

COURT FILE NUMBER 1501 – 00955 Clerk's Stamp

COURT COURT OF QUEEN'S BENCH OF ALBERTA  
IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTER CALGARY

IN THE MATTER OF THE *COMPANIES'*  
*CREDITORS ARRANGEMENT ACT*, R.S.C.  
1985, C. c-36, as amended

APPLICANTS LUTHERAN CHURCH – CANADA, THE  
ALBERTA-BRITISH COLUMBIA  
DISTRICT, ENCHARIS COMMUNITY  
HOUSING AND SERVICES, ENCHARIS  
MANAGEMENT AND SUPPORT  
SERVICES, AND LUTHERAN  
CHURCH-CANADA, THE ALBERTA-  
BRITISH COLUMBIA DISTRICT  
INVESTMENTS LTD.

DOCUMENT **AFFIDAVIT OF ALEANA SORENSEN**

ADDRESS FOR SERVICE  
AND CONTACT  
INFORMATION OF PARTY  
FILING THIS DOCUMENT  
Allan Garber Professional Corporation  
Barrister and Solicitor  
Suite 108, 17707 105 Avenue  
Edmonton, AB T5S 1T1  
Attn: Allan A. Garber  
Tel: (587) 400-9310  
Fax: (587) 400-9313  
File No.: 156-2015AG

**AFFIDAVIT OF ALEANA SORENSEN**

Sworn on July 14, 2016

I, Aleana Sorensen, of the City of Edmonton,

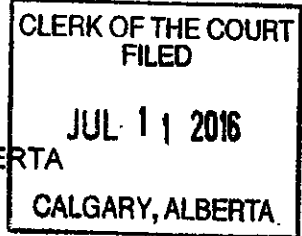
SWEAR AND SAY THAT:

1. I work as a legal assistant for Allan Garber, counsel for the Respondents Marilyn Huber and Sharon Sherman, and as such have personal knowledge of the matters deposed to herein.



COURT FILE NUMBER  
COURT  
JUDICIAL CENTRE

1501-00955  
COURT OF QUEEN'S BENCH OF ALBERTA  
CALGARY



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

APPLICANTS

LUTHERAN CHURCH — CANADA, THE ALBERTA —  
BRITISH COLUMBIA DISTRICT, ENCHARIS COMMUNITY  
HOUSING AND SERVICES, ENCHARIS MANAGEMENT  
AND SUPPORT SERVICES, AND LUTHERAN CHURCH —  
CANADA, THE ALBERTA — BRITISH COLUMBIA  
DISTRICT INVESTMENTS LTD.

DOCUMENT

**BRIEF OF DELOITTE RESTRUCTURING INC.  
REGARDING THE APPLICATION FOR AN ORDER  
SANCTIONING THE DISTRICT PLAN OF COMPROMISE  
AND ARRANGEMENT AND THE APPLICATION FOR AN  
ORDER REMOVING AND REPLACING THE MONITOR**

ADDRESS FOR SERVICE  
AND CONTACT  
INFORMATION OF PARTY  
FILING THIS DOCUMENT

CASSELS BROCK & BLACKWELL LLP  
Suite 1250, 440 – 2<sup>nd</sup> Avenue SW LLP  
Calgary, AB T2P 5E9  
Telephone (403) 351-2921

File No. 49073-1

Attention: Jeffrey L. Oliver

**SCHEDULED TO BE HEARD BEFORE THE HONOURABLE MADAM JUSTICE  
ROMAINE AT 9:00 AM ON JULY 15, 2016**

This is Exhibit - A - referred to in the  
Affidavit of  
Aleana Sorensen  
Sworn before me this 14 day  
of July Garber A.D., 2016  
A Notary Public, A Commissioner for Oaths  
in and for the Province of Alberta

Allan A. Garber  
Barrister and Solicitor

*Moffat v. Wetstein*, 1996 CarswellOnt 2148 at para. 131.

*Controlled Media Investments Inc. v. Penfund Capital (No. 1) Ltd.* (2000),  
10 B.L.R. (3d) 91 at para. 14.

67. On March 9, 2016, the Court granted an Order approving a stay of proceedings in respect of the class proceedings that the Creditor Applicants had previously attempted to undertake (the "**AB – BC Proceedings**"). In addition, the Court made the following remarks in response to the suggestion that the Monitor had a conflict of interest:

The issue of a possible Monitor conflict with respect to the District was completely disclosed in the Monitor's 4<sup>th</sup> Report. I note that, yesterday, I received a letter from Mr. Oliver advising that Deloitte & Touche LLP was also the auditor for DIL in 1998 and 1999, which had been missed in the conflict check until early this week. While unfortunate, this additional information does not add any material concern with respect to the possibility of conflict as the audit engagement with respect to the District between 1990 and 1990 was previously disclosed and handled appropriately, as described in the 15th Report.

March 9 Transcript at para. 14.

Twenty-First Report at para. 29.2.

68. There is no basis to conclude that the Monitor has an actual or apparent conflict of interest given that, among other things:
- (a) Neither the Monitor nor Deloitte LLP are benefiting from any releases as part of the District Plan;
  - (b) The District Plan contemplates that conduct of the Representative Action will be carried out by the Subcommittee;
  - (c) The District Committee will decide who to name to the Subcommittee and the Monitor will have no role in that process;
  - (d) The members of the Subcommittee will be fiduciaries independent of the Monitor;
  - (e) The Monitor will have no involvement in the conduct of the Representative Action; and
  - (f) The Monitor's involvement in this CCAA proceeding does not require that it review any previous work performed by it or Deloitte LLP.
69. The Monitor also notes that as the provisions of the District Plan related to the Representative Action create a process for Eligible Affected Creditors to pursue future litigation, the Monitor would have been unable to provide such an opinion without extensive legal advice. The advice of counsel, rather than just the business judgment of the Monitor, was critical to formulating an opinion on the Representative Action.

Twenty-First Report at para. 29.4.

70. The above fact also illustrates why removal and replacement of Deloitte as the Monitor would fail to provide any ascertainable benefit to the stakeholders: any replacement Monitor would similarly rely on the advice of counsel rather than its business judgment in formulating its opinion on the Representative Action.

104. By voting on the District Plan, however, Eligible Affected Creditors have had the opportunity to voice their individual views on the District Plan. The fact that the District Plan has been approved by the required double majority of creditors (being two-thirds in value and a majority in number of voting Eligible Affected Creditors) indicates that the majority of Eligible Affected Creditors are of the view that the approval and implementation of the District Plan is the preferred outcome.
105. Notably, there is nothing in the analysis in the Expert Report which compares the alternative to the formation of NewCo, being an immediate forced liquidation in a depressed real estate market that would likely result in a return of a reduced amount of Ms. Kroeger's investment. If the Expert Report had conducted that analysis, it might well reflect a different conclusion.
106. For all of the above reasons, the Monitor respectfully submits that the District Plan is fair and reasonable in the circumstances.

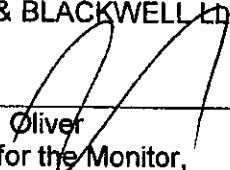
**V. RELIEF REQUESTED**

107. It is respectfully requested that this Honourable Court:
- (a) dismiss the application for an order to remove and replace the Monitor; and
  - (b) sanction the District Plan as voted on by the Eligible Affected Creditors.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 15th day of July 2016.

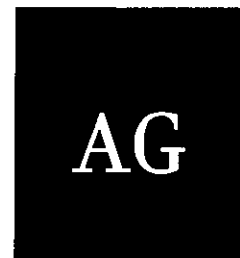
CASSELS BROCK & BLACKWELL LLP

Per

  
\_\_\_\_\_  
Jeffrey L. Oliver  
Counsel for the Monitor,  
Deloitte Restructuring Inc.

**ALLAN GARBER**  
**Barrister & Solicitor**

#108, 17707 105 Avenue  
Edmonton, Alberta T5S 1T1



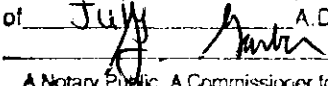
July 14, 2016

Via Fax: (403) 648-1151

Our File No.:156-2015AG

**Cassels Brock & Blackwell LLP**

Suite 1250, Millennium Tower  
440 - 2nd Avenue SW  
Calgary AB, T2P 5E9  
Tel: (403) 351-2921  
Fax: (403) 648-1151

This is Exhibit "B" referred to in the  
Affidavit of  
Aleana Sorensen  
Sworn before me this 14 day  
of July A.D., 2016  
  
A Notary Public, A Commissioner for Oaths  
in and for the Province of Alberta

**FAXED**

**Attention: Jeffery Oliver**

RE: Lutheran Church - Canada, the Alberta - British Columbia District et al

I have reviewed your brief signed July 15, 2016. At paragraph 69 you indicate that the Monitor would not have been able to provide opinions about the representative action process without extensive legal advice. I hereby request that these legal opinions be provided immediately to myself and to Ms. Poyner. If you need some case law on this, please consider the following from *O'Neil v. Witte* [2001] N.W.T.J. No. 82 at para. 10 per Justice Vertes:

“When a party places its state of mind in issue and has received legal advice to help form that state of mind, then privilege will be deemed to have been waived with respect to such legal advice.... where a party makes his or her intent and knowledge of the law relevant, then it would be unfair to preclude the opposing party from discovering information relating to that issue by relying on the privilege.

Yours truly,

**Allan Garber Professional Corporation**

Per:

Allan A. Garber  
AG/as

Cc: Errin Poyner

Telephone: (587) 400-9311  
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Email: allan@garberlaw.ca  
www.garberlaw.ca

COURT FILE NUMBER 1501-00955

Clerk's Stamp

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANTS LUTHERAN CHURCH – CANADA, THE ALBERTA-BRITISH COLUMBIA DISTRICT, ENCHARIS COMMUNITY HOUSING AND SERVICES, ENCHARIS MANAGEMENT AND SUPPORT SERVICES, AND LUTHERAN CHURCH-CANADA, THE ALBERTA-BRITISH COLUMBIA DISTRICT INVESTMENTS LTD.

DOCUMENT: **APPLICATION BY MARILYN HUBER and SHARON SHERMAN**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT  
Attn: Allan Garber  
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Suite 1085, 17707 105 Avenue NW  
Edmonton, Alberta, T5S 1T1  
Phone: (587) 400-9311  
Fax: (587) 400-9313

**NOTICE TO RESPONDENTS:**

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

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

Date: July 15, 2016

Time: 9:00 a.m.

Where: Calgary Court Center, 601 – 5<sup>th</sup> Street SW, Calgary, Alberta

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

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

**Remedy claimed or sought:**

1. An order abridging the time for service of this Application.
2. An order requiring the Monitor and/or Cassels Brock & Blackwell LLP to produce the legal opinions referenced in paragraph 69 of their brief filed July 11, 2016.

**Grounds for making this application:**

3. The legal opinions, in addition to the business judgment of the Monitor, were critical to the Monitor formulating an opinion on the Representative Action, and are relevant to the proceedings.
4. The legal opinions are not subject to solicitor/client privilege.

**Material or evidence to be relied on:**

5. The Affidavit of Aleana Sorensen, filed.

**Applicable rules:**

6. Rules 1.4(1), 2(c) of the *Alberta Rules of Court*.

**Applicable Acts and regulations:**

7. N/A

**Any irregularity complained of or objection relied on:**

8. N/A

**How the application is proposed to be heard or considered:**

9. Before the presiding Justice in Chambers.

**WARNING**

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.