings, the Defendant Concentra was the trustee of DIL’s registered RRSP and RRIF trust funds (the “RRSP and RRIF Trusts”), pursuant to the terms of a RRSP and RRIF Agency Trust Agreement dated April 9, 2002 (the “2002 RRSP and RRIF Trust Agreement”) and a Replacement Trustee Agreement dated January 1, 2005 (the “2005 RRSP and RRIF Replacement Trustee Agreement”).
61. Concentra was also the trustee of DIL’s TFSA trust funds (the “TFSA Trust”) pursuant to the terms of a Tax Free Savings Account (TFSA) Agency Agreement dated October 30, 2009 (the “2009 TFSA Trust Agreement”).
62. The RRSP and RRIF Trust and the TFSA Trust are referred to collectively herein as the “DIL Trusts”.
63. It was a term of the DIL Trusts that all monies on deposit in the DIL Trusts would be held in trust for the depositors thereto (including the Plaintiffs) by Concentra on the following terms:
- (a) that the monies on deposit in the DIL Trusts would be used solely for the purposes of investment in accordance with the mandate of the ABC District’s Church Extension Program as set out in paras. 50 and 56 herein;
  - (b) that the monies on deposit in the DIL Trusts would be invested in “qualified investments” as that term is defined in the *Income Tax Act*, RSC 1985, c.1; and
  - (c) that the monies deposited to the DIL Trusts would be repaid to the depositors on demand, and with interest at rates set by the ABC District.
64. Pursuant to the terms of the 2002 RRSP and RRIF Trust Agreement, the 2005 RRSP and RRIF Replacement Trustee Agreement and the 2009 TFSA Trust Agreement, Concentra appointed DIL to act as its agent in carrying out the administration of the DIL Trusts, including the matters set out in para. 63 herein.
65. In turn, DIL retained ABC District as its sub-agent to provide management services in respect of the DIL Trusts, in exchange for a management fee.

66. The ABC District's Department of Stewardship and Financial Ministries (the "DSFM") established Loan Eligibility Policies in respect of the CEF and DIL trust 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.
67. 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.
68. The DSFM also set Loan Criteria for the CEF and DIL Trusts 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.
69. The DSFM also set Loan Conditions for the CEF and DIL Trusts 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.

70. All loans in excess of \$100,000.00 required the approval of the ABC District's Board of Directors.
71. The ABC District guaranteed the investments of DIL depositors in Church Extension programs.

*E. The Prince of Peace Village Loans*

72. In or about 1993, however, the ABC District decided to use the monies on deposit in the CEF Trust to purchase 156 acres of real property near Calgary, Alberta (the "POP Village Lands") for the purposes of developing those lands on its own behalf into a multi-use residential and commercial development called the Prince of Peace Village ("POP Village"), including a 174-unit seniors' condominium development, a seniors' assisted living residence ("The Manor"), and an Alzheimer's care centre ("The Harbour").
73. A portion of the POP Village Lands was set aside to build a church and a school for the benefit of the Prince of Peace congregation.
74. 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 Trust, 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.
75. LCC and/or LCCFM were aware of, or ought to have been aware of, and approved the ABC District's decision to utilize the CEF Trust monies for the purpose of developing the POP Village Lands.
76. The POP Village development commenced in 1993 and was carried on by the ABC District from 1993 through 2006.
77. Taman was at all times material to these proceedings a member of the Prince of Peace congregation, and a member of the congregation's Building Committee responsible for advancing and promoting the development of the POP Village Lands.
78. In addition to being the President and a director of ABC District and a director of LCC, Schiemann was at all times material to these proceedings a member of the Prince of Peace Congregation.
79. 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 Trust, 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 development's financial demands.

80. On November 9, 2005, ABC District incorporated ECHS to act as the developer of the POP Village.
81. At all times material to these proceedings, Taman and Bishop & McKenzie were the solicitors for both ABC District and ECHS.
82. At all times material to these proceedings, Taman was also a director, trustee, like official or principal of both ABC District and ECHS.
83. In 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 \$45,000,000.00 (the "First 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 Life Lease Assumption Agreement"), in order to facilitate ECHS's speculative development of the POP Village Lands. The First 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.
84. Chowne and Prowse Chowne were the solicitors for ABC District in respect of the transfer of the POP Village Lands from ABC District to ECHS, and First POP Village CEF Mortgage Loan.
85. Taman and Bishop & McKenzie were the solicitors for ECHS in respect of the transfer of the POP Village Lands from ABC District to ECHS, and the First POP Village CEF Mortgage Loan.
86. To the knowledge of ABC District, DIL, LCC and/or LCCFM, and Taman, ECHS was insolvent from its inception and continued to operate at a deficit.
87. ABC District subsequently approved additional unsecured loans to ECHS from the CEF 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.
88. On or about November 17, 2011, December 7, 2011 Concentra and/or DIL approved a mortgage loan from the DIL Trusts to ECHS in the amount of \$4,000,000.00 payable on demand with interest at 6% per annum (the "First POP Village DIL Mortgage Loan") and \$3,950,000.00 payable on demand with interest at 6% per annum (the "Second POP Village DIL Mortgage Loan") (referred to collectively as the "POP Village DIL Mortgage Loans").
89. The POP Village DIL Mortgage Loans were a fraudulent and dishonest scheme, in that they

were advanced by Concentra, DIL and/or ABC District to ECHS for the purpose of financing the POP Village development and enabling ECHS to meet its debt obligations to ABC District under the First POP Village CEF Mortgage Loan and/or its obligations to other lenders, and not for the benefit of the beneficiaries of the DIL Trusts, and constituted a risk to the interests of the beneficiaries of the DIL Trusts that Concentra, DIL and/or ABC District knew that they were not entitled to take.

90. On or about November 17, 2011, Schiemann, M. Ruf, H. Haberstock, Dressler, Lunderby, K. Haberstock, Washeim, Burns, Giese, Kentel, Kuhn, Schmidt and Gillingham were the directors of ABC District (the "2011 ABC District Directors").
91. On or about November 17, 2011, Kentel, Kobie, Schmidt, Lewis, Giese, M. Ruf, Lutz, Henning and Lee were the directors of DIL (the "2011 DIL Directors").
92. On or about November 17, 2011, Robinson, J. Ruf and Rivet were the officers of DIL (the "2011 DIL Officers")
93. The 2011 DIL Directors and the 2011 DIL Officers are referred to collectively herein as the "2011 DIL Officers and Directors".
94. The POP Village DIL Mortgage Loans were authorized, directed and approved by the 2011 ABC District Directors and the 2011 DIL Officers and Directors.
95. On or about November 17, 2011, Schiemann, Heumann, McMaster, Werschler, M. Ruf and Schoepp were the directors of ECHS (the "2011 ECHS Directors").
96. On or about November 17, 2011, ABC District and DIL were under common control in that Kentel, Schmidt, Giese and M. Ruf were directors and/or officers of both ABC District and DIL.
97. On or about November 17, 2011, ABC District and ECHS were under common control, in that Schiemann and M. Ruf were directors and/or officers of ABC District and ECHS.
98. On or about November 17, 2011, DIL and ECHS were under common control in that M. Ruf was an officer and/or director of both DIL and ECHS.
99. Chowne, Williams and Prowse Chowne were the solicitors for DIL in respect of the POP Village DIL Mortgage Loans.
100. On or about November 17, 2011, Chowne, Williams and Prowse Chowne were also the solicitors for ABC District.
101. Taman and Bishop & McKenzie were the solicitors for ECHS in respect of the POP Village DIL Mortgage Loans.

102. The 2011 ABC District Directors, the 2011 DIL Officers and Directors and the 2011 ECHS Directors knew or were willfully blind or reckless to the fact that:
- a. ECHS was insolvent;
  - b. ECHS had not prepared any financial statements since its incorporation; and
  - c. There was insufficient equity in the POP Village Lands to secure the POP Village DIL Mortgage Loans over and above the First POP Village CEF Mortgage Loan.
103. Pursuant to an agreement between DIL and ABC District made in or about September 2011, the POP Village DIL Mortgage Loans were to be registered in priority to the POP Village CEF Mortgage Loan and the District – ECHS Mortgage Loan (the ABC District – DIL Priority Agreement”).
104. Contrary to the ABC District – DIL Priority Agreement, and as a result of ABC District’s failure to execute and Concentra and/or DIL’s failure to prepare and register the ABC District – DIL Priority Agreement concurrently with the POP Village DIL Mortgage Loans, the POP Village DIL Mortgage Loans were registered in second and third position behind the District – ECHS Mortgage Loan.
105. In the alternative, Concentra and/or DIL failed to require that ABC District grant priority to the POP Village DIL Mortgage Loans ahead of the First POP Village CEF Mortgage Loan as a condition of advancing those Loans, despite there being inadequate equity in the POP Village Lands to secure the POP Village Mortgage Loans, and for the benefit of the ABC District and the Prince of Peace congregation.
106. In the further alternative, on or about November 17, 2011 Concentra and/or DIL advanced the First POP Village DIL Mortgage Loan from the DIL Trusts in the amount of \$4,000,000.00. The mortgage loan to ECHS in the amount of \$3,950,000.00 was made by ABC District from the CEF Trust on the same date (the “Second POP Village CEF Mortgage Loan”).
107. ABC District then assigned the Second POP Village CEF Mortgage Loan to Concentra and/or DIL by way of a Transfer of Mortgage dated January 22, 2014 (the “2014 Mortgage Transfer”), in exchange for consideration of \$3,950,000.00.
108. The 2014 Mortgage Transfer was a dishonest and fraudulent design on the part of Concentra, DIL and/or AC District in that its purpose was to provide capital to ABC District for the purpose of funding its operations, making additional loans to ECHS, and meeting its obligations to the beneficiaries of the CEF Trust, and was not for the benefit of the beneficiaries of the DIL Trusts, and constituted a risk to the prejudice of the interests of the beneficiaries of the DIL Trusts that Concentra, DIL and/or ABC District knew that they were not entitled to take.
109. The First POP Village DIL Mortgage Loan and the Second POP Village CEF Mortgage Loan, as amended by the 2014 Mortgage Transfer, are referred to collectively and

alternatively with the First and Second POP Village DIL Mortgage Loans as the “POP Village DIL Mortgage Loans”.

110. On January 22, 2014, Schiemann, M. Ruf, Dressler, Tufts, Buck, Esperanza, K. Haberstock, Gergens, Giese, Kentel, Kuhn, Schmidt and Weist were directors of ABC District (the “2014 ABC District Directors”).
111. On January 22, 2014, Schmidt, Kentel, M. Ruf, Henning, Lewis, Giese, Wolgram and D. Haberstock were the directors of DIL (the “2014 DIL Directors”).
112. The 2014 Mortgage Transfer was authorized, approved and directed by the 2014 ABC District Directors, and by the 2014 DIL Directors.
113. The 2014 ABC District Directors and the 2014 DIL Directors knew, or were willfully blind or reckless to the fact that:
  - a. ECHS was insolvent;
  - b. ECHS had not issued financial statements since the date of its incorporation; and
  - c. There was insufficient equity in the POP Village Lands to secure the Second POP Village CEF Mortgage Loan upon its transfer to DIL pursuant to the terms of the 2014 Mortgage Transfer.
114. On January 22, 2014, ABC District and DIL were under common control, in that M. Ruf, Kentel, Schmidt and Giese were directors of both ABC District and DIL.
115. Chowne, Williams and Prowse Chowne were the solicitors for Concentra and DIL in respect of the 2014 Mortgage Transfer.
116. Chowne, Williams and Prowse Chowne were also the solicitors for ABC District in respect of the 2014 Mortgage Transfer.
117. Pursuant to an agreement between DIL and ABC District made in or about January 2014, the Second POP Village CEF Mortgage Loan, as amended by the 2014 Mortgage Transfer, was to be registered against the title to the POP Village Lands in priority to the First POP Village CEF Mortgage Loan (the “Second ABC District – DIL Priority Agreement”).
118. However, contrary to the Second ABC District – DIL Priority Agreement, ABC District failed to execute, and Concentra and/or DIL failed to prepare and register, the Second ABC District – DIL Priority Agreement concurrently with the registration of the 2014 Mortgage Transfer.
119. In the alternative, Concentra and/or DIL failed to require that ABC District grant the Second POP Village CEF Mortgage priority over the First POP Village CEF Mortgage Loan as a condition of the 2014 Mortgage Transfer, despite there being inadequate equity in the POP Village Lands to secure the Mortgage.

120. As a result of the matters set out in paras. 88 – 119 herein, the First POP Village DIL Mortgage Loan was registered in second position behind the First POP Village CEF Mortgage Loan, and the Second POP Village DIL Mortgage Loan (or alternatively the Second POP Village CEF Mortgage Loan, as amended by the 2014 Mortgage Transfer) was registered in third position.

121. To the knowledge of ABC District, DIL, the 2011 ABC District Directors, the 2011 DIL Officers and Directors and the 2014 DIL Directors:

- a. the POP Village DIL Mortgage Loans contravened the mandate of the ABC District Church Extension Program and the terms of the DIL Trusts as set out in paras. 50, 56 and 63 herein, 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;
- b. contrary to the terms of the DIL Trusts the POP Village DIL Mortgage Loans were not “qualifying investments” as that term is defined in the *Income Tax Act*, RSC 1985, c.1.
- c. the POP Village DIL Mortgage Loans contravened the ABC District’s Church Extension Program Loan Eligibility Policies, Loan Criteria and Loan Conditions as set out in paras. 66 – 69 herein in respect of the CEF and DIL Trusts in that:
  - (i) 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;
  - (ii) the POP Village was a non-denominational commercial housing and health care project which was not intended or required to carry out the ministry of the Lutheran faith;
  - (iii) The loan-to-value ratio in respect of each of the Mortgage Loans was greater than that which would be commercially acceptable, or alternatively was based on an inflated valuation of the POP Village Lands;
  - (iv) The POP Village development was commenced and continued in the absence of any, or any reliable, financial projections;
  - (v) ECHS lacked the experience and qualifications to bring the POP Village to successful completion;
  - (vi) ECHS had no ability to service the POP Village Loans;
  - (vii) ECHS was insolvent and had not issued any financial statements since the date of its incorporation;
  - (viii) ECHS did not and was not required to provide financial support to ABC District and/or LCC in exchange for the POP Village Loans;
  - (ix) The POP Village DIL Mortgage Loans were unsecured or alternatively inadequately secured;
  - (x) The officers of ECHS were not required to sign Loan Repayment Agreements with ABC District and DIL in respect of the POP Village Loans;
  - (xi) ECHS was not required to make a commitment to promote Church



- Extension investments among its members or others;
- (xii) ECHS was not required to submit financial statements to the ABC District or to DIL, or alternatively the ABC District and/or DIL failed to scrutinize those financial statements to assess the risk to the POP Village DIL Mortgage Loans.

122. However, despite this knowledge the Directors approved, authorized and directed DIL and ABC District (as sub-agent to DIL and manager of the DIL Trusts) to grant the POP Village DIL Mortgage Loans to ECHS in order to support the successful development of the POP Village and the repayment of the POP Village CEF Mortgage Loans to the ABC District, for the benefit of the ABC District (in its own capacity) and the POP congregation.
123. DIL, ABC District and the Directors did not disclose to the beneficiaries of the DIL Trusts that by reason of the registration of the POP Village DIL Mortgage Loans in second and third position behind the First POP Village CEF Mortgage Loan, the POP Village DIL Mortgage Loans were likely to be and were uncollectible.
124. The POP Village development was ultimately unsuccessful and ECHS defaulted on the POP Village CEF Loans and the POP Village DIL Mortgage Loans. There is insufficient equity in the POP Village Lands to discharge the POP Village DIL Mortgage Loans.

#### ***F. The Strathmore Loan***

125. In or about 2007, ECHS purchased a parcel of real property located in Strathmore, Alberta (the "Strathmore Property").
126. On or about July 31, 2008, ABC District purchased the Strathmore Property from ECHS for \$1.00 (the "ABC District Strathmore Purchase").
127. Chowne and Prowse Chowne were the solicitors for ABC District in respect of the ABC District Strathmore Purchase.
128. Also on or about July 31, 2008, Concentra acting as Trustee of the DIL Trust and/or DIL acting as agent of Concentra loaned its manager and sub-agent ABC District \$5,891,322.54 payable on demand and with interest at 6.5% from the DIL Trust, to be secured by the Strathmore Property (the "Strathmore Loan").
129. On July 31, 2008, Kentel, Kobie, Schmidt, Mutschler, M. Ruf, Lutz, Henning and Lee were the directors of DIL (the "2008 DIL Directors").
130. On July 31, 2008, Schiemann, J. Ruf and Rivet were the officers of DIL (the "2008 DIL Officers").
131. The 2008 DIL Directors and the 2008 DIL Officers are referred to collectively herein as

the “2008 DIL Officers and Directors”.

132. On July 31, 2008, Schiemann, M. Ruf, H. Haberstock, Stroup, K. Haberstock, Burns, Kentel, Kuhn, Lutz, Schmidt and Kruse were the directors of ABC District (the “2008 ABC District Directors”)
133. On July 31, 2008, DIL and District were under common control, in that Kentel, Schmidt, Lutz, Schiemann and M. Ruf were directors and/or officers of both DIL and District.
134. The Strathmore Loan was approved, authorized and directed by the 2008 DIL Officers and Directors and the 2008 ABC District Directors, who knew or ought to have known that the Strathmore Property was worth substantially less than \$5,891,322.54.
135. Pursuant to an agreement between Concentra and/or DIL and ABC District, ABC District was required to provide security for the Strathmore Loan by executing a mortgage against the Strathmore property in favour of Concentra.
136. ABC District failed to execute a mortgage in favour of Concentra in respect of the Strathmore Loan.
137. Alternatively, ABC District executed a mortgage in favour of Concentra as Trustee for DIL in respect of the Strathmore Loan, but DIL and/or ABC District as sub-agent to DIL and manager of the DIL Trust failed to register that mortgage.
138. Alternatively, Concentra and/or DIL failed to require ABC District to execute a mortgage in favour of Concentra in respect of the Strathmore Loan.
139. Chowne and Prowse Chowne were the solicitors for both ABC District and DIL in respect of the Strathmore Loan.
140. Despite the fact that the Strathmore Property was worth considerably less than the principal amount of the Strathmore Loan, and despite ABC District’s failure to execute and/or register a mortgage in favour of Concentra and/or DIL in respect of the Strathmore Loan, Concentra and/or DIL advanced the proceeds of the Strathmore Loan to ABC District.
141. The Strathmore Loan contravened the mandate of the ABC District Church Extension Program and the terms of the DIL Trusts as set out in paras. 50, 56 and 63 herein, 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 raising operating funds for the ABC District and/or ensuring that the ABC District could meet its financial obligations to the beneficiaries of the CEF Trust.
142. Further, the Strathmore Loan was a dishonest and fraudulent scheme on the part of Concentra, DIL and/or ABC District, in that it constituted a risk to the prejudice of interests

of the beneficiaries to the DIL Trust that Concentra, DIL and ABC District knew they were not entitled to take.

143. Further, the Strathmore Loan contravened the terms of the DIL Trusts in that it was not a “qualifying investment” as defined in the *Income Tax Act*, RSC 1985, c. 1.
144. Further, the Strathmore Loan contravened the Loan Eligibility Policies, the Loan Criteria and the Loan Conditions in that:
  - a. The Strathmore Loan was not made for a capital project;
  - b. It was not required to provide or renovate facilities or property in which to carry out the ministry of the Lutheran faith;
  - c. There were no steps taken to obtain any reliable appraisal of the market value of the Strathmore Property prior to approving the Loan;
  - d. It was in excess of a commercially reasonable loan-to-value ratio;
  - e. There was no plan or commitment by ABC District to repay or service the debt;
  - f. It was not adequately secured by a registrable mortgage, or at all;
  - g. It was not supported by a Loan Repayment Agreement signed by the officers of the ABC District;
  - h. The ABC District did not provide annual financial statements to the DSFM for review of its ongoing eligibility.
145. LCC and/or LCCFM were aware, or were willfully blind or reckless as to the fact that Concentra and/or DIL had extended the Strathmore Loan to ABC District, and that the Strathmore Loan contravened the mandate of the ABC District Church Extension Program, the terms of the DIL Trusts, and the Loan Eligibility Policies, Loan Criteria and Loan Conditions as set out in paras. 141 - 144 herein.
146. On December 23, 2014, ABC District executed a \$5,891,322.54 mortgage against the Strathmore property in respect of the Strathmore Loan (the “Concentra Strathmore Mortgage”). Concentra and/or DIL proceeded to register that Mortgage against the title to the Strathmore Property.
147. Due to Concentra and/or DIL and/or ABC District’s six and a half year delay in registration of the Concentra Strathmore Mortgage, the Mortgage was unenforceable, rendering Concentra unable to execute on the underlying security and collect the Strathmore Loan on behalf of the beneficiaries to the DIL Trusts, including the Plaintiffs.
148. DIL, ABC District, the 2014 DIL Directors and the ABC District Directors failed to disclose to the beneficiaries of the DIL Trusts, including the Plaintiffs, that the Strathmore Mortgage Loan had not been secured by a mortgage when it was granted in 2008, or that the Concentra Strathmore Mortgage was registered on December 23, 2014, or that the lengthy delay that occurred between 2008 and the registration of the Concentra Strathmore Mortgage on December 23, 2014 rendered the Strathmore Loan uncollectible.

### ***G. The CCAA Proceedings***

149. As a result of the facts and matters set out herein, DIL and/or Concentra were unable to meet their obligations to the beneficiaries to the DIL Trusts, including the Plaintiffs.
150. Knowing that Concentra and DIL were unable to meet their obligations to the beneficiaries of the DIL Trusts, Concentra, DIL, the 2014 DIL Directors, and the 2014 ABC District Directors continued to encourage and accept deposits to the DIL Trusts up until and including December 31, 2014, without disclosing their insolvency and pending insolvency proceedings to the beneficiaries of the DIL Trusts, including the Plaintiffs.
151. The LCC and/or LCCFM were aware or ought to have been aware of the insolvency of DIL, and of the impending CCAA Proceeding. However, LCC and/or LCCFM took no steps to halt the operations of the ABC District Church Extension Program or the DIL, or to inform the depositors to the DIL Trusts that their deposits were at risk.
152. On January 2, 2015 ABC District, DIL, ECHS and a related company Encharis Management and Support Services (“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. The DIL Amended Amended Plan of Compromise and Arrangement dated January 11, 2016 (the “DIL Plan”) was sanctioned by the Court by order dated August 2, 2016.
153. Taman and Bishop & McKenzie are the solicitors for the Applicants in the CCAA Proceedings.
154. By way of an agreement approved by the Court of Queen’s Bench issued in the CCAA Proceedings on January 4, 2016, ABC District and DIL agreed, *inter alia*:
- (i) That District shall pay to DIL the all-inclusive sum of \$4,114,006.00 in settlement of DIL’s claims against District in relation to the POP Village DIL Mortgage Loans (the “POP Village DIL Mortgage Settlement Agreement”); and
  - (ii) That District shall pay to DIL 50% of the net proceeds of sale of the Strathmore Property in settlement of DIL’s claims against District in relation to the Strathmore Loan (the “Strathmore Settlement Agreement”).
155. In or about June 2016, ABC District paid to DIL the proceeds of the POP Village DIL Mortgage Settlement Agreement. These funds have been distributed to the beneficiaries of the DIL Trusts, including the Plaintiffs.

156. On or about September 16, 2016, pursuant to the Strathmore Settlement Agreement, ABC District sold the Strathmore Property for approximately \$3,100,000.00. 50% of the net sale proceeds have been distributed to the beneficiaries of the DIL Trusts, including the Plaintiffs.
157. Pursuant to the CCAA Proceedings, the remaining investment assets of the DIL Trusts have been or will be liquidated for the benefit of the beneficiaries of the DIL Trusts. However, the proceeds of those assets are not sufficient to satisfy Concentra and/or DIL's total outstanding obligations to the beneficiaries of the DIL Trusts, including the Plaintiffs.

#### *H. The Plaintiffs*

##### **(i) The Plaintiff Marilyn Huber**

158. Marilyn Huber is 51 years old is a member of the Good Shepherd Lutheran Church in Valleyview, Alberta.
159. At all times material to these proceedings, Ms. Huber has been a beneficiary of the DIL RRSP Trust. As of December 31, 2014, the balance of Ms. Huber's DIL RRSP account was \$72,179.36.
160. Through the course of the CCAA Proceedings, Ms. Huber has received distributions of \$43,753.86 from DIL.
161. As a result of the facts and matters set out herein, Ms. Huber has suffered damages and loss in the amount of \$28,425.50, which is the shortfall in her RRSP account. There are insufficient assets in the DIL investment portfolio to satisfy DIL's obligations to Ms. Huber.

##### **(ii) The Plaintiff Reid Glenn**

162. Reid Glenn is 62 years old and is a member of the Prince of Peace Lutheran Church in Peace River, Alberta.
163. At all times material to these proceedings, Mr. Glenn has been a beneficiary of the DIL RRSP Trust. As of December 31, 2014, the balance of Mr. Glenn's DIL account was \$364,095.79.
164. Through the course of the CCAA Proceedings, Mr. Glenn has received distributions of \$220,708.49 from DIL.

165. As a result of the facts and matters set out herein, Mr. Glenn has sustained damages and loss in the amount of \$143,387.30, which is the shortfall in his RRSP account. There are insufficient assets in the DIL investment portfolio to satisfy DIL's obligations to Mr. Glenn.

#### **I. The Class**

166. This is a proposed class proceeding on behalf of the Plaintiffs and:

- a. a putative class of people resident in Alberta who on January 2, 2015 were depositors to The Lutheran Church – Canada, Alberta and British Columbia District Investments Ltd. and who had not opted out of the Representative Action referred to in Article 5.1 of the DIL Plan prior to the commencement of these proceedings (the “AB DIL Class”); and
- b. a putative extra-provincial class of people resident outside of Alberta and who on January 2, 2015 were depositors to The Lutheran Church – Canada, Alberta and British Columbia District Investments Ltd. and who had not opted out of the Representative Action referred to in Article 5.1 of the DIL Plan in the manner set out in Art. 5.7 of the DIL Plan prior to the commencement of these proceedings (the “Extrajurisdictional DIL Class”).

#### **J. Liability of Concentra: Breach of trust, breach of fiduciary duty, and negligence**

167. As trustee of the DIL Trusts, Concentra owed the following duties to the beneficiaries of the DIL Trusts, including the Plaintiffs:

- a. as a trustee, to:
  - (i) abide by the terms of the DIL Trusts;
  - (ii) to refrain from investing the DIL Trusts funds in a manner inconsistent with the terms of the DIL Trusts, both at common law and in accordance with s. 3(1) and 4(1) of the *Trustee Act*, RSA 2000, c. T-8;
  - (iii) to exercise the degree of care, skill, diligence and judgment that a reasonable investor would exercise in the making of investments on behalf of the beneficiaries of the DIL Trusts, both at common law and in accordance with s. 4(1) of the *Trustee Act*, *supra*;
  - (iv) to invest the DIL Trusts funds with a view to obtaining a reasonable return while avoiding undue risk, having regard to the circumstances of the Trusts, in accordance with s.3(2) of the *Trustee Act*, *supra*;
  - (v) to establish and adhere to investment lending policies, standards and procedures that a reasonable and prudent person would apply in respect of a portfolio of investments and loans to avoid undue loss and obtain a

reasonable rate of return, in accordance with s. 450 of the *Trust and Loan Companies Act*, SC 1991, c. 45;

- b. As a fiduciary:
  - (i) to act honestly, in good faith and strictly in the best interests of the beneficiaries of the DIL Trusts; and
  - (ii) to ensure that its agent DIL and its subagent and manager ABC District acted honestly, in good faith and in the best interests of the beneficiaries of the DIL Trusts; and
- c. To exercise the same degree of care in the administration of the DIL Trusts as would a reasonable trustee, including in the supervision of its agent DIL and its subagent and manager ABC District to ensure that they:
  - (i) abided by the terms of the DIL Trusts;
  - (ii) refrained from investing the DIL Trusts funds in a manner inconsistent with the DIL Trusts;
  - (iii) exercised the same degree of care, skill, diligence and judgment in the performance of its duties as Concentra was obliged to exercise.
  - (iv) Complied with and applied the mandate of the ABC District Church Extension Program, and the ABC District's Loan Eligibility Policies, Loan Criteria and Loan Conditions.

168. In breach of its duty of trust to the beneficiaries of the DIL Trusts, including the Plaintiffs, Concentra:

- a. authorized, or permitted DIL and/or ABC District to authorize, the POP Village DIL Mortgage Loans,
  - (i) which were contrary to the terms of the DIL Trusts in that:
    - 1. the loan proceeds were not used for investment purposes in accordance with the mandate and policies of the ABC District's Church Extension Program as set out in paras. 50, 56 and 63 herein, but were instead advanced to ECHS in order to allow it to pursue speculative real estate development of the POP Village Lands and/or to provide operating capital to ABC District; and
    - 2. the Loans were not "qualifying investments" within the meaning of the *Income Tax Act*, RSC 1985, c. 1;
  - (ii) failed to exercise a reasonable degree of skill, care, diligence and judgment in the making of investments on behalf of the beneficiaries of the DIL Trusts by (including but not limited to):
    - 1. failing to take any reasonable steps, or any steps at all, to determine the market value of and equity in the POP Village Lands prior to granting and/or assuming the POP Village DIL Mortgage Loans;

2. failing to determine whether ECHS was capable of servicing the POP Village DIL Mortgage Loans prior to advancing the Loan proceeds, in circumstances where ECHS was insolvent at the time that the Loans were granted;
  3. failing to conduct reasonable and timely, or any, reviews of the security or (lack thereof) given for the POP Village DIL Mortgage Loans;
- (iii) failed to establish and adhere to investment lending policies, standards and procedures that a reasonable and prudent person would apply and adhere to, including but not limited to the Loan Eligibility Policies, Loan Criteria and Loan Conditions as set out in paras. 66 – 69 herein with respect to the POP Village DIL Mortgage Loans, in the manner set out in para. 121 herein; and
- b. authorized, or permitted DIL and/or ABC District to authorize, the Strathmore Loan,
- (i) which was contrary to the terms of the DIL Trusts in that:
    1. the loan proceeds were not used for investment purposes in accordance with the mandate and policies of the ABC District's Church Extension Program as set out in paras. 50, 56 and 63 herein, but instead were advanced to ABC District in order to provide operating capital and/or to service its obligations to the beneficiaries of the CEF Trust;
    2. the Loan was not a "qualifying investment" within the meaning of the *Income Tax Act*, RSC 1985, c. 1;
  - (ii) failed to exercise a reasonable degree of skill, care, diligence and judgment in the making of the Strathmore Loan on behalf of the beneficiaries of the DIL Trusts by:
    1. failing to ensure that the Strathmore Loan was secured by a registrable mortgage over the Strathmore Property;
    2. failing to conduct reasonable and timely reviews of the security for the Strathmore Loan on an ongoing basis;
    3. failing to obtain an appraisal or take another reasonable steps to determine the market value of the Strathmore Property prior to approving and advancing the Loan;
  - (iii) failing to establish and adhere to investment lending policies, standards and procedures that a reasonable and prudent person would apply and adhere to, including but not limited to the Loan Eligibility Policies, Loan Criteria and Loan Conditions as set out in paras. 66 – 69 herein with respect to the Strathmore Loan, in the manner set out in para. 144 herein,

all of which caused the Plaintiffs and putative AB DIL Class and Extraprovincial DIL Class members to suffer damages and loss.



169. Further, in breach of its fiduciary duties to the beneficiaries of the DIL Trusts, including the Plaintiffs, Concentra permitted its agent DIL to engage and continue to employ ABC District as its subagent and manager and to loan monies to ABC District and to ECHS which was under common control with ABC District, despite its knowledge that:

- a. ECHS was a borrower from DIL in respect of the POP Village DIL Mortgage Loans and a borrower from ABC District in respect of the First POP Village CEF Mortgage Loan, and was under common control with both ABC District and DIL, which were under common control with each other, which put both ABC District and DIL in a conflict of interest as between their duties to the beneficiaries to the DIL Trusts in respect of the POP Village DIL Mortgage Loans and their interests in the First POP Village CEF Mortgage Loan, and which resulted in:
  - (i) the approval of the POP Village DIL Mortgage Loans, despite their contravention of the terms of the DIL Trusts, the Loan Eligibility Policies, the Loan Criteria and the Loan Conditions as set out in para. 121 herein and the insolvency of ECHS; and
  - (ii) the registration of the POP Village DIL Mortgage Loans in second and third priority behind the First POP Village CEF Mortgage Loan without the concurrent of the District – DIL Priority Agreements, or any priority agreements, in circumstances where the Loan were at risk of being uncollectible by reason of the lack of equity in the POP Village Lands and the inability of ECHS to adequately manage or complete the project as set out in para. 120 herein, and for the benefit of ABC District and the Prince of Peace congregation; and
  
- b. ABC District was a borrower from DIL in respect of the Strathmore Loan and was under common control with DIL, which put both ABC District and DIL in a conflict of interest as between their duties to the beneficiaries of the DIL Trusts and their interest in the Strathmore Loan, and which resulted in:
  - (i) the approval of the Strathmore Loan despite its contravention of the terms of the DIL Trust and the contravention of the Loan Eligibility Policies, Loan Criteria and Loan Conditions as set out in para. 144 herein; and
  - (ii) the failure of ABC District and DIL to execute and register the Strathmore Mortgage against the title to the Strathmore Property at the time that the Strathmore Loan was advanced as set out in para. 136 herein,

all of which caused the Plaintiffs and putative AB DIL Class and Extraprovincial DIL Class members to suffer damages and loss.

170. Further, in breach of its duty of care to the DIL Depositors, Concentra failed to comply with and apply, and/or or ensure that the DIL and ABC District complied with and applied, the Loan Eligibility Policies, the Loan Criteria and the Loan Conditions:

- a. With respect to the POP Village DIL Mortgage Loans (or alternatively the First POP Village DIL Mortgage Loan and the Second POP Village CEF Mortgage Loan, as amended by the District – DIL Transfer of Mortgage), in the manner set out in para. 121 herein; and

- b. With respect to the Strathmore Loan, in the manner set out in para. 144 herein,  
all of which caused the Plaintiffs and putative AB DIL Class and Extraprovincial DIL Class members to suffer damages and loss.

**K. Liability of DIL: Breach of trust, breach of fiduciary duty, and negligence**

171. As the agent of Concentra, the trustee of the DIL Trusts, DIL owed the same duty of trust, fiduciary duties and duties of care to the beneficiaries of the DIL Trusts, including the Plaintiffs, as were owed by Concentra, as set in para. 167 herein.

172. DIL breached its duties to the beneficiaries of the DIL Trusts,

- a. With respect to the POP Village DIL Mortgage Loans in the manner set out in paras. 168a., 169a. and 170a. herein,
- b. With respect to the Strathmore Loan, in the manner set out in paras. 168b, 169b, and 170b. herein,

all of which caused the Plaintiffs and putative AB DIL Class and Extraprovincial DIL Class members to suffer damages and loss.

173. In the alternative, at all times material to these proceedings DIL acted as the agent of Concentra in the operation and administration of the DIL Trusts. The acts, omissions and breaches of duty of DIL as set out herein occurred within the normal course of the business of Concentra, and were within the actual or ostensible authority granted to DIL by Concentra. Accordingly, Concentra is vicariously liable for the acts, omissions and breaches of duty of DIL as set out herein.

**L. Liability of the DIL Officers and Directors: Breach of Trust and Breach of Fiduciary Duty**

**(i) The 2008 DIL Officers and Directors**

174. The 2008 DIL Officers and Directors had the same trust duties, fiduciary duties and duties of care as DIL had to the beneficiaries of the DIL Trusts, as set out in para. 171 herein.

175. The 2008 DIL Officers and Directors, or one or more or all of them, knew or were willfully blind or reckless to the fact that the Strathmore Loan contravened the mandate of

the ABC District Church Extension Program and the terms of the DIL Trusts as set out in paras. 50, 56 and 63, and the Loan Eligibility Policies, the Loan Conditions and the Loan Criteria set out in paras. 66 – 69 herein.

176. Despite this knowledge, the 2008 DIL Officers and Directors, or one or more or all of them, in breach of their trust and fiduciary duties to the beneficiaries of the DIL Trusts, rendered assistance to DIL, Concentra and/or ABC District in the breach of the DIL Trusts by:

- a. authorizing, directing and approving the Strathmore Loan, for the financial benefit of ABC District, of which one or more or all of them were officers and directors, and not for the benefit of the beneficiaries of the DIL Trusts; and
- b. failing to disclose the matters set out in paras. 168(b) to the beneficiaries of the DIL Trusts.

177. As a result of the foregoing, the Plaintiffs and putative members of the AB DIL Class and Extraprovincial DIL Class have suffered damages and loss.

**(a) The 2011 and/or 2014 DIL Officers and Directors**

178. The 2011 and/or 2014 DIL Officers and Directors had the same fiduciary duties, trust duties and duties of care as DIL had to the beneficiaries of the DIL Trusts, as set out in para 171 herein.

179. The 2011 DIL Officers and Directors and the 2014 DIL Officers and Directors, or one or more or all of them, knew or were willfully blind or reckless as to the fact that the POP Village DIL Mortgage Loans contravened the mandate of the ABC District Church Extension Program and the terms of the DIL Trusts as set out in paras. 50, 56 and 63 herein, the Loan Eligibility Policies, the Loan Conditions and the Loan Criteria set out in paras. 66 – 69 herein, and were unlikely to be collectible in the event of default by ECHS.

180. Despite this knowledge, the 2011 and/or 2014 DIL Officers and Directors, or one or more or all of them, in breach of their trust and fiduciary duties and their duty of care to the beneficiaries of the DIL Trusts, including the Plaintiffs, rendered assistance to DIL, Concentra and/or ABC District in the breach of the DIL Trusts by authorizing, directing, and approving the execution, funding and registration of the POP Village DIL Mortgage Loans in second and third priority to the First POP Village CEF Mortgage Loan, for the benefit of:

- a. With respect to the First and Second POP Village DIL Mortgage Loans: for the benefit of the Prince of Peace Congregation and ECHS in their interests in completion of the POP Village development, and for the benefit of ABC District in order to protect ABC District's interest in the First POP Village CEF Mortgage Loan; or alternatively,

b. With respect to:

- (i) the First POP Village DIL Mortgage Loan: for the benefit of the Prince of Peace Congregation and ECHS in the completion of the POP Village development, and in order to protect ABC District's interest in the First POP Village CEF Mortgage Loan;
- (ii) the Second POP Village CEF Loan, as amended by the 2014 Transfer of Mortgage: in order to provide capital to the ABC District with which to carry on its operations, fund additional loans to ECHS and meet its obligations to the beneficiaries of the CEF Trust.

181. Further, the 2011 and/or 2014 DIL Officers and Directors failed to disclose to the beneficiaries of the DIL Trusts the matters set out in paras. 168(a) and 179 - 180 herein.

182. Further, despite their knowledge of the facts and matters set out in paras. 183 and 184 herein, and despite knowing that the Strathmore Mortgage was unenforceable by reason of the 6.5 year delay in registration, and despite knowing that ABC District, Encharis and DIL were insolvent and planning to seek protection from their creditors pursuant to the CCAA Proceedings, the 2014 DIL Officers and Directors continued to encourage and accept deposits to the DIL Trusts by the Plaintiffs and putative BC DIL Class and Extraprovincial DIL Class members, up to and including December 31, 2014.

183. As a result of the foregoing, the Plaintiffs and putative AB DIL Class and Extraprovincial DIL Class members have suffered damages and loss.

**M. Liability of ABC District: Breach of trust, breach of fiduciary duty, and negligence**

184. As the sub-agent of DIL, ABC District owed the same duty of trust, fiduciary duties and duties of care to the beneficiaries of the DIL Trust, including the Plaintiffs, as were owed by Concentra, as set in para.167 herein.

185. ABC District breached its duties to the beneficiaries of the DIL Trust,

- a. With respect to the POP Village DIL Mortgage Loans (or alternatively the First POP Village DIL Mortgage Loan and the Second POP Village CEF Mortgage Loan, as amended by the District – DIL Transfer of Mortgage) in the manner set out in paras. 169a. and 171a herein, and in acting as the subagent of DIL and the manager of the DIL Trusts when it was in a conflict of interest with the beneficiaries of the DIL Trusts as set out in para. 170a herein,
- b. With respect to the Strathmore Loan, in the manner set out in paras. 169b and 171b herein, and in acting as the subagent of DIL and the manager of the DIL Trust when it was in a conflict of interest with the beneficiaries of the DIL Trusts as set out in para. 170b herein,

all of which caused the Plaintiffs and putative AB DIL Class and Sub-class and Extraprovincial DIL Class members to suffer damages and loss.

186. In the alternative, at all times material to these proceedings ABC District acted as the sub-agent of DIL, which was the agent of Concentra in the operation and administration of the DIL Trusts. The acts, omissions and breaches of duty of ABC District as set out herein occurred within the normal course of the business of Concentra and/or DIL, and were within the actual or ostensible authority granted to ABC District by Concentra and/or DIL. Accordingly, Concentra is vicariously liable for the acts, omissions and breaches of duty of ABC District as set out herein.

#### **N. Liability of ABC District Directors**

##### **(i) The 2008 ABC District Directors**

187. The 2008 ABC District Directors had the same fiduciary duties, trust duties and duty of care as ABC District had to the beneficiaries of the DIL Trusts in its capacity as sub-agent to DIL and the manager of the DIL Trusts, as set out in para 167 herein.

188. The 2008 ABC District Directors, or one or more or all of them, knew or were reckless or willfully blind to the fact that the Strathmore Loan contravened the mandate of the ABC District Church Extension Program and the terms of the DIL Trusts as set out in paras. 50, 56 and 63 herein, and the Loan Eligibility Policies, the Loan Conditions and the Loan Criteria as set out in paras. 66 – 69 herein, in the manner set out in paras. 141 - 144 herein.

189. Despite this knowledge, the 2008 ABC District Directors, or one or more or all of them, in breach of their trust and fiduciary duties and duty of care to the beneficiaries of the DIL Trusts, rendered assistance to ABC District, DIL and Concentra in the breach of the DIL Trusts by authorizing, directing and approving the Strathmore Loan for the financial benefit of ABC District in its own capacity in order to obtain operating capital and funds with which to meet its obligations to the beneficiaries of the CEF Trust, and not for the benefit of the beneficiaries of the DIL Trusts.

190. Further, the 2008 ABC District Directors failed to disclose to the beneficiaries of the DIL Trusts the matters set out in paras. 168b and 188-189 herein.

191. As a result of the foregoing, the Plaintiffs and putative AB DIL Class and Extraprovincial DIL Class members have suffered damages and loss.

##### **(b) The 2011 and/or 2014 ABC District Directors**

192. The 2011 and/or 2014 ABC District Directors had the same fiduciary duties, trust duties and duty of care as ABC District had to the beneficiaries of the DIL Trusts as sub-agent to DIL and manager of the DIL Trust, as set out in para. 185 herein.
193. The 2011 DIL Officers and Directors and/or the 2014 DIL Officers and Directors, or one or more or all of them, knew or were willfully blind or reckless as to the fact that the POP Village DIL Mortgage Loans contravened the mandate of the ABC District Church Extension Program and the terms of the DIL Trust as set out in paras. 50, 56 and 63 herein, and the Loan Eligibility Policies, the Loan Conditions and the Loan Criteria, as set out in paras. 66 – 69 herein, in the manner set out in para. 121 herein.
194. Despite this knowledge, the 2011 and/or 2014 ABC District Officers and Directors, or one or more or all of them, in breach of their trust and fiduciary duties and duty of care to the beneficiaries of the DIL Trusts, rendered assistance to Concentra, DIL and/or ABC District in the breach of the DIL Trusts by authorizing, directing and approving the execution, funding and registration of the POP Village DIL Mortgage Loans in second and third priority to the First POP Village CEF Mortgage Loan, for the financial benefit of the Prince of Peace Congregation and ECHS, and in order to protect ABC District's own interest in the First POP Village CEF Mortgage Loan, and not for the benefit of the beneficiaries of the DIL Trust.
195. Further, the 2011 and/or 2014 ABC District Directors failed to disclose to the beneficiaries of the DIL Trusts the facts and matters set out in paras. 172(a) herein.
196. Further, despite their knowledge of the facts and matters set out in paras. 197-198 herein, and despite their knowledge that the POP Village DIL Mortgage Loans would be uncollectable in the event that ECHS defaulted on the Loans, and despite their knowledge that the Strathmore Loan had not been secured by a mortgage and that by reason of the 6.5 year delay in registration would not be collectible in the event that it defaulted on the Loan, and despite knowing that ABC District, DIL and Encharis were insolvent and planning to seek protection from their creditors pursuant to the CCAA Proceedings, the 2014 ABC District Directors or one or more or all of them continued to encourage and accept deposits to the DIL Trusts by the Plaintiffs and putative BC DIL Class and Extraprovincial DIL Class members, up to and including December 31, 2014.
197. As a result of the facts and matters set out herein, the Plaintiffs and putative AB DIL Class and Extraprovincial DIL Class members have suffered damages and loss.

#### **O. Liability of LCC and LCCFM**

##### **(a) As Joint Enterprisers with DIL and District**

198. As participants in the joint enterprise that is the ABC District's Church Extension program, of which the DIL Trust is a component along with the CEF Trust, as set out in para. 57 herein, LCC and/or LCCFM are jointly and severally liable to the Plaintiffs and

putative Class members along with ABC District and DIL for ABC District's and DIL's breaches of the DIL Trusts, breaches of fiduciary duty and negligence as set out in paras. 172 and 185 herein.

**(b) For Rendering Knowing Assistance to Breach of Trust and Breach of Fiduciary Duty**

199. In the alternative, LCC and/or LCCFM knew of or were willfully blind or reckless to the breaches of trust and breaches of fiduciary duty committed by Concentra, DIL and/or ABC District as set out in paras. 168, 172 and 185 herein, and knowingly assisted in those breaches of trust and breaches of fiduciary duty by:

- a. reviewing and approving the POP Village DIL Mortgages and the Strathmore Loan; and
- b. allowing the ABC District to continue to operate the ABC District Church Extension Fund program despite the failure of ABC District and DIL to comply with and apply the Loan Eligibility Policies, the Loan Conditions and the Loan Criteria,
  - (i) with respect to the POP Village DIL Mortgage Loans, as set out in para. 121 herein; and
  - (ii) with respect to the Strathmore Loan, in the manner set out in para. 141 - 144 herein; and
- c. permitting the ABC District to manage and operate the ABC District Church Extension Program in circumstances where it was acting in a conflict of its duties to the beneficiaries of the DIL Trust, its duties to the beneficiaries of the CEF Trusts, and its interests as a debtor to DIL on its own behalf and its interests as a creditor to ECHS on its own behalf.

200. As a result of the foregoing the Plaintiff and putative AB DIL Class and Extraprovincial DIL Class have suffered damages and loss for which LCC and LCCFM are jointly and severally liable along with Concentra, DIL and ABC District.

**(c) Vicarious Liability for Acts and Omissions of ABC District**

201. 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 as set out in paras. 50, 56 and 63 herein. The acts, omissions and breaches of duty of ABC District as set out in para. 184 – 185 herein occurred within the normal course of the business of LCC and/or LCCFM's Church Extension Program, 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.

**P. Liability of Chowne, Williams and Prowse Chowne: Rendering Knowing Assistance to Breach of Trust and Breach of Fiduciary Duty**

202. In January 2006, Chowne and Prowse Chowne were the solicitors for ABC District in respect of the POP Village CEF Mortgage Loan.
203. In November 2011, Chowne and Prowse Chowne were the solicitors for both ABC District and DIL in respect of the POP Village DIL Mortgage Loans (or alternatively, the First POP Village DIL Mortgage Loan), and the First ABC District – DIL Priority Agreement.
204. In the alternative, in November 2011 Chowne and Prowse Chowne were the solicitors for both ABC District and DIL in respect of the First POP Village DIL Mortgage Loan, and counsel for ABC District in respect of the Second POP Village CEF Mortgage Loan, and in November 2014, Williams and Prowse Chowne were counsel to both ABC District and DIL in respect of the 2014 Mortgage Transfer and the Second ABC District – DIL Priority Agreement.
205. Chowne, Williams and Prowse Chowne knew, or were willfully blind or reckless as to the following facts:
- a. ABC District was the manager of the DIL Trusts and the subagent to DIL, which was the agent of the trustee Concentra;
  - b. ABC District held the First POP Village CEF Mortgage Loan over the POP Village Lands, in the amount of \$45,000,000.00;
  - c. ABC District was a party adverse in interest to DIL by way of the priority of the POP Village CEF Mortgage Loan over any subsequent secured loans granted to ECHS by DIL in respect of the POP Village Lands;
  - d. Any mortgage granted by DIL to ECHS which was secured by the POP Village Lands and registered in second or third priority after the First POP Village CEF Mortgage was at risk of being uncollectible as a result of inadequate equity in the POP Village Lands and the insolvency of ECHS; and
  - e. The POP Village DIL Mortgage Loans contravened the mandate of the ABC District Church Extension Fund and the terms of the DIL Trusts as set out in paras. 50, 56 and 63 herein, and the Loan Eligibility Policies, the Loan Conditions and the Loan Criteria as set out in paras. 66 – 69 herein, and in the manner set out in paras. 121 and 141 - 144 herein.
206. Chowne, Williams and Prowse Chowne knowingly assisted and facilitated Concentra's, ABC District's and DIL's breaches of their trust and fiduciary duties to the beneficiaries of the DIL Trusts, including the Plaintiffs and the putative class members, as set out in paras. 171 – 172 and 184 – 185 herein, by:
- a. Preparing and registering the POP Village DIL Mortgage Loans which contravened the mandate of the ABC District Church Extension Program and the terms of the DIL Trusts as set out in paras. 50, 56 and 63 herein, and the



Loan Eligibility Policies, the Loan Conditions and the Loan Criteria as set out in paras. 66 – 69 herein, and in the manner set out in para. 121 and 141 - 144 herein; and

- b. By registering the POP Village DIL Mortgage Loans in the absence of the First and/or Second ABC District – DIL Priority Agreement, or any priority agreement, that would have ensured that the POP Village DIL Mortgage Loans were registered in priority to the First POP Village CEF Mortgage,

all of which caused damages and loss to the Plaintiffs and the putative members of the AB DIL Class and the Extraprovincial DIL Class.

- 207. Accordingly, Chowne, Williams and Prowse Chowne are jointly and severally liable along with the ABC District, DIL and Concentra for the damages and loss caused to the Plaintiffs and putative AB DIL Class and Extraprovincial DIL Class members as a result of those breaches of duty.
- 208. Further, at all times material to this proceeding Chowne and Williams were acting in the ordinary course of the business of Prowse Chowne LLP and/or with the authority of their partners therein. Accordingly, Prowse Chowne LLP is vicariously liable for Chowne's and Williams' breaches of duty and wrongful acts as set out herein.
- 209. In the alternative, Prowse Chowne LLP had actual knowledge of the wrongful conduct of Williams and Chowne as set out herein, or was reckless or willfully blind thereto. Therefore, Prowse Chowne is liable to the Plaintiffs and putative AB DIL Class and Extraprovincial DIL Class members for the conduct of Chowne and Williams as set out herein.

**Q. Liability of ECHS: Knowing Receipt of Monies Acquired in Breach of Trust**

- 210. ECHS knew, or was willfully blind or reckless as to the fact that the POP Village DIL Mortgage Loans contravened the intent and mandate of the ABC District Church Extension Fund Program and the terms of the DIL Trusts as set out in paras. 50, 56 and 63 herein, and the Loan Eligibility Policies, the Loan Criteria and the Loan Conditions as set out in paras. 66 – 69 herein, in the manner set out in paras. 121 and 141 - 144 herein.
- 211. Despite this knowledge, ECHS willingly accepted and received the proceeds of the POP Village DIL Mortgage Loans (or alternatively the First POP Village DIL Mortgage Loan) from DIL, which has caused the BC DIL Class, the Extraprovincial DIL Class to suffer damages and loss.
- 212. ECHS holds the proceeds of the POP Village DIL Mortgage Loans (or alternatively the First POP Village DIL Mortgage Loan) paid to it in breach of the DIL Trusts on a

constructive trust for the beneficiaries of the DIL Trusts, including the Plaintiff.

**R. Liability of 2011 ECHS Directors**

213. The 2011 ECHS Directors knew or were willfully blind or reckless as to the fact that:
- a. the proceeds of the POP Village DIL Mortgage Loans (or alternatively the First POP Village DIL Mortgage Loan) were monies acquired in breach of the DIL Trusts;
  - b. that there was insufficient equity in the POP Village Lands to secure the POP Village DIL Mortgage Loans (or alternatively the First POP Village DIL Mortgage Loan); and
  - c. ECHS was insolvent and unable to repay the POP Village DIL Mortgage Loans.
214. However, the 2011 ECHS Directors, or one or more or all of them, knowingly accepted and received the Loan proceeds on behalf of ECHS, and/or rendered knowing assistance to the breach of the DIL Trust by seeking and negotiating the Loan(s) which caused the beneficiaries of the DIL Trusts, including the Plaintiffs and putative BC DIL Class and Extraprovincial DIL Class members, damages and loss.

**S. Liability of Taman and Bishop & McKenzie: Rendering Knowing Assistance to Receipt of Monies Acquired in Breach of Trust**

215. At all times material to these proceedings Taman was a member of the POP Congregation, the Chairman of the POP Congregation's Housing Committee responsible for advancing the POP Village development, counsel for both ABC District and ECHS and a director, officer, like official or principal of both ABC District and ECHS.
216. Taman knew, or was reckless or willfully blind to the fact that the use of DIL Trusts monies to finance the development of the POP Village Lands contravened the intent and purpose of the ABC District Church Extension Program and the terms of the DIL Trusts as set out in paras. 50, 56 and 63 and the Loan Eligibility Policies, Loan Criteria and Loan Conditions as set out in paras. 66 – 69, in the manner set out in para. 121.
217. By advising ECHS with respect to the POP Village DIL Mortgage Loans (or alternatively the First POP Village DIL Mortgage Loan) and negotiating those Loan(s) with ABC District and DIL, Taman rendered knowing assistance to ECHS's receipt of DIL Trusts monies acquired in breach of the DIL Trusts, which caused the Plaintiffs and putative AB DIL Class and Extraprovincial DIL Class members to suffer damages and loss.
218. Further, at all times material to this proceeding Taman was acting in the ordinary course of the business of Bishop & McKenzie or with the authority of his partners therein. Accordingly, Bishop & McKenzie is vicariously liable for Taman's breaches of duty and wrongful acts as set out herein.
219. In the alternative, Bishop & McKenzie had actual knowledge of the wrongful conduct of

Taman as set out herein, or was reckless or willfully blind thereto. Therefore, Bishop & McKenzie is liable to the Plaintiffs and putative AB DIL Class and Extraprovincial DIL Class members for the wrongful conduct of Taman as set out herein.

## REMEDY SOUGHT

220. The Plaintiffs claim on their own behalf and on behalf of the AB DIL Class and the Extraprovincial DIL Class, the following relief:

- a. In respect of the Strathmore Loan:
  - (i) As against the Defendants Concentra, DIL, ABC District, LCC and LCCFM, jointly and severally:
    1. Damages for breach of fiduciary duty;
    2. Damages for breach of trust;
    3. Damages for negligence;
    4. An order for restitution;
    5. An accounting;
    6. A constructive trust;
    7. Pre-judgment interest in accordance with the *Judgment Interest Act*;
    8. Costs of this proceeding; and
    9. Such further and other relief as this Court deems just.
  - (ii) As against the Defendants the 2008 ABC District Directors, the 2008 DIL Officers and Directors, Chowne Prowse Chowne, LCC and LCCFM:
    1. Damages for rendering knowing assistance to a breach of trust;
    2. Damages for rendering knowing assistance to a breach of fiduciary duty;
    3. A constructive trust;
    4. An accounting;
    5. Pre-judgment interest in accordance with the *Judgment Interest Act*;
    6. Costs of this proceeding; and
    7. Such further and other relief as this Court deems just.
- b. In respect of the First POP Village DIL Mortgage Loan:
  - (i) As against the Defendants Concentra, DIL, ABC District, LCC and LCCFM, jointly and severally:
    1. Damages for breach of trust;
    2. Damages for breach of fiduciary duty;
    3. Damages for negligence;
    4. An order for restitution;
    5. A constructive trust;
    6. An accounting;
    7. Pre-judgment interest in accordance with the *Judgment Interest Act*;
    8. Costs of this proceeding; and
    9. Such further and other relief as this Court deems just.

- (ii) As against the Defendants the 2011 DIL Officers and Directors, the 2011 ABC District Directors, Chowne and Prowse Chowne, jointly and severally:
  1. Damages for rendering knowing assistance to a breach of trust;
  2. Damages for rendering knowing assistance to a breach of fiduciary duty;
  3. An accounting;
  4. A constructive trust;
  5. Prejudgment interest in accordance with the *Judgment Interest Act*;
  6. Costs of this proceeding; and
  7. Such further and other relief as this Court deems just.
- (iii) As against ECHS:
  1. Damages for knowing receipt of monies acquired in breach of trust;
  2. An accounting;
  3. A constructive trust;
  4. An order for restitution;
  5. Prejudgment interest in accordance with the *Judgment Interest Act*;
  6. Costs of this proceeding; and
  7. Such further and other relief as this Court deems just.
- (iv) As against the 2011 ECHS Directors, Taman and Bishop & McKenzie:
  1. Damages for rendering knowing assistance to a breach of trust;
  2. An accounting;
  3. A constructive trust;
  4. Prejudgment interest in accordance with the *Judgment Interest Act*;
  5. Costs of this proceeding; and
  6. Such further and other relief as this Court deems just.
- c. In respect of the 2014 Mortgage Transfer:
  - (i) As against the Defendants Concentra, DIL, ABC District, LCC and LCCFM, jointly and severally:
    1. Damages for breach of trust;
    2. Damages for breach of fiduciary duty;
    3. Damages for negligence;
    4. A constructive trust;
    5. An accounting;
    6. Pre-judgment interest in accordance with the *Judgment Interest Act*;
    7. Costs of this proceeding; and
    8. Such further and other relief as this Court deems just.
  - (ii) As against the 2014 ABC District Officers and Directors, the 2014 DIL Directors, Chowne, Williams and Prowse Chowne, jointly and severally:
    1. Damages for rendering knowing assistance to a breach of trust;
    2. Damages for rendering knowing assistance to a breach of fiduciary duty;
    3. A constructive trust;
    4. An accounting;
    5. Pre-judgment interest in accordance with the *Judgment Interest Act*;

6. Costs of this proceeding; and
7. 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.