



**COURT FILE NUMBER** 1501-00955

**COURT** COURT OF QUEEN'S BENCH OF ALBERTA

**JUDICIAL CENTRE** CALGARY

**DOCUMENT** FIFTEENTH REPORT OF THE MONITOR

IN THE MATTER OF THE COMPANIES CREDITORS'  
ARRANGEMENT ACT, R.S.C. 1985 c. C-36 AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF LUTHERAN CHURCH – CANADA, THE  
ALBERTA – BRITISH COLUMBIA DISTRICT, ENCHARIS  
COMMUNITY HOUSING AND SERVICES, ENCHARIS  
MANAGEMENT AND SUPPORT SERVICES AND  
LUTHERAN CHURCH – CANADA, THE ALBERTA –  
BRITISH COLUMBIA DISTRICT INVESTMENTS LTD.

DATED FEBRUARY 25, 2016

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

**Counsel**

Gowling WLG (Canada) LLP  
1600, 421 7th Avenue SW  
Calgary, Alberta T2P 4K9  
Attention: Jeffrey Oliver

Telephone/ Facsimile: 403-298-1000/ 403-263-9193  
Email: Jeffrey.Oliver@gowlings.com

**Monitor**

Deloitte Restructuring Inc.  
700 Bankers Court, 850 – 2<sup>nd</sup> Street SW  
Calgary, AB T2P 0R8  
Attention: Jeff Keeble & Vanessa Allen

Telephone/Facsimile: 403-298-5955/ 403-718-3681  
Email: jkeeble@deloitte.ca & vanallen@deloitte.ca

# Table of Contents

Introduction and Notice to Reader .....	1
Introduction .....	1
Notice to Reader .....	2
Court Applications .....	3
The DIL Sanction Order .....	6
The Results of the DIL Meeting .....	6
Amendment to the DIL Plan following the DIL Meeting .....	6
The AB - BC Proceedings .....	8
Prior Involvement of Mr. Kellen in the CCAA Proceedings .....	8
The Representative Action .....	10
Other Considerations .....	11
Deloitte's Prior Engagements .....	13
Prior Consulting Engagements .....	13
Prior Audit Engagement .....	13
The Subcommittee Order .....	15
The Subcommittee Order .....	15
The Subcommittee Charter .....	17
The Sugden Brief .....	19
The Concept of the Representative Action .....	19
Opting-out of the Representative Action .....	19
Potential Conflict of Interest .....	21
Conclusion .....	22

# Introduction and Notice to Reader

## Introduction

1. On January 23, 2015, Lutheran Church – Canada, the Alberta – British Columbia District (the “District”), Encharis Community Housing and Services (“ECHS”), Encharis Management and Support Services (“EMSS”) and Lutheran Church – Canada, the Alberta – British Columbia District Investments Ltd. (“DIL”, collectively the “Applicants” or the “District Group”) obtained an Initial Order (the “Initial Order”) from the Court of Queen’s Bench of Alberta (the “Court”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “CCAA”). Deloitte Restructuring Inc. (“Deloitte”) was appointed as Monitor (the “Monitor”) in the CCAA proceedings.
2. For clarity, the District includes the Church Extension Fund (“CEF”), which was originally created to allow District members to loan their money and earn interest in faith-based developments. CEF was operated under the purview of the District’s Department of Stewardship and Financial Ministries and was not created as a separate legal entity. As such, depositors to CEF are creditors of the District (the “District Depositors”). Depositors to DIL will be referred to as the “DIL Depositors”. The District Depositors and the DIL Depositors will collectively be referred to as the “Depositors”.
3. The Initial Order provided for an initial stay of proceedings (the “Stay”) until February 20, 2015. The Court has now granted six extensions of the Stay. The most recent Order was granted at an application on January 20, 2016 and extended the Stay until April 29, 2016.
4. Prior to the Initial Order being granted, Deloitte prepared a Pre-Filing Report of the Proposed Monitor dated January 22, 2015 (the “Pre-Filing Report”). The Monitor subsequently filed the following reports:
  - 4.1. the First Report of the Monitor dated February 17, 2015;
  - 4.2. the Second Report of the Monitor dated March 23, 2015 (the “Second Report”);
  - 4.3. the Third Report of the Monitor dated June 16, 2015;
  - 4.4. the Fourth Report of the Monitor dated June 24, 2015 (the “Fourth Report”);
  - 4.5. the Fifth Report of the Monitor dated August 24, 2015 (the “Fifth Report”);
  - 4.6. the Sixth Report of the Monitor dated September 9, 2015;
  - 4.7. the Seventh Report of the Monitor dated October 20, 2015;
  - 4.8. the Eighth Report of the Monitor dated October 30, 2015;
  - 4.9. the Ninth Report of the Monitor dated November 26, 2015;

- 4.10. the Tenth Report of the Monitor dated December 22, 2015;
  - 4.11. the Eleventh Report of the Monitor dated January 11, 2016;
  - 4.12. the Twelfth Report of the Monitor dated January 27, 2016 (the “Twelfth Report”);
  - 4.13. the Thirteenth Report of the Monitor dated February 4, 2016; and
  - 4.14. The Fourteenth Report of the Monitor dated February 18, 2016 (together with the Pre-Filing Report, the reports listed in 4.1 to 4.14 will collectively be referred to as the “Reports”).
5. The Monitor also filed a confidential supplement to the Second Report dated March 25, 2015, a confidential supplement to the Fourth Report dated June 25, 2015 and a confidential supplement to the Fifth Report dated August 26, 2015 (collectively the “Supplements”). The Supplements provided the Court with additional detail with respect to the District Group’s applications for the approval of the sales of six parcels of land (the “Sale Lands”). The Supplements were sealed by the Court in order to avoid tainting any future sale processes that would be required if any of the transactions involving the Sale Lands failed to be completed.
  6. In addition to the Pre-Filing Report, the Reports and the Supplements, the Monitor prepared a First Report to the Creditors of ECHS and EMSS dated November 10, 2015 (the “Encharis Report”) and a First Report to the Creditors of DIL dated December 8, 2015 (the “DIL Report”). Both the Encharis Report and the DIL Report were prepared for the purpose of providing creditors of the corresponding entities with specific information related to the respective plans of compromise and arrangement for ECHS and EMSS, as amended and for DIL, as amended (the “DIL Plan”).
  7. Capitalized terms not otherwise defined herein shall have the meanings given to them in the Reports and in the Supplements.
  8. Information on the CCAA proceedings can be accessed on Deloitte’s website at [www.insolvencies.deloitte.ca](http://www.insolvencies.deloitte.ca) under the link entitled “Lutheran Church – Canada, the Alberta – British Columbia District et. al.” (the “Monitor’s Website”).

## Notice to Reader

9. In preparing this report, the Monitor has relied on unaudited financial information, the books and records of the Applicants and discussions with the Applicant’s employees, the Applicant’s Chief Restructuring Officer, interested parties and stakeholders. The Monitor has not performed an independent review or audit of the information provided.
10. The Monitor assumes no responsibility or liability for any loss or damage occasioned by any party as a result of the circulation, publication, reproduction, or use of this report.
11. All amounts included herein are in Canadian dollars unless otherwise stated.

# Court Applications

12. The activities of both the Monitor and the Applicants leading up to the most recent Court application on February 23, 2016 (the “February 23 Hearing”) are detailed in the Reports.
13. At the February 23 Hearing, this Honourable Court granted Orders including the following relief:
  - 13.1. Approving the sale of lands in Elkford, British Columbia (the “Elkford Lands”), which are legally described as follows:

PARCEL IDENTIFIER: 009-824-103

LOT 2 DISTRICT LOT 3512 PLAN 15363

KOOTENAY LAND DISTRICT; and
  - 13.2. Sealing the Confidential Affidavit of Cameron Sherban, sworn on February 16, 2016 (the “February Confidential Affidavit”), which contains specific information related to the sale of the Elkford Lands in order to avoid tainting any future sale process that may be required should the sale of the Elkford Lands fail to be completed.
14. The District was originally scheduled to make an application at the February 23 Hearing seeking an Order (the “District Meeting Order”) authorizing and directing the District to present their plan of compromise and arrangement (the “District Plan”) to their creditors for approval. The application for the District Meeting Order has been adjourned *sine die* in order to allow sufficient time for the following objections to be addressed:
  - 14.1. An objection by Fiserv Solutions Canada Inc. and Open Solutions DTS, Inc. (“Fiserv”) who jointly filed a proof of claim (the “Fiserv Claim”) related to the early termination of a contract between Fiserv and the District in the amount of approximately \$268,200. The Monitor disallowed a portion of the Fiserv Claim and Fiserv has disputed that disallowance. The Monitor understands that Fiserv intends to object to the District Meeting Order on the basis that they believe that the District’s trade creditors, including Fiserv, should be in a separate class of creditors from the District Depositors. The Monitor further understands that the District and Fiserv are attempting to resolve the Fiserv Claim; and
  - 14.2. An objection raised by Errin Poyner of Sugden McFee & Roos LLP (“Sugden”) on behalf of her clients Randall Kellen and Elvira Kroeger (the “Sugden Plaintiffs”) and Allan Garber of Allan Garber Professional Corporation (“Garber”) on behalf of his clients Sharon Sherman and Marilyn Huber (the “Garber Plaintiffs”). The Monitor notes that Sharon Sherman is not a

creditor of the District or DIL, although, she does have a family member who is a District Depositor. The Sugden Plaintiffs filed a statement of claim pursuant to the *Class Proceedings Act, R.S.B.C. 1996, c. 50 (British Columbia)* on February 23, 2016 and the Garber Plaintiffs filed a statement of claim pursuant to the *Class Proceedings Act, 2003, S.A., 2003, c.C-16.5* on February 22, 2016. The proceedings commenced by Sugden and Garber will collectively be referred to as the “AB - BC Proceedings”. Both of the statements of claim (the “Statements of Claim”) named the following defendants:

14.2.1. Lutheran Church – Canada;

14.2.2. Lutheran Church – Canada Financial Ministries;

14.2.3. Bishop & McKenzie LLP (“Bishop”), who acts as legal counsel for the Applicants and Mr. Francis Taman, who is a partner at Bishop and acts as the Applicant’s lead counsel in the CCAA proceedings;

14.2.4. Prowse Chowne LLP (“Prowse”), who formerly acted as legal counsel for the District and DIL and Mr. Ronald Chowne and Mr. John Williams, who are partners at Prowse;

14.2.5. Concentra Trust, who acts as the bare trustee for DIL; and

14.2.6. Shepherd Village Ministries Ltd., an entity related to the Applicants, which is not subject to the CCAA proceedings (collectively the “Named Defendants”).

14.3. The Monitor understands that the objections filed by Sugden and Garber are based on their view that the District Depositors should be aware of the alleged claims as against the Named Defendants prior to voting on the District Plan.

15. The Monitor understands that the intention is that the application for the District Meeting Order will be heard in sufficient time to maintain the proposed date for the District Meeting, which is currently scheduled for April 30, 2016.

16. This report represents the Monitor’s Fifteenth Report (the “Fifteenth Report”). The Fifteenth Report is being prepared to provide additional information to the Court related to the hearing scheduled for February 29, 2016 (the “February 29 Hearing”) which will include the following applications:

16.1. An application by DIL for an Order sanctioning the DIL Plan (the “DIL Sanction Application”, the “DIL Sanction Order”), declaring that the DIL Plan is fair and reasonable and declaring that the DIL Plan and all associated steps, compromises, transactions, arrangements, assignments, releases and reorganizations effected by the DIL Plan are approved, binding and effective upon those creditors affected by the DIL Plan;

16.2. An application by the Monitor for an Order extending the Stay to the AB – BC Proceedings; and

16.3. An application by the Monitor to seal the Monitor’s Confidential Supplement to the Fifteenth Report, to be provided to the Court in advance of the February 29 Hearing. The Confidential

Supplement contains the following information which the Monitor does not wish to publicly disclose:

- 16.3.1. The quantum of the claims of the Sugden Plaintiffs and the Garber Plaintiffs which, as set out paragraph 46 of the Initial Order, have not been publicly disclosed through the CCAA proceedings; and
- 16.3.2. The number of DIL Depositors who have opted-in and out of the Representative Action (as defined herein) as of the date of this Fifteenth Report, which the Monitor does not wish to release ahead of the deadline for DIL Depositors to opt-out of the Representative Action. The Monitor does not want such disclosure to influence the decision of undecided DIL Depositors as to whether or not they wish to participate in the Representative Action.

# The DIL Sanction Order

## The Results of the DIL Meeting

17. The Twelfth Report provided information on the outcome of the meeting of DIL Depositors to consider the DIL Plan (the “DIL Meeting”) and on the DIL Sanction Application. As detailed in the Twelfth Report, the Monitor supports the DIL Sanction Application, based on the following:
  - 17.1. The Monitor supports the DIL Plan and is of the view that the DIL Plan is fair and reasonable and appears to be in the best interest of all parties; and
  - 17.2. At the DIL Meeting, the DIL Depositors voted in favour of the DIL Plan and requested that the Court sanction the DIL Plan.
18. As previously reported, as at the date of the DIL Meeting, there were 896 DIL Depositors with outstanding claims of \$22.4 million. The Monitor received a total of 472 votes from DIL Depositors with claims totalling \$14.5 million with votes being submitted via election letter in advance of the DIL Meeting and via written ballot at the DIL Meeting. In total, approximately 53% of DIL Depositors voted and the claims of those DIL Depositors who voted represented approximately 65% of the total proven claims of DIL Depositors. Of the 472 DIL Depositors who voted, 434, or approximately 92%, voted in favour of the DIL Plan and 38 Depositors, or approximately 8% voted against the DIL Plan. Those DIL Depositors who voted in favour of the DIL Plan had claims totalling \$12.7 million, or approximately 87% of voting claims, and those DIL Depositors who voted against the DIL Plan had claims totalling \$1.8 million, or approximately 13% of voting claims. As such, the DIL Plan was approved by the required majority being two-thirds in dollar value and a majority in number of voting DIL Depositors.

## Amendment to the DIL Plan following the DIL Meeting

19. At the DIL Sanction Application, DIL will be requesting one amendment to the DIL Plan (the “DIL Amendment”) for the purpose of clarifying one of the provisions of the DIL Plan related to a future legal action or actions, which may be undertaken on behalf of DIL Depositors as a class proceeding (the “Representative Action”). The DIL Amendment relates to Article 5.6 of the DIL Plan entitled “No Claims Other than Representative Action” (“Article 5.6”). Article 5.6 includes wording to the effect that DIL Depositors are not eligible to be members of any “class” for the purposes of the *Class Proceedings Act, R.S.B.C. 1996, c. 50 (British Columbia)* and the *Class Proceedings Act, 2003, S.A., 2003, c.C-16.5* or any legislation of similar purpose or intent in any Canadian Province or Territory or State of the United States in any other legal proceeding(s) other than the Representative Action for DIL except for any representative action commenced pursuant to the District’s plan of compromise and



arrangement (the “District Representative Action”), if applicable. Article 5.6 is being amended to make it clear that, should the District Plan not advance for any reason, DIL Depositors are not foregoing their rights to pursue any claims that would have been pursued in the District Representative Action.

20. The Monitor is supportive of the DIL Amendment, which clarifies the original intention of Article 5.6 and ensures that DIL Depositors’ rights are preserved vis a vis any claims that could be advanced in the Representative Action for the District in the event that the District Plan is not approved by the District’s creditors or sanctioned by the Court.

# The AB - BC Proceedings

## Prior Involvement of Mr. Kellen in the CCAA Proceedings

21. Mr. Kellen has had ongoing involvement in the CCAA proceedings. He retained legal counsel early in the CCAA proceedings and was previously represented, at least in Alberta, by Miles Davison LLP (“Miles Davison”).
22. Mr. Kellen previously filed an application (the “Kellen Application”) and a corresponding affidavit on May 21, 2015. The Kellen Application, which was originally scheduled to be heard on June 18, 2015, requested the following relief:
  - 22.1. Lifting the Stay as against the officers and directors of the Applicants in order to permit the commencement of proceedings as against them for alleged breaches of fiduciary duties and negligence in the performance of their duties to Mr. Kellen and other investors, depositors and creditors of the Applicants; and
  - 22.2. Varying paragraph 46 of the Initial Order to disclose the contact information of the investors and creditors of the applicants.
23. In order to consider Mr. Kellen’s application, the Monitor requested but was not provided with the following information:
  - 23.1. A final copy of the intended statement of claim Mr. Kellen wished to file; and
  - 23.2. Clarification as to the specific parties against whom Mr. Kellen wished to lift the Stay and the other parties against whom Mr. Kellen wished to advance claims.
24. Although the requested information was not provided, it is clear from the Kellen Application that his intention was to pursue claims against parties to whom the Stay applied.
25. The Kellen Application was adjourned with the consent of all parties.
26. On December 15, 2015, the Monitor received notice from Miles Davison that they were no longer acting on Mr. Kellen’s behalf. Sugden now acts on behalf of Mr. Kellen and Ms. Kroeger.
27. Following the filing of the DIL Plan, Ms. Poyner raised several concerns regarding the DIL Plan and specifically those provisions of the DIL Plan related to the Representative Action. Ms. Poyner had the opportunity to communicate with all stakeholder groups with respect to these concerns, as summarized below:

- 27.1. Ms. Poyner met with the Applicant's legal counsel, the Monitor, the Monitor's legal counsel, legal counsel to the creditors' committee for DIL (the "DIL Committee") and legal counsel for the creditors' committee for the District (the "District Committee") on November 30, 2015. The DIL Committee and the District Committee will collectively be referred to as the "Committees";
- 27.2. Ms. Poyner met with the DIL Committee and their legal counsel on December 4, 2015;
- 27.3. Ms. Poyner met with the District Committee and their legal counsel on December 17, 2015. Although the District Plan had not yet been finalized, it was known that the provisions of the District Plan related to the Representative Action were going to mirror those in the DIL Plan;
- 27.4. Ms. Poyner had ongoing correspondence with the Applicant's legal counsel, the Monitor, the Monitor's legal counsel and legal counsel for each of the Committees related to her comments on the DIL Plan. Selected correspondence provided by Ms. Poyner is attached as Exhibits to the Affidavit of Courtney Clark sworn on February 23, 2016. The Monitor also forwarded correspondence provided by Ms. Poyner to the Committees at Ms. Poyner's request. The Monitor can advise that certain revisions were made to both the DIL Plan and the District Plan based on comments raised by Ms. Poyner.
- 27.5. The Monitor can confirm that there have been fulsome discussions between the DIL and District Committees, their legal counsel and the Monitor related to Ms. Poyner's concerns regarding the DIL Plan and the District Plan.
- 27.6. Ms. Poyner attended the DIL Meeting and voiced her concerns regarding the DIL Plan at the DIL Meeting. The minutes of the DIL Meeting (the "Minutes") are attached as "Schedule 6" to the Twelfth Report. The discussion with Ms. Poyner at the DIL Meeting was quite extensive and is documented on pages 8 to 12 of the Minutes.
- 27.7. It is the view of the Monitor that Ms. Poyner has had an ample opportunity to participate in the CCAA proceedings. In addition, Ms. Poyner is familiar with the provisions of the DIL Plan and the District Plan related to the Representative Action, as well as with the outcome of the DIL Meeting and with the DIL Sanction Application. Although the Monitor only recently became aware of the nature of Mr. Garber's involvement in the process, the Monitor understands that Sugden and Garber are working together to advance the AB - BC Proceedings. As such, the Monitor is concerned that the AB - BC Proceedings have been commenced with full knowledge of the status of the CCAA proceedings in an attempt to potentially frustrate the DIL Plan and the District Plan (including the Representative Action sections therein) or to potentially obtain a competitive advantage in relation to carriage of the Representative Actions established for DIL or for the District, or alternatively in other potential proceedings outside of the DIL and District Plans in the event that such plans are not sanctioned by the Court. The specific concerns of the Monitor related to the commencement of the AB - BC Proceedings and their potential impact on the CCAA proceedings are further outlined below.

## The Representative Action

28. In the event that the DIL Sanction Order is granted, the Monitor wishes to preserve the process set out in the DIL Plan to advance the Representative Action (the “Representative Action Process”). Pursuant to the DIL Plan, the Representative Action represents the sole recourse to DIL Depositors with respect to those claims to be pursued in the Representative Action (the “Representative Action Claims”). As previously reported, the Monitor is supportive of the Representative Action Process contained both in the DIL Plan and the District Plan for the following reasons:
- 28.1. It provides a streamlined process for the establishment of the group of DIL Depositors, who wish to participate in the Representative Action;
  - 28.2. It prevents a situation where DIL Depositors are being contacted by multiple groups seeking to represent them in a class action or otherwise;
  - 28.3. Increased recoveries may be achieved in settling the claims advanced in the Representative Action on the basis that such settlements will be a resolution of any and all claims by DIL Depositors;
  - 28.4. It allows for ongoing involvement of members of the DIL Committee, who have information and insight into the CCAA Proceedings that may prove useful to the subcommittee that is formed to advance the Representative Action (the “Subcommittee”); and
  - 28.5. Selected depositors have indicated that they view any involvement in litigation as inconsistent with their personal religious beliefs. The Representative Action Process allows DIL Depositors to opt-out of the Representative Action before litigation is ever commenced should that be their preference. As previously noted, the Confidential Supplement will provide the Court with information on the number of DIL Depositors who have opted-in and opted-out of the Representative Action as of the date of this report.
29. The Monitor is of the view that allowing the AB - BC Proceedings to continue could be detrimental to the ability of DIL Depositors and District Depositors to advance their respective Representative Actions for the following reasons:
- 29.1. It creates uncertainty for the Named Defendants in relation to who has legitimate carriage of Representative Action Claims. This is of particular concern in the event that such Named Defendants wish to resolve or have settlement negotiations prior to the Representative Action Process being commenced;
  - 29.2. Absent the Stay being extended to the AB – BC Proceedings, the Sugden Plaintiffs and the Garber Plaintiffs will be free to take any step available to them until the District Plan is sanctioned, which will likely not occur until late Spring 2016. The Monitor is concerned that steps taken in the AB – BC Proceedings could prejudice the ability of future legal counsel chosen to advance the Representative Action (the “Representative Counsel”) to advance the

- Representative Action (such as making admissions, release of parties, pursuit of particular strategies and settlement discussions);
- 29.3. District Depositors may be confused about whether the AB - BC Proceedings are in fact the Representative Action contemplated in either the DIL or the District Plan. This will make it increasingly difficult for the Applicants and the Monitor to communicate with stakeholders in relation to the District Plan, and may muddy consideration of the District Plan on its merits;
  - 29.4. The Named Defendants will need to expend time and money in defending themselves in a proceeding that, should the DIL Plan and the District Plan be sanctioned, will ultimately be stayed. Any additional expense incurred by the Named Defendants in advancing this defense may be factored into a future settlement, which is ultimately negotiated pursuant to the Representative Action;
  - 29.5. The claims being advanced by Sugden and Garber do not include any claims that would be released by the DIL Plan. As such, the Monitor is not aware of any prejudice to any parties as a result of the Stay being extended to the AB - BC Proceedings. In addition, the Monitor is not aware of any limitation periods that would require the claims being made by Sugden and Garber to be advanced prior to that time; and
  - 29.6. The AB - BC Proceedings have been advanced under class action legislation in Alberta and British Columbia. As such, Sugden and Garber presumably intend to seek certification of a class that would include all of the DIL and District Depositors. Doing so would involve all of the DIL Depositors in litigation, even when they have already communicated a desire to opt-out of such litigation by opting-out of the Representative Action.
30. To date, Sugden and Garber have refused to agree to a consensual stay of the AB – BC Proceedings, except on an interim basis for the sake of an adjournment of the Monitor's application. The Monitor is not aware of any prejudice that those parties would suffer as a result of the Stay being extended to the AB - BC Proceedings.

## Other Considerations

31. In addition to the Monitor's concerns related to the Representative Action, the Monitor would have the following additional concerns related to the Stay not being extended to the AB – BC Proceedings:
  - 31.1. Paragraph 19 of the Initial Order provided for the Stay, which applied to proceedings or enforcement processes in any Court commenced or continued against or in respect of the Applicants or the Monitor. The Monitor is of the view that, although the Applicants are not Named Defendants, the AB - BC Proceedings involve claims that could be viewed as being in respect of the Applicants and are clearly intended to be addressed by the Representative Action Process established in the DIL Plan and the District Plan;

- 31.2. The Monitor is concerned with preserving the legitimacy and integrity of the CCAA proceedings. As reported above, the DIL Plan was approved by 92% in number and 87% in dollar value of voting DIL Depositors. The DIL Depositors are aware of and should be able to rely on the DIL Plan, including the Representative Action, being advanced as anticipated, subject to the DIL Sanction Order being granted. The Monitor notes that the AB - BC Proceedings do not provide, at least at this time, DIL Depositors with the transparency or protections offered under the Representative Action Process, as outlined in the DIL Plan, including the establishment of the Subcommittee and the establishment of a competitive process to retain Representative Counsel. Both of these processes were clearly outlined in the DIL Plan, which was approved by DIL Depositors;
- 31.3. The allegations contained in the Statements of Claim in the AB – BC Proceedings may be misinterpreted by DIL and District Depositors as statements of fact. Rather, as in any pleading, the allegations contained in the Statements of Claim are allegations, which are not proven and are not in and of themselves evidence. The Monitor expresses no opinion regarding whether the allegations contained in the Statements of Claim are true or false. The perception of the allegations in a pleading against the Named Defendants at this stage of the restructuring, however, may create uncertainty for District Depositors in considering the District Plan. The Monitor is of the view that, extending the Stay to the AB - BC Proceeding, will allow the District Plan to advance in a more controlled fashion and facilitate future communication between the Monitor and the Depositors;
- 31.4. Based on the claims process that was approved by the Court of Queen’s Bench of Alberta on February 20, 2015, of the Garber Plaintiffs, only Ms. Huber has a claim against DIL. As such, collectively, the Garber and Sugden Plaintiffs represent only three out of 896 DIL Depositors and, as further detailed in the Confidential Supplement, their claims constitute a negligible percentage of the total proven claims of DIL Depositors. While the CCAA proceedings provide a forum for all DIL Depositors to express their views, the Monitor is of the view that, based on the results of the DIL Meeting, the views of the Ms. Huber and the Sugden Plaintiffs are not those of the larger body of DIL Depositors. The Monitor further notes that Ms. Huber and the Sugden Plaintiffs voted on the DIL Plan. As such, they have had the opportunity to participate in the CCAA process; and
- 31.5. Should Ms. Poyner or Mr. Garber choose to do so, they have the opportunity to put their name forward to be considered as Representative Counsel by the Subcommittee.

# Deloitte's Prior Engagements

## Prior Consulting Engagements

32. As reported in the Pre-Filing Report, Deloitte and Deloitte LLP were previously retained by the Applicants to provide the following consulting services on the following dates:
  - 32.1. February 6, 2014 – to provide an independent evaluation of the potential options related to the Prince of Peace development and to create a plan for executing the option that was ultimately chosen;
  - 32.2. June 9, 2014 – to provide a work plan and approach to assist in the solicitation and qualification of experienced seniors' care home management to assist in the optimization of the Harbour and Manor senior's care facilities;
  - 32.3. June 30, 2014 – to provide an evaluation of the debt structure of CEF, as it related to the District, the members of the District, ECHS, EMSS and the Prince of Peace development;
  - 32.4. July 25, 2014 – To act as a consultant regarding the informal or formal restructuring of the Applicants; and
  - 32.5. August 1, 2014 – to provide tax planning services in conjunction with developing a limited partnership structure, outlining the applicable tax and commercial issues and assisting with the implementation.

## Prior Audit Engagement

33. The Monitor has reviewed the material filed by Sugden related to the DIL Sanction Application including the Brief of the Respondents Elvira Kroeger and Randall Kellen regarding the Sanction Hearing for the DIL Plan of Compromise and Arrangement (the "Sugden Brief").
34. The Sugden Brief notes that Deloitte acted as the auditor of the District between 1990 and 1999 (the "Audit Work"). The Monitor previously disclosed this in the Fourth Report. At the time of the Fourth Report, Deloitte was attempting to complete a preliminary review of the use of funds advanced (the "Advances") to acquire and build out the Prince of Peace Development (the "Review") with the purpose of the Review being to report further on the causes of the Applicant's insolvency and to provide Depositors with preliminary findings and potential areas for further review related to the Advances.

35. As stated in the Fourth Report, Deloitte had completed a conflict check prior to consenting to act as Monitor in the CCAA Proceedings; however, Deloitte's prior audit engagement had not been flagged as part of this conflict check. Deloitte's prior audit engagement did not preclude them from acting as Monitor; however, it would preclude Deloitte from completing the Review for the period during which they had acted as auditor (1990 to 1999). Upon learning of this potential conflict of interest, the Monitor suspended the Review and reported to the Committees, advising them that they may be tasked with choosing another accounting firm to complete the Review.
36. At the time that the Monitor became aware of this potential conflict of interest, much of the information requested pursuant to the Review, had yet to be provided by the District. As subsequently reported, the Applicants were unable to provide supporting documentation for Advances made prior to June 2006 and the documentation provided for the period following June 2006 was incomplete. As Deloitte did not act as auditor subsequent to 1999, the Monitor advised the Committees of same and completed the Review to the extent that they were able for the period where documentation was available.
37. The Sugden Brief suggests that the Audit Work could give rise to Deloitte being named in the Representative Action. The Monitor is not aware of any allegations of wrongdoing against Deloitte related to the Audit Work. The Monitor notes, however, that the releases granted in the DIL and District Plans to the professionals in the CCAA proceedings do not include liability arising out of fraud, gross negligence or wilful misconduct and only apply to work directly or indirectly related to the CCAA proceedings or their commencement. As such, neither the DIL Plan nor the District Plan includes any releases related to the Audit Work.



# The Subcommittee Order

38. In the Sugden Brief, Ms. Poyner indicates that DIL has not yet made available the draft form of Order that they will be seeking at the February 29 Hearing appointing the Subcommittee (the “Subcommittee Order”), which includes a Charter for that Subcommittee (the “Subcommittee Charter”). The Monitor notes that the form of Subcommittee Order and the Subcommittee Charter were attached to the Application by the Applicants that was filed and served by the District Group on February 19, 2016 and is posted on the Monitor’s Website.

## The Subcommittee Order

39. The Twelfth Report includes a discussion of the make-up, duties and responsibilities of the Subcommittee. The Monitor highlights the following additional points addressed in the Subcommittee Order:
- 39.1. Pursuant to the Subcommittee Order, the DIL Committee is to send out to all of the DIL Depositors, who have not opted-out of the Representative Action, an invitation to participate on the Subcommittee. The Monitor notes that they intend to send out this invitation on behalf of, and in consultation with, the DIL Committee;
- 39.2. In order to act on the Subcommittee, an individual must meet the following criteria:
- 39.2.1. Be a DIL Depositor or a committee, trustee or personal representative of a DIL Depositor;
  - 39.2.2. Not be in a conflict of interest with respect to the Representative Action;
  - 39.2.3. not have opted out of the Representative Action; and
  - 39.2.4. not be DIL, the Applicants, the present and former directors, officers, volunteers and employees of DIL, parties covered under DIL’s directors and officers liability insurance and any independent contractors of DIL, who was employed three days a week or more on a regular basis (the “Partially Released Parties”).

The version of the Subcommittee Order that was filed by the District on February 19, 2016 also indicates that District Depositors would be precluded from acting on the Subcommittee. The Monitor has been advised that this restriction is being removed based on consultation with the Monitor and legal counsel for the Committees.

- 39.3. In addition to the duties and responsibilities of the Subcommittee described in the Twelfth Report, the Subcommittee Order sets out the following additional duties and responsibilities of the Subcommittee to be completed in consultation with Representative Counsel:
- 39.3.1. Providing information and updates with respect to the Representative Action to those DIL Depositors who have elected or been deemed to elect to participate in the Representative Action (the “Representative Class”) on a regular basis; and
  - 39.3.2. Prior to the commencement of the Representative Action, provide such information to the Representative Class, as it exists at that time, as they deem necessary or desirable in their discretion, to permit the members of the Representative Class to determine if they wish to continue to participate in the Representative Action.
- 39.4. The duties and responsibilities of Representative Counsel are also set out in the Subcommittee Order and include the following:
- 39.4.1. Assisting the Subcommittee in appointing one or more appropriate plaintiffs in the Representative Action (the “Representative Plaintiff(s)”);
  - 39.4.2. Assisting the Subcommittee in determining a reasonable and realistic holdback to fund the out-of-pocket costs associated with the Representative Action and to indemnify the Representative Plaintiff for any cost award (the “Representative Holdback”);
  - 39.4.3. Prosecuting the Representative Action on behalf of the Representative Class;
  - 39.4.4. Advising the Subcommittee with respect to any and all alternatives, including, without limitation, settlement and mediation and other forms of alternative dispute resolution;
  - 39.4.5. Taking instructions with respect to the Representative Action from the Subcommittee; and
  - 39.4.6. Doing all other things that legal counsel should do to advance the cause of their clients;
- 39.5. In order to be a Representative Plaintiff, an individual must meet the following criteria:
- 39.5.1. Be a DIL Depositor;
  - 39.5.2. Not be in a conflict of interest with respect to the Representative Action;
  - 39.5.3. Not have opted-out of the Representative Action; and
  - 39.5.4. Not be a Partially Released Party.

## The Subcommittee Charter

40. The Subcommittee Order attaches the Subcommittee Charter, which further sets out the purpose, duties and responsibilities and monitoring, reporting and communication responsibilities of the Subcommittee. The Monitor notes as follows with respect to the Subcommittee Charter:

40.1. The Subcommittee Charter further sets additional duties for the Subcommittee, which are summarized below:

40.1.1. Choosing a Chairman;

40.1.2. Ensuring that the legal documents and records regarding the Representative Action have been properly prepared, maintained and stored;

40.1.3. Acting honestly, in good faith, with a view to the best interests of the Representative Class;

40.1.4. Ensuring that each member of the Subcommittee discloses all actual or potential conflicts of interest and recuses themselves from discussions and voting, as required;

40.1.5. Committing the time and energy necessary to properly carry out their duties on the Subcommittee;

40.1.6. Attending all regularly scheduled Subcommittee meetings;

40.1.7. Adequately preparing for Subcommittee meetings;

40.1.8. Reviewing the Subcommittee's strategies and their implementation;

40.1.9. Making independent determinations and conclusions regarding the Representative Action;

40.1.10. Reporting at reasonable intervals to the Representative Class; and

40.1.11. Doing such other acts and things as they consider necessary and advisable to carry out their duties and responsibilities.

40.2. The Subcommittee Charter further describes the following responsibilities of the Subcommittee related to monitoring, reporting and communication:

40.2.1. Monitoring the Subcommittee's progress towards its goals and objectives and revising and altering its direction in response to changing circumstances;

40.2.2. Ensuring and making regular assessments that the Subcommittee has implemented adequate internal control and information systems;

40.2.3. Developing appropriate measures for receiving feedback from the Representative Class;

40.2.4. Taking action when performance falls short of its goals and objectives or when other special circumstances warrant;

- 40.2.5. Ensuring the timely reporting of any other actions that have a significant impact on the Representative Class in conjunction with Representative Counsel; and
  - 40.2.6. Reporting the Subcommittee's finding and conclusions to the Representative Class in a manner and at such times as the Representative Counsel shall determine is consistent with the duties of the Subcommittee.
41. The Subcommittee Charter also sets out procedures surrounding meetings of the Subcommittee.
42. The Monitor is of the view that the Subcommittee Order is appropriate in terms of the purpose, duties and responsibilities set out therein, which are consistent with what was contemplated in the DIL Plan.

# The Sugden Brief

43. Based on their review of the Sugden Brief, the Monitor wishes to provide additional information related to the following items:

## The Concept of the Representative Action

44. The Applicants are the authors of the plans of arrangement filed by each of the Applicants, including the DIL Plan and the District Plan. Having said that, the DIL Plan and the District Plan were developed subject to extensive consultation with the Monitor and the DIL Committee and the District Committee, respectively. The Monitor notes that the concept of the Representative Action was developed through this consultative process.

## Opting-out of the Representative Action

45. The Monitor acknowledges that the inclusion of the Representative Action Letter and the Notice of Opting Out in the DIL Plan, as currently drafted, are duplicative. The Representative Action Process has been streamlined in the District Plan, such that the Notice of Opting Out is the only mechanism for District Depositors to opt-out of the Representative Action.
46. As it relates to the DIL Plan, the original intention was for the Representative Action Letter to be used as a mechanism for DIL Depositors to opt in or out of the Representative Action prior to the DIL Meeting and for the Notice of Opting Out to be used as a mechanism for DIL Depositors to opt-out thereafter. Based on discussions with Ms. Poyner, the timing for opting out of the Representative Action was refined resulting in both the Representative Action Letter and the Notice of Opting Out being able to be used interchangeably.
47. To clarify the process surrounding DIL Depositors opting out of the Representative Action, the Monitor notes as follows:
  - 47.1. DIL Depositors can use the Representative Action Letter to opt-in or opt-out of the Representative Action or can use the Notice of Opting Out to opt-out of the Representative Action. Those DIL Depositors who do not explicitly opt-in or opt-out of the Representative Action are deemed to have opted-in to the Representative Action.
  - 47.2. Distributions to those DIL Depositors who have opted-in or been deemed to opt-in to the Representative Action will be subject to the Representative Action Holdback, the amount of which will be established by the Subcommittee in consultation with Representative Counsel.

- 47.3. Once the Subcommittee has been formed and Representative Counsel has been retained, the Monitor will send a further correspondence to DIL Depositors (the “Representative Action Information Letter”) including the following information:
- 47.3.1. The name of the Subcommittee members;
  - 47.3.2. The name of Representative Counsel;
  - 47.3.3. The estimated amount of the Representative Action Holdback;
  - 47.3.4. The deadline for opting-out of the Representative Action;
  - 47.3.5. The date of the commencement of the Representative Action; and
  - 47.3.6. Instructions for opting-out of the Representative Action, should they wish to do so.
- 47.4. A range will be provided related to each DIL Depositor’s pro-rata share of the Representative Action Holdback in the Representative Action Information Letter. As DIL Depositors have the ability to opt-out of the Representative Action until the day prior to the commencement of the Representative Action, however, each DIL Depositor’s pro-rata share of the Representative Action Holdback will be subject to change depending on how many DIL Depositors opt-out of the Representative Action after receiving the Representative Action Information Letter but before the commencement of the Representative Action.
- 47.5. As was subsequently set out in the District Plan, depending on the arrangement that is reached between the Subcommittee and Representative Counsel, should it be determined that costs will be incurred prior to the commencement of the Representative Action, the Monitor will also provide an earlier correspondence to DIL Depositors advising them that this is the case and advising them of the deadline by which they must opt-out of the Representative Action if they do not wish to have any amounts withheld pursuant to the Representative Action Holdback.
- 47.6. The Representative Action Holdback is intended to provide a mechanism for DIL Depositors to share costs related to the commencement of the Representative Action. It is not meant to be a mechanism to fund any and all costs throughout the Representative Action, which may well continue after the CCAA Proceedings have been completed. Representative Counsel, in conjunction with the Subcommittee, will be best suited to estimate the amount of the Representative Action Holdback.

## Potential Conflict of Interest

48. The Sugden Brief alleges that Mr. Taman, who acts as legal counsel for the Applicants, has a conflict of interest in representing the Applicants in the CCAA proceedings and may have drafted the DIL and District Plans with a view to obtaining a benefit for himself. The Monitor does not wish to comment on the allegations made in the Sugden Brief in relation to that alleged conflict of interest. As previously reported, however, both the District and DIL Plans involved extensive consultation with the Monitor, the CRO, the District Committee and the DIL Committee as well as each of the Committee's independent legal counsel. They also involved consultation with stakeholders such as Ms. Poyner. The level of independently represented parties in this proceeding is significantly in excess of what is typical in a standard CCAA proceeding. In addition, since the District and DIL Plans include only very limited releases, the Monitor does not perceive that the District and DIL Plans have the effect of benefiting Mr. Taman or Bishop. Both of those parties may be named as a defendant in a Representative Action, if that is the desire of the Subcommittee.

# Conclusion

49. As previously reported, the Monitor supports the DIL Sanction Application, based on the following:
  - 49.1. The Monitor supports the DIL Plan and is of the view that the DIL Plan is fair and reasonable and appears to be in the best interest of all parties; and
  - 49.2. At the DIL Meeting, the DIL Depositors voted in favour of the DIL Plan and requested that the Court sanction the DIL Plan.
50. The Monitor is seeking an Order extending the stay to the AB - BC Proceedings for the reasons outlined herein; and
51. The Monitor is seeking an Order sealing the Confidential Supplement for the following reasons:
  - 51.1. So as not to publicly disclose the quantum of the investments held in DIL and the District by the Garber Plaintiffs or the Sugden Plaintiffs which, pursuant to the Initial Order have not been publicly disclosed in the CCAA proceedings; and
  - 51.2. So as not to publicly disclose the number of DIL Depositors, who have presently opted in or opted out of the Representative Action in case the release of that information were to unduly influence the decision of undecided DIL Depositors whether to opt-in or opt-out of the Representative Action.

**DELOITTE RESTRUCTURING INC.,**  
In its capacity as Court-appointed Monitor of  
The Lutheran Church – Canada, The Alberta –  
British Columbia District, Encharis Community  
Housing and Services, Encharis Management  
and Support Services and The Lutheran Church  
– Canada, The Alberta – British Columbia  
District Investments Ltd. and not in its personal  
or corporate capacity



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Jeff Keeble CA, CIRP, CBV  
Senior Vice-President