COURT FILE NUMBER	1501-00955
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
	IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, as amended
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	**REPLY BRIEF OF DELOITTE RESTRUCTURING INC. REGARDING THE APPLICATION FOR AN ORDER SANCTIONING THE DISTRICT PLAN OF COMPROMISE AND ARRANGEMENT**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	CASSELS BROCK & BLACKWELL LLP Suite 1250, 440 – 2nd 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

I. INTRODUCTION

1. Deloitte Restructuring Inc. ("**Deloitte**"), in its capacity as monitor (the "**Monitor**") of 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**", and, together with the District, ECHS, and EMSS, the "**Debtors**") submits the following in reply to the response brief of Elvira Kroeger and Randall Kellen (the "**Second Kellen Brief**") and the response brief of Sharon Sherman and Marilyn Huber (the "**Huber Brief**") both in respect of the Debtors' application for an order approving and sanctioning the District Plan.

2. Capitalized terms not defined herein have the meanings set out in the Monitor's main brief in respect of this application (the "**Main Brief**") and/or the District Plan.

3. The Second Kellen Brief and the Huber Brief make numerous allegations and advance various arguments regarding certain provisions of the District Plan which are substantively identical to those in the DIL Plan and which were the subject of fulsome argument during the Debtors' application for an order approving and sanctioning the DIL Plan heard on February 29, 2016 (the "**DIL Sanction Application**").

> Special Chambers Application Applicant's Brief – Commercial List, dated February 19, 2016.
>
> Brief of Deloitte Restructuring Inc. Regarding the Sanction Hearing for the DIL Plan of Compromise and Arrangement, dated February 23, 2016.
>
> Brief of the Respondents Elvira Kroeger and Randall Kellen Regarding the Sanction Hearing for the DIL Plan of Compromise and Arrangement, dated February 24, 2016 (the "**Kellen DIL Sanction Brief**").
>
> Transcript of Proceedings dated March 9, 2016, Court of Queen's Bench Action No. 1501-00955.

4. As stated in the Main Brief, the Monitor adopts its prior submissions in that regard and does not intend to reargue them in respect of the District Plan. However, in light of the content of the Second Kellen Brief and the Huber Brief, the Monitor will, for completeness, reemphasize its position in respect of certain issues.

II. CONVENIENCE PAYMENTS

5. The Second Kellen Brief and the Huber Brief suggest that the Convenience Payments have the effect of unfairly skewing the voting results on the basis that, of the total 2,600 Eligible Affected Creditors, approximately 1,616 Eligible Affected Creditors with claims totalling approximately $1.3 million are anticipated to be paid in full by the Convenience Payments (the "**Convenience Creditors**").

6. The Monitor says the following in Reply:

   (a) of the 1,616 Convenience Creditors, 500 or 31% in number of the Convenience Creditors, voted on the District Plan. The Convenience Creditors who voted on the District Plan had claims totalling approximately $707,800 or 54% of the total claims of the Convenience Creditors.

(b) of the 500 Convenience Creditors who voted on the District Plan, 450 (90% of voting Convenience Creditors) voted in favour of the District Plan and 50 (10% of voting Convenience Creditors) voted against the District Plan. The Convenience Creditors who voted in favour of the District Plan had claims of approximately $641,300 (91% of the total claims of voting Convenience Creditors) and the Convenience Creditors who voted against the District Plan had claims of approximately $66,500 (9% of the total claims of voting Convenience Creditors).

(c) as previously reported, approximately 1,294 Eligible Affected Creditors with total claims of approximately $85.1 million voted on the District Plan. The Convenience Creditors, therefore, represented approximately 39% in number and approximately 1% in dollar value of the total voting Eligible Affected Creditors. In order for the District Plan to be approved, both a majority in number and two-thirds in dollar value of voting creditors must have voted in favour of the District Plan. As such, while the Convenience Payments increased the likelihood that a majority in number of Eligible Affected Creditors would vote in favour of the District Plan, they had little impact on the likelihood that two-thirds in dollar value of voting creditors would vote in favour of the District Plan.

(d) excluding the Convenience Creditors, there was a total of 794 Eligible Affected Creditors who voted on the District Plan, of which 626, or approximately 79%, voted in favour of the District Plan and 168 voted against the District Plan. As such, the District Plan still would have passed by a majority in number of voting Eligible Affected Creditors had no Convenience Creditors voted.

Twenty-Second Report of the Monitor, dated July 12, 2016, Court of Queen's Bench Action No. 1501-00955 at para. 18 (the "**Twenty-Second Report**").

7. A major consideration for the inclusion of the Convenience Payments in the District Plan was that only those Eligible Affected Creditors with claims over $5,000 would receive NewCo Shares. Limiting the number of NewCo Shareholders will create a more manageable corporate governance structure for NewCo than would otherwise be possible and will help to ensure that only Eligible Affected Creditors who have a vested interest in NewCo become NewCo Shareholders.

Twenty-Second Report at para. 18.5.

8. Absent the Convenience Payments, if all Eligible Affected Creditors received a portion of their pro-rata distribution in the form of NewCo Shares, there would be 2,600 NewCo Shareholders as opposed to approximately 1,000 NewCo Shareholders (as contemplated following the Convenience Payments under the District Plan). As a result, a majority of NewCo Shareholders would have small investments in NewCo and would not have a significant economic stake in NewCo's success, which could impede NewCo's ability to obtain direction from NewCo Shareholders.

9. Convenience Payments are regular features in many plans of compromise and arrangement filed in CCAA proceedings.

See e.g. *Contech Enterprises Inc., Re*, 2015 BCSC 129 at para. 27.

See e.g. *Target Canada Co., Re*, 2016 CarswellOnt 8815 at ss. 3.2.

See e.g. *Nelson Financial Group Ltd., Re*, 2011 ONSC 2750 at para. 14.

10. The Convenience Payments must be assessed in view of the well-recognized principle that a plan under the CCAA is a compromise. As reflected in the authorities cited at paragraph 96 of the Main Brief, various rights and remedies must be compromised to varying degrees to result in a reasonable, viable plan for all concerned. A plan should be approved if it is fair, reasonable and equitable, and equitable treatment is not necessarily equal treatment.

11. In the Monitor's respectful submission, the Convenience Payments are fair and reasonable when viewed within the context of the District Plan as a whole.

III. THE VALUATION OF NEWCO SHARES

12. Paragraph 59 of the Second Kellen Brief suggests that the value attributable to the NewCo Shares will be the same as the amount that could be recovered by Eligible Affected Creditors in a forced sale liquidation pursuant to a further insolvency proceeding, such as a receivership.

13. In reply, the Monitor notes that the value of the NewCo Shares is intended to be based principally on the CWPC Appraisal and the Colliers Appraisal, which reflect a range of forced sale values. The Monitor has consulted with Deloitte's Valuations Group, who has indicated that in valuing shares such as those of NewCo, it would be more common to value assets such as the Prince of Peace Properties based on appraised market values as opposed to forced sale values. The Monitor has attempted to balance this consideration against other practical considerations such as the fact that, depending on the mandate that is chosen for NewCo, the Prince of Peace Properties may still be liquidated in the near-term and the need to accurately reflect the shortfall to Eligible Affected Creditors, which will represent the amount they would ultimately be able to pursue in the Representative Action. Having said that, it is unlikely that the values attributed to the Prince of Peace Properties in calculating the value of the NewCo Shares will reflect the lowest forced sale values reflected in the CWPC Appraisal and the Colliers Appraisal. They will also not reflect costs associated with the marketing and sale of the Prince of Peace Properties such as realtor commissions.

Twenty-Second Report at para. 21.3.

14. Paragraph 23 of the Second Kellen Brief cites the proposition that the Court "does not have the jurisdiction or authority to sanction a Plan which contains terms that fall outside the purpose, objects and schedule of the CCAA". In a purported application of this principle, paragraph 61 of the Second Kellen Brief asserts that the "only identifiable purpose in issuing NewCo Shares rather than to simply liquidate the Prince of Peace Properties is to allow (and, in the case of the Depositors who voted against the Plan, to force) creditors to speculate as to the future value of those assets", and that this "is not a purpose sanctioned by the CCAA".

Second Kellen Brief at paras. 23 and 61.

15. To the contrary, the contemplated issuance of the NewCo Shares essentially constitutes a debt-to-equity conversion, which is a very common feature of CCAA plans. Courts have recognized that debt-to-equity conversions are sanctioned by the CCAA and that they can be critical to restructurings.

16. In *843504 Alberta Ltd., Re*, Madam Justice Topolniski recognized the well-established principle that the CCAA is a flexible instrument and that a debtor company is entitled to pursue a wide range of restructuring options, including debt-to-equity conversion. In particular, the Court noted that "reorganization of a company's affairs under the CCAA may take many forms", that there "is not one solution that will apply for every company" and that solutions may "vary from organizational and management restructuring, downsizing, refinancing, or debt to equity conversion".

> *843504 Alberta Ltd., Re*, 2003 ABQB 1015 at para. 14

17. The language cited above flows from the well-established concept that the CCAA is remedial legislation, intended to facilitate compromises and arrangements between companies and their creditors as an alternative to bankruptcy. Accordingly, "the Court should give the statute a broad and liberal interpretation so as to encourage and facilitate successful restructurings whenever possible".

> *ATB Financial v. Metcalfe & Mansfield Alternative Instruments II Corp.*, 45 B.L.R. (4th) 201 at para. 41, aff'd 2008 ONCA 587 ("***ATB***") at para. 44.

18. In fact, the Supreme Court of Canada expressly noted in *Century Services* that "[c]ourts frequently observe that '[t]he CCAA is skeletal in nature' and does not 'contain a comprehensive code that lays out all that is permitted or barred.'" Accordingly, the flexibility of the CCAA allows for innovation and creativity.

> *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 at para. 57, citing *ATB*.

19. In addition, paragraphs 94-95 of the Second Kellen Brief suggest that "[i]n the absence of a clear mandate for NewCo, the District Plan is nothing more than 'a plan to make a plan'" and, as such, it "deprives the Court of its power pursuant to s. 6 of the CCAA to ensure that the 'plan' is fair and reasonable and therefore appropriate to impose upon the minority."

> Second Kellen Brief at paras. 94-95.

20. Taken to its logical conclusion, this suggestion implies that a plan involving a debt-to-equity conversion must define the mandate of the corporation in which the creditors are to receive equity. In the Monitor's respectful submission, such an approach would be impractical and contrary to the goal of providing the stakeholders with the flexibility to pursue the option which they collectively determine to be in their best interests, taking into account NewCo Management's recommendations and market conditions at the time of the NewCo Shareholders' Meeting.

21. Courts have routinely approved plans which leave certain aspects to be resolved at a later time. For example, in *Stelco Inc., Re*, the debtor company brought a motion to approve a plan at a time when several issues remained to be resolved, including the corporate structure of the debtor company. Those outstanding issues did not constitute a barrier to the court's decision to approve and sanction the plan.

> *Stelco Inc., Re* (2006), 14 B.L.R. (4th) 260 at paras. 4 and 41.

22. In addition, as reflected in the authorities cited at paragraph 92 of the Main Brief, fairness and reasonableness are not abstract notions but must be measured against the available commercial alternative. In this case, the commercial alternative that the

Creditor Applicants appear to urge is an immediate forced liquidation in a depressed real estate market that may result in a return of a reduced amount of the stakeholders' investments. The District Plan does not foreclose that option but instead permits the NewCo Shareholders an opportunity to make an informed decision regarding NewCo's mandate.

23. In addition, paragraph 95 of the Second Kellen Brief suggests that the issuance of NewCo Shares is not appropriate because "there is no guarantee that the market will improve in the near to mid term" and because "[t]he market is just as likely to decline further, thereby devaluing the NewCo Shares over time." However, as courts have recognized, in assessing a plan the court must "look at the situation based upon what is currently known as to existing facts and what is realistic in the foreseeable future." While there is no guarantee that the market will improve in the near to mid term, that is a realistic possibility and the lack of a guarantee is not a basis to reject the District Plan.

Anvil Range Mining Corp. (2001), 25 C.B.R. (4th) 1 at para. 6.

IV. THE REPRESENTATIVE ACTION

24. Paragraphs 46-50 and 111-116 of the Second Kellen Brief suggest that the Representative Action provisions of the District Plan "represent a significant compromise of the District Depositors' rights to pursue claims against third parties." Mr. Kroeger and Mr. Kellen advanced a similar argument in respect of the DIL Sanction Application.

Second Kellen Brief at paras. 46-50.

Kellen DIL Sanction Brief at para. 48.

25. As the Monitor submitted at the DIL Sanction Application, the Representative Action provides for the appointment of a subcommittee comprised of depositors who opt-in to the Representative Action. Such subcommittee members owe fiduciary duties to those depositors who opt into the Representative Action, and are given the authority to pursue all claims on behalf of all depositors, including as against third parties. As such, no claims that can be pursued in the Representative Action would be released.

26. A claim against a third party will only not be advanced by the subcommittee if not doing so is consistent with their fiduciary duties. This is not a release of such claims. Rather, it is a recognition that the depositors have chosen to consolidate their legal rights on the basis provided for in the District Plan in order to pursue the Representative Action in a streamlined fashion.

27. Paragraphs 53-55 of the Second Kellen Brief suggest that the District Plan violates s. 5.1(2) of the CCAA because it "constitutes a significant compromise of the District Depositors' substantive and procedural rights to pursue claims against District directors".

28. While it is true that s. 5.1(2) of the CCAA prohibits the compromise of certain claims brought against directors, no such compromise would be effected by the District Plan. As stated above, the District Plan would not release or compromise any claims that can be pursued in the Representative Action. Accordingly, the District Plan would permit the directors to be pursued in the Representative Action in accordance with s. 5.1(2) of the CCAA.

V. RELIEF REQUESTED

29. It is respectfully requested that this Honourable Court 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.

INDEX OF AUTHORITIES

Tab	Description
1.	*Contech Enterprises Inc., Re*, 2015 BCSC 129.
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3.	*Nelson Financial Group Ltd., Re*, 2011 ONSC 2750.
4.	*843504 Alberta Ltd., Re*, 2003 ABQB 1015.
5.	*ATB Financial v. Metcalfe & Mansfield Alternative Instruments II Corp.*, 45 B.L.R. (4th) 201, aff'd 2008 ONCA 587.
6.	*Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60.
7.	*Stelco Inc., Re* (2006), 14 B.L.R. (4th) 260.
8.	*Anvil Range Mining Corp.* (2001), 25 C.B.R. (4th) 1.