

Court File \_\_\_\_\_

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**BETWEEN:**

**BONNIE CUMMINGS IN HER CAPACITY AS ESTATE EXECUTRIX  
OF THE ESTATE OF THE LATE JOHN CUMMINGS**

**Applicant**

**- and -**

**PEOPLEGE HR SERVICES INC., WINSTON PARK FINANCIAL SERVICES LTD.,  
CMC FRASER LTD. AND 1624452 ONTARIO LIMITED**

**Respondents**

**REPORT OF BDO CANADA LIMITED  
AS THE PROPOSED RECEIVER OF  
PEOPLEGE HR SERVICES INC., WINSTON PARK FINANCIAL SERVICES LTD.,  
CMC FRASER LTD. AND 1624452 ONTARIO LIMITED**

**October 24, 2012**

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## **INTRODUCTION AND PURPOSE OF REPORT**

1. BDO Canada Limited (in its corporate capacity, “**BDO**”, or, in its capacity as proposed receiver, the “**Proposed Receiver**”) understands that an application has been made before the Ontario Superior Court of Justice (Commercial List) for an order (the “**Receivership Order**”) to appoint a receiver pursuant to section 101 of the *Courts of Justice Act* R.S.O. 1990 C. c.43, as amended (the “**CJA**”), over all the assets, undertakings, and properties owned and/or administered by (a) Peopledge HR Services Inc. (“**Peopledge**”), and by (b) Winston Park Financial Services Ltd. (“**WPFS**”), CMC Fraser Ltd. (“**CMC**”) and 1624452 Ontario Limited (“**162**”) (collectively, the “**Related Companies**”).
2. The purpose of this report of the Proposed Receiver (the “**Report**”) is to provide this Court with background information, including the following:
  - (a) an overview of Peopledge and its current situation;
  - (b) an overview of the Related Companies;
  - (c) an outline of the facts leading to the discovery of missing funds, and the possible improper transfer of funds between Peopledge and the Related Companies; and
  - (d) finally, an outline of the proposed activities of the Proposed Receiver if appointed as receiver by the Court, including the proposed Wind-Down Process (defined below) of Peopledge, the proposed RC Process (defined below) of the Related Companies, and the proposed investigation into the movement of funds between Peopledge and the Related Companies.

## **BACKGROUND**

3. Peopledge conducts business as a provider of payroll processing, human resources, and benefits services. It is a privately held Ontario corporation incorporated on December 11, 2006. John Cummings (“**Cummings**”) actively managed the operations of Peopledge.

4. Cummings was the sole operating director of Peopledge until his death on May 30, 2012.
5. The application is brought by the estate of the late John Cummings (the “Cummings Estate”), by Cummings’ widow, Bonnie Cummings (“Bonnie”) in her capacity as Estate Executrix for the Cummings Estate (in this capacity, the “Estate Executrix”).
6. The Cummings Estate is the majority and controlling shareholder of Peopledge. In addition to Peopledge, Cummings had incorporated and acted as the sole director of WPFS, CMC and 162.
7. The Estate Executrix brings this application, to, among other things, oversee and implement an orderly and immediate wind-down of Peopledge, and to conduct and streamline the Proposed Receiver’s proposed investigation into the movement of funds from Peopledge to the Related Companies, based on the following primary grounds:
  - (a) there are no registered acting directors of Peopledge and there is no senior management in place to oversee the operations;
  - (b) the Estate Executrix’s investigation into Peopledge’s business has revealed there are missing funds from Peopledge’s accounts, and certain of those funds have been traced in and to accounts held by or with the Related Companies; and
  - (c) there are no registered acting directors of the Related Companies.

## **ENGAGEMENT OF BDO**

8. At the insistence of the Cummings Estate, BDO was retained by Peopledge in September 2012, to: i) conduct an assessment of the operations and bank accounts of Peopledge used in processing customers’ payrolls and deduction remittances; and ii) provide a recommendation for a restructuring, wind-down, or other proposed course of action for Peopledge.

9. As part of that retainer, BDO has:
  - (a) attended in-person and telephone meetings with Peopledge employees and others, including the Estate Executrix, in order to gain information regarding Peopledge and its situation;
  - (b) engaged legal counsel who has also participated in certain of these meetings;
  - (c) obtained financial and other information produced by Peopledge relating to its operations and current financial situation;
  - (d) reviewed certain of the books and records of Peopledge;
  - (e) reviewed various other documents and materials relevant to Peopledge and its business including the Master Service Agreements of various customers, the unique service contract with Peopledge's largest customer, certain Peopledge operation checklists and payroll processing documents; and
  - (f) held discussions, on a confidential basis, with two payroll processing competitors to investigate the orderly transition of the servicing of payroll accounts.
10. BDO is a licensed trustee within the meaning of section 2 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, C. b-3. as amended (the "BIA"), and is qualified and has consented to be appointed as a receiver pursuant to the CJA.
11. The Report has been prepared at the request of the Cummings Estate in connection with the proposed appointment of BDO as receiver of Peopledge and the Related Companies, with the same duty and care as though BDO had already been appointed to such role.
12. The Proposed Receiver has relied upon unaudited financial information of Peopledge, including its books and records, certain financial information prepared by Peopledge, and discussions with Peopledge's management. The Proposed Receiver has not been provided with any books and records of the

Related Companies, and has very limited knowledge of the business, share structure, and liabilities of the Related Companies. The Proposed Receiver expresses no opinion or other form of assurance on the information contained in this Report or relied on in its preparation.

13. This Report is to be read in conjunction with the affidavit of the Estate Executrix sworn on October 24, 2012 (the “Executrix Affidavit”), which sets out the current situation of Peopledge and the Related Companies (collectively, the “Companies”) and immediate need for the appointment of a receiver.

## **OVERVIEW OF PEOPLEDGE**

### **Overview of Peopledge’s Management**

14. Cummings was the central driving force of Peopledge. However, the Cummings Estate, the majority and controlling shareholder of Peopledge, has limited knowledge about, and no ability to manage, the business of Peopledge.
15. Cummings was diagnosed with leukemia in September, 2011, and passed away on May 30, 2012. Cummings’ illness significantly impacted his ability to manage Peopledge. The Proposed Receiver understands that Cummings withdrew significantly from management, and began to rely heavily on Jennifer Hughes (“Hughes”), Peopledge’s Manager of Finance and Administration to assume his responsibilities in his absence.
16. With the loss of Cummings, Hughes has been thrust into a senior management position. However, Hughes acknowledges that she is in a position that exceeds her experience and qualifications. While the Proposed Receiver understands that Hughes’ focus is to maintain “the status quo” and she is following the practices and procedures previously implemented by Cummings, Hughes lacks executive direction required to run the business of Peopledge.

17. Hughes has not received proper and complete instructions in this regard and appears unable to oversee the complete business operations primarily due to the lack of active officers, directors, or shareholders. Hughes has raised concerns about retaining employees given the current uncertainty in management and operations, and Hughes has further advised the Proposed Receiver that employees are investigating other employment options outside of Peopledge.
18. A copy of the corporate profile of Peopledge listing the officers and directors is attached as **Appendix "A"**.
19. As indicated above, Cummings was the sole director of Peopledge at the time of his death. Bonnie was appointed as an officer and director of Peopledge on May 30, 2012. The Proposed Receiver is informed by Bonnie that she agreed to the appointment as director of Peopledge because of her concurrent appointment as Estate Executrix, and specifically that she was informed that Peopledge could not operate without a replacement for Cummings on the banking documentation for Peopledge. The Proposed Receiver is advised that prior to May 30, 2012, Bonnie did not have any direct or active involvement in the operations of Peopledge.
20. Bonnie resigned as director on August 14, 2012. While her resignation as director is not yet reflected on the corporate profile, the Proposed Receiver is advised she resigned following the discovery of missing monies from Peopledge's accounts to and/or through the accounts of the Related Companies.

### **Overview of Peopledge's Customers and Creditors**

21. As indicated above, Peopledge conducts business as a provider of payroll processing, human resources, and benefits services. It provides such services mostly for Canadian customers, but also services a number of customers with payrolls based in United States of America.



22. The Proposed Receiver has compiled the following statistics in respect of Peopledge’s customers:

	<b>CANADA</b>	<b>U.S.A.</b>
Number of customers	152	8
Estimated number of customers’ employees administered	9,926	482
Estimated number of monthly payroll cheques issued	25,000	1,000
<b>Average monthly turnover of dollars</b>	<b>\$46,000,000</b>	<b>\$6,000,000</b>

23. Peopledge’s customers include certain sizeable multi-national corporations. For privacy purposes, the names of the customers are not set out in this Report. The approximate number of employees being serviced within the top five customers is as follows:

<b>CLIENT</b>	<b>APPROXIMATE NUMBER OF EMPLOYEES</b>
Customer 1 (“Customer 1”)	3,500
Customer 2	930
Customer 3	900
Customer 4	730
Customer 5	350

24. Peopledge enters into a form of Master Service Agreements (“MSA”) with its customers. Based on a sample review of MSA’s, customers are generally entitled to terminate their agreements with Peopledge with 90 days prior written notice (or earlier, if the customer issues a payment to Peopledge for the payroll processing fees which would be generated during the 90-day notice period).

25. Peopledge has entered into agreements with certain international payroll service providers to provide payroll services in Canada and/or U.S.A. for international clients. There are agreements in place with activpayroll Ltd. based in Aberdeen, Scotland and Celergo L.L.C. based in Illinois, U.S.A. Currently, Peopledge administers about 34 client payrolls through these partnering agreements.
26. Peopledge generated revenue of about \$1.566 million for the year ending December 31, 2011. Revenue for the nine months ended September 30, 2012 is approximately \$1.443 million. Most of the revenue, approximately 94 percent, is generated from payroll processing services. Peopledge typically charges its customers a flat base payroll processing fee plus a nominal charge per employee pay processed. There are various fee schedules for different service levels available to customers. Peopledge also offers human resources telephone support to clients at a predetermined hourly rate.
27. Peopledge calculates and collects payroll processing fees with each respective pay. There are some exceptions however, notably Customer 1 identified above. In Customer 1's case, the payroll processing fee has been prearranged in accordance with the signed contract and is invoiced on a quarterly basis. As well, Customer 1 has negotiated payment terms of 120 days.
28. Peopledge derives approximately 4% of its revenues from the interest earned on the balances held in the Consolidated Payroll Accounts (defined below). The balance of Peopledge's revenues is generated from human resources and benefits services.
29. Peopledge currently employs 19 full-time employees.
30. Attached as Appendix "B" is a copy of the *Personal Property Security Act*, R.S.O. 1990, c. P.10, as amended (the "PPSA") search obtained by the Proposed Receiver against Peopledge.
31. There are two registrations against Peopledge, as follows:

- (a) registration dated August 1, 2008 in favour of Bank of Montreal (“BMO”), against the inventory, equipment, accounts, and other personal property of Peopledge, motor vehicles included. The Proposed Receiver understands that BMO is a secured creditor of Peopledge by way of loan agreement under which approximately \$13,000 remains owing according to Peopledge’s books and records; and
- (b) registration dated April 27, 2012 in favour of Dell Financial Services Canada Limited, against the equipment and other personal property of Peopledge, and specifically against all Dell and non-Dell computer equipment.

### **Overview of Payroll Processing and Bank Accounts**

- 32. To administer payroll services for its customers, Peopledge licenses a third party payroll processing software package called ePersonality from High Line Corporation. ePersonality is used by employers to administer personnel records, position control, salary administration, benefit administration, and other needs of human resource departments. Hughes advises the Proposed Receiver that Peopledge is not aware of any other payroll company in Canada that use this software.
- 33. Peopledge utilizes the ePersonality software and the Consolidated Payroll Accounts (defined below) to process its own internal payroll as well.
- 34. Customers input their payroll data into ePersonality, which is accessible by them through the internet, for processing by Peopledge. Peopledge reviews the data, calculates the required payroll taxes and other deductions, and forwards a draft fund summary report to customers for their approval. The fund summary report itemizes the calculation of each individual employee’s net pay, payroll tax and other deductions, and payroll processing fees payable to Peopledge.
- 35. After the customer approves the fund summary report, Peopledge generates a data file through ePersonality containing each individual employee’s net

payroll amount and bank account information. The data is then converted to a format which is readable by banking systems and provides the necessary information for the distribution of payroll funds directly to employees' bank accounts.

36. Also, upon approval of the fund summary report, customers are instructed to arrange the payroll funding ("**Payroll Funds**") via: (a) electronic fund transfer, including wire transfer, and internet or telephone banking; (b) pre-authorized debit transactions; or (c) by providing Peopledge a float balance by certified funds and replenishing the balance after each payroll is processed.
37. Payroll Funds are directed to one of two consolidated interest bearing bank accounts ("**Consolidated Payroll Accounts**") controlled by Peopledge. One account, with BMO, is used to administer payrolls for customers with Canadian employees; the second account, with BMO Harris Bank, is used to administer payrolls for customers with U.S. employees.
38. In addition to the Consolidated Payroll Accounts, Peopledge maintains three additional bank accounts with BMO and one bank account with ING Direct Canada for its higher rate of interest return (the "**Corporate Bank Accounts**"). The Corporate Bank Accounts are utilized for general operating purposes.
39. Payroll Funds are generally received by Peopledge three days in advance of their required distribution date. Customer payrolls, payroll tax and other remittances, and the payroll processing fees earned by Peopledge are paid directly from the Consolidated Payroll Accounts. Peopledge typically disburses customers' payrolls to their respective employees within three days of receiving Payroll Funds; however, the portion of Payroll Funds representing payroll tax and other deductions may not be distributed for up to 45 days. A handful of customers remit payroll tax on a quarterly basis. Accordingly, Peopledge collects and holds certain customer deductions up to three months in advance. As a result, there is usually a significant balance on hand in the Consolidated Payroll Accounts at any given time (the "**Float**").

40. Payroll processing fees earned by Peopledge are transferred from the Consolidated Payroll Accounts to the Corporate Bank Accounts twice a month. In addition, the interest earned on funds held in the Consolidated Payroll Accounts is also regularly transferred to the Corporate Bank Accounts.
41. Based on the current information available, the Proposed Receiver does not believe the Consolidated Payroll Accounts were set up as trust accounts, premised on the following:
  - (a) the identification and names assigned to the Consolidated Payroll Accounts do not include any reference to trust funds;
  - (b) the Proposed Receiver reviewed a sample of MSA's regarding the provision of payroll processing services. None of the sampled MSA's contain clauses providing that Payroll Funds were to be held in trust for the benefit of the customer and/or its respective employees; and
  - (c) the accounting of funds held in the Consolidated Payroll Accounts does not track funds by individual customer.

### **Overview of Accounting Practices**

42. Peopledge maintains two general ledgers:
  - (a) the first is used to record Peopledge's business transactions ("**Peopledge GL**"). The Peopledge GL reports Peopledge's revenues and related business expenses, and maintains all accounting and transactions related to the Corporate Bank Accounts. A copy of the Peopledge GL trial balance as at September 30, 2012 is attached as **Appendix "C"**; and
  - (b) the second is used to record transactions related to the processing of customer payrolls, payroll tax, and other remittances ("**Customer GL**"). The Customer GL maintains all accounting and transactions related to the Consolidated Payroll Accounts. A copy of the Customer GL trial balance as at September 30, 2012 is attached as **Appendix "D"**. The

Customer GL does not track the collection and distribution of Payroll Funds on a customer-by-customer basis, but rather tracks these activities based on the nature of the intended disbursements (i.e. net payroll funds to be distributed to employees, withholding taxes to be remitted to Canada Revenue Agency, union dues collected, etc.). The practical result of this is that Peopledge's records do not readily demonstrate current liabilities to customers.

## **OVERVIEW OF THE RELATED COMPANIES**

### **The Related Companies**

43. Particulars as to the status of the Related Companies are provided in the Executrix Affidavit.
44. Attached as Appendix "E" is the corporate profile for 162. As it appears from that search report:
  - (a) 162 was incorporated by Cummings on June 30, 2004;
  - (b) Bonnie is listed as secretary and treasurer, effective as at June 30, 2004 and president effective as at May 30, 2012; and
  - (c) there are no listed directors of 162.
45. As indicated in Executrix Affidavit:
  - (a) 162 traded under the business trade names of "CMC Fraser" and "Winston Park Financial Services";
  - (b) Bonnie did not know of nor did she consent to hold her positions as officer prior to her appointment as Estate Executrix;
  - (c) the Estate Executrix has not been able to locate evidence that Cummings, as first director, issued any shares in 162 to either himself or another as shareholder;

- (d) the Estate Executrix believes that Cummings was shareholder of 162, or always intended that he be shareholder; and
  - (e) to her knowledge, there are no employees of 162.
46. Attached as **Appendix “F”** is the corporate profile for WPFS. As it appears from that search report:
- (a) WPFS was incorporated by Cummings on July 16, 2009;
  - (b) Bonnie is listed as president, secretary and treasurer, effective as at May 30, 2012; and
  - (c) there are no listed directors of WPFS.
47. As indicated in Executrix Affidavit:
- (a) no organizing documents were prepared to organize WPFS, and the Estate Executrix has not been able to locate documentation as to issued shares, if any, of WPFS;
  - (b) the Estate Executrix believes that Cummings was shareholder of WPFS, or always intended that he be shareholder; and
  - (c) to her knowledge, there are no employees of WPFS.
48. Attached as **Appendix “G”** is the corporate profile for CMC. As it appears from that search report:
- (a) CMC (formerly 2152578 Ontario Inc.) was incorporated on October, 2009;
  - (b) Bonnie is listed as president, secretary and treasurer, effective as at May 30, 2012; and
  - (c) there are no listed directors of CMC.
49. As indicated in Executrix Affidavit:
- (a) organizing documents were prepared but a share certificate was not executed and issued by Cummings to himself. However, Cummings signed resolutions as shareholder and acted as if the shares had been issued; and

(b) to her knowledge, there are no employees of CMC.

**Stakeholders of Related Companies who will be Affected by the Appointment**

50. In anticipation of this *ex parte* application, the Proposed Receiver has attempted to determine which parties will be impacted or potentially prejudiced by the appointment of the Proposed Receiver over the Related Companies.
51. Based on the Proposed Receiver's searches pursuant to the PPSA current as at October 1, 2012, there are no secured parties with registrations under the PPSA. Attached as **Appendix "H"** are the PPSA search results for each of the Related Companies.
52. Based on the Proposed Receiver's execution and writ searches in Ontario current as at October 2, 2012 there are no registered creditors. Attached as **Appendix "I"** are the execution and writ search results for each of the Related Companies.
53. As detailed above, the Proposed Receiver understands from the Executrix Affidavit that:
- (a) there are no employees of the Related Companies;
  - (b) Cummings is seemingly the sole or majority shareholder of each of the Related Companies, and therefore the Estate Executrix believes that she is the only interested stakeholder in the Related Companies; and
  - (c) the Estate Executrix supports and consents to the appointment of the Proposed Receiver over the Related Companies.



## **THE ESTATE EXECUTRIX'S INVESTIGATION INTO POSSIBLE MISAPPROPRIATION OF FUNDS**

54. As part of her investigation into the business of Peopledge (described in detail below), the Estate Executrix discovered Float funds which were paid to accounts held by or with the Related Companies.
55. Particulars of the investigation and findings of the Estate Executrix are set out in the Executrix Affidavit. A brief summary of the Proposed Receiver's general observations regarding this investigation, and its own review of certain records of Peopledge and the Related Companies, is set out below.

### **Payment of Payroll and Operating Expenses**

56. Based on Proposed Receiver's review of Peopledge's books and records, it has never been profitable and has accumulated losses since inception totaling \$1.375 million. Its books show a loss for the nine months ended September 30, 2012 totalling approximately \$69,000.
57. Given its history of operating losses, Peopledge is currently struggling with its cashflow.
58. Hughes advises the Proposed Receiver there are no prospects for new customers for Peopledge to increase revenues. Nor has Peopledge initiated any initiatives to reduce costs. Peopledge has no cash flow projections in place, but rather reviews its banking and operations on a day-to-day basis.
59. Peopledge's employees are paid on a semi-monthly basis with an average payroll cost of \$55,000 per pay period. As a result of cashflow constraints, it appears that Peopledge has processed several of its own internal payrolls from the Consolidated Payroll Accounts without depositing the necessary funding in advance of the withdrawals. The Proposed Receiver understands that Peopledge intended to have the necessary funding deposited to cover such withdrawals once funds became available.

60. The Proposed Receiver further understands from management that advances are regularly drawn on payroll processing fees for specific customers from funds available in the Consolidated Payroll Accounts. Peopledge management advises that this practice is a direct result of the continuing cash flow problems of Peopledge.
61. In short, Peopledge appears to have utilized Payroll Funds to fund its business operations. The length of time for which it has done so is not yet known.
62. According to the Proposed Receiver's investigations, it appears that Peopledge has used approximately \$464,000 from the Consolidated Payroll Accounts as at October 15, 2012 in this manner. Management is unable to plan how to remedy the shortfall in the Consolidated Payroll Accounts and anticipates it will continue to accrue.
63. Based on the information available to it at the time of writing this Report, the Proposed Receiver believes that the deficiency in the Consolidated Payroll Accounts will continue to grow as Peopledge continues to utilize the Payroll Funds to fund its own operations.

#### **Transfer of Peopledge's funds to the Related Companies**

64. As set out in the Executrix Affidavit, and based on conversations had with management at Peopledge:
  - (a) in or around May 2007, inquiries were made by management about the balances held in the Consolidated Payroll Accounts and the availability of the Float;
  - (b) there was suggestion that the money could be better utilized in investment accounts that offered a greater rate of return than the nominal interest rates provided by the Consolidated Payroll Accounts;
  - (c) cheques were drawn from the Consolidated Payroll Accounts and made payable to CMC Fraser and/or Winston Park Financial Services, the

business trade names of 162, during the period May 2007 to February 2012;

- (d) the Customer GL reflects these payments as transfers of funds from one of the Consolidated Payroll Accounts to an account labeled High Yield Account (the “High Yield Account”), held with CMC Fraser and/or Winston Park Financial Services;
  - (e) the balance held in the High Yield Account as at September 30, 2012 is \$3.400 million. A copy of the transaction history for the High Yield Account is attached as Appendix “J”.
65. Management advises that Peopledge occasionally received wire transfers deposited to the Consolidated Payroll Accounts, and that these wire transfer amounts allegedly represented interest earned on the High Yield Account. Accordingly, they are recorded as such in the Company’s books and records.
66. The Cummings Estate has not been able to locate and the Proposed Receiver has not been provided account statements known to be for the High Yield Account, and has no further information on this account.
67. Further, based on its review of materials provided by the Estate Executrix, the Proposed Receiver understands that the following accounts are held with the Related Companies.
- (a) 162 maintains three accounts with Bank of Montreal:
    - i. a Canadian deposit account having an estimated balance of \$1,835.07 as at May 31, 2012, and the Estate Executrix advises that it appears based on the initial investigation that \$1,835.07 are funds belonging to Peopledge;
    - ii. a BMO Investor Line account having an estimated balance of \$72,845.26 as at June 30, 2012, and the Estate Executrix advises that it appears based on the initial investigation that \$72,845.26 are funds belonging to Peopledge; and

- iii. a BMO Investor Line account having an estimated balance of \$NIL.
  - (b) WPFS maintains an account with TD Canada Trust, having an estimated balance of \$116,709.44 as at May 31, 2012, and the Estate Executrix advises that it appears based on the initial investigation that \$116,709.44 are funds belonging to Peopledge;
  - (c) CMC maintains two accounts with Bank of Montreal:
    - i. a Canadian deposit account having an estimated balance of \$387.99 as at May 31, 2012, and the Estate Executrix advises that it appears based on the initial investigation that \$387.99 are funds belonging to Peopledge; and
    - ii. a US savings account having an estimated balance of \$486.00 as at May 31, 2012, and the Estate Executrix advises that it appears based on the initial investigation that \$486.00 are funds belonging to Peopledge.
- 68. The Proposed Receiver is not aware of, nor has it been advised of, any other accounts held by any of the Related Companies.
- 69. The Estate Executrix desires that a professional investigation (and, to the extent necessary, a forensic examination) be conducted into the previous transfer of funds from Peopledge's Consolidated Payroll Accounts to the High Yield Account. While it is possible to transfer funds from the accounts of the Related Companies to Peopledge, the Estate Executrix wishes to ensure that the funds held with the Related Companies are not used to fund the operating deficit under which Peopledge is currently operating; and iii) the Estate Executrix desires that an independent party obtain and retain control of all funds in separate accounts, so as not to prejudice the creditors of each of Peopledge and the Related Companies by movement of funds.

## **BUSINESS CONSIDERATIONS IN ADVANCE OF THE PROPOSED WIND-DOWN**

### **Feasibility for a Going Concern Marketing and Sale Process**

70. During the course of its review, the Proposed Receiver assessed the feasibility of conducting a marketing and sale process for Peopledge's assets and operations, to seek to maximize enterprise value for the benefit of all stakeholders.
71. The Proposed Receiver concluded that a fulsome marketing and sale process for Peopledge's assets and operations would not affect the desired objectives and, would not likely result in a successful and profitable sale for the following reasons:
- (a) Peopledge has insufficient working capital to fund operations during the time it would take to canvass the market and conduct a full marketing and sale process for a going-concern sale of the assets and operations;
  - (b) there are no readily available sources for a capital injection to fund this process, and the Cummings Estate will not provide such a capital injection;
  - (c) Peopledge does not have a capable senior management team in place to manage the operations and additional due diligence requests which would be required in a sale process;
  - (d) There is significant uncertainty surrounding the approximately \$3.864 million used from the Consolidated Payroll Accounts which may discourage potential purchasers;
  - (e) a public sales process would likely cause distress to Peopledge's customers, who, in the interest of protecting their employees and payroll, may take steps to terminate their contracts with Peopledge, effectively depleting the most valuable asset, being the customer base;

- (f) Customer 1 owns and uses a copy of ePersonality to administer its payroll and certain other human resources functions, and the Proposed Receiver understands that no other payroll service provider in Canada uses this software. Part of the contract between Customer 1 and Peopledge is for hosting and technical support for ePersonality. Customer 1's payroll processing fees account for approximately 30% of Peopledge's payroll processing revenues. The Proposed Receiver is advised that Customer 1 considered payroll service providers from other countries and therefore, may do so again. The Proposed Receiver cannot ensure that the account with Customer 1 will form part of the assets to be sold to a purchaser, and the practical effect of this is that purchase offers will likely contain adjustment clauses for the loss of Customer 1's account;
- (g) Peopledge recently ended its contract with its fourth largest customer (having a scheduled end date of December 31, 2012), resulting in the loss of revenue generated from processing payrolls for an estimated 730 employees;
- (h) there is no guarantee as to the cooperation of customers when transitioning accounts from Peopledge to a purchaser; and
- (i) Peopledge has a history of continuing operating losses.

### **Cessation of Business Operations and Transition of Customer Accounts**

- 72. Given the movement of funds to the High Yield Account and the lack of viable management, the Estate Executrix ultimately concluded that it is necessary the business operations of Peopledge cease immediately.
- 73. The Proposed Receiver would not agree to operate the business of Peopledge in these circumstances and concurs with the Estate Executrix's conclusions.
- 74. Given the challenges in undertaking a sales process, the Proposed Receiver and the Estate Executrix engaged in lengthy discussions as to how to salvage the

value of Peopledge, and how to ease the transition of customers who rely on Peopledge's services, if operations were to cease abruptly as a result of the proposed receivership.

75. The Estate Executrix on behalf of Peopledge, asked the Proposed Receiver to contact certain large payroll service-providers that provide similar services to employers as those offered by Peopledge, to engage in limited discussions with these entities on a no-names basis, to determine what options might be available.
76. The Proposed Receiver contacted two of the larger and well known payroll companies with a view to understanding the process which would be required to transferring accounts from Peopledge to a new service provider, such that Peopledge customers and their employees would suffer as little disruption as possible.
77. The Proposed Receiver was advised by management of two further payroll providers which had expressed an informal interest in Peopledge's operations in the past, including a provider based out of the U.S.A. and one based out of Southern Ontario. However, among other things, given the hurdles of a formal and expansive marketing and sale process (discussed below) and the small size of the Canadian company, the Proposed Receiver was not instructed to contact these or any further payroll service providers.

### **Transitioning Payrolls at Request of Customers**

78. The Proposed Receiver was instructed to engage in discussions with Ceridian Canada Ltd. ("Ceridian") and ADP Inc. ("ADP"), in an effort to establish a potential transition plan for Peopledge's customers.
79. As part of its discussions, the Proposed Receiver queried both Ceridian and ADP if a successful payroll transition maintained any value to them by way of a referral fee on successful transitions.

80. The Proposed Receiver identified certain key elements requiring consideration to effect a successful transition of payroll services:
- (a) speed at which customers could be transitioned over to a new payroll provider;
  - (b) resources required for transitioning payrolls;
  - (c) costs;
  - (d) customers would have to request the transition of their payroll; and
  - (e) previous experience by payroll provider in similar situations.
81. Both Ceridian and ADP expressed an interest in assisting a receiver in transitioning customer payrolls. Accordingly, without divulging customer names, or Peopleledge, the Proposed Receiver entered into numerous confidential discussions with each company.
82. A Unilateral Confidential Disclosure Agreement (“CDA”) was drafted to allow for certain information to be presented to both Ceridian and ADP to further discussions. The CDA was drafted such that customer names and Peopleledge were not to be disclosed at the time of execution.
83. ADP did not execute a CDA. After high-level discussions with the Proposed Receiver on a no-names basis, ADP ultimately determined it would be difficult for it to transition the expected number of customers quickly, and ADP could not commit to a transition period of less than two to six weeks. ADP subsequently withdrew its interest as a result of its organizational priorities.
84. Ceridian maintained its interest and executed the CDA. Along with the CDA, Ceridian provided the Proposed Receiver a list of items they required to see in order to complete their due diligence and satisfy themselves.



## **Referral Agreement**

85. Upon a further review of the detailed information requested, Ceridian confirmed it was in a position to assist in the transitioning of payrolls, as discussed with the Proposed Receiver.
86. Ceridian further confirmed:
  - (a) they have experience in similar situations, with historical transition rates of approximately 90%;
  - (b) they maintain a separate consolidated trust account for customer funds, which is routinely reconciled. This should provide a level of comfort and assurance to customers looking for a new provider;
  - (c) they will waive the implementation fee for customers with 200 employees or less, which represents approximately 95% of Peopledge's customers;
  - (d) customer and employee information can be transitioned through an upload to Ceridian's payroll software, which transition will require the cooperation and assistance of Ceridian and Peopledge employees.
87. Transitioning and implementing Peopledge's customers employing in excess of 200 employees will be more complex and require more time. However, Ceridian has agreed to work with the larger customers as well to work out a transition plan that may reasonably meet their needs.
88. Additionally, Ceridian has agreed to pay a referral fee equivalent to a multiple of 1.25 times the annual revenue to be received by Ceridian, based on their fee models, for each customer who successfully transitions to Ceridian.
89. Ceridian's Chief Financial Officer ("CFO") has estimated the potential revenue available on a 100% transition rate under their fee schedules to be approaching \$1.000M annually. Peopledge's largest customer, Customer 1, is not included in this estimation.

90. Ceridian's CFO has confirmed that in her experience Ceridian has been successful in transitioning 90-95% of customers, when acting in similar situations.
91. The Proposed Receiver has negotiated an upfront deposit of \$400,000 from Ceridian, which has been delivered to BDO in trust by way of certified funds, pending the Receivership Order being made. The Proposed Receiver and Ceridian have undertaken to re-adjust the deposit to the referral fee on successful transitions.
92. Both Ceridian and the Proposed Receiver concur the transition of payrolls can only be completed with the approval and authorization of the customers. The Proposed Receiver has not sought to bind any customer to Ceridian. The Proposed Receiver will also require customers to sign a written consent and authorization prior to the release of any customer or payroll information to Ceridian.
93. The Proposed Receiver and Ceridian have negotiated a Referral Agreement, a copy of which is attached as **Appendix "K"**. The Referral Agreement has been irrevocably signed by Ceridian. Pursuant to the terms of the Referral Agreement, the Referral Agreement will only be executed by BDO with the direction and authorization of this Court.
94. The Proposed Receiver believes that the Referral Agreement is beneficial to all interested parties for the following reasons:
  - (a) it will allow an orderly transition of customer payrolls to another provider for those customers that wish to transition to Ceridian;
  - (b) Ceridian has agreed to waive the initial implementation fees associated with new contracts (for customers with under 200 employees) which will minimize the costs to customers;
  - (c) Ceridian maintains a separate trust account for customer funded payrolls;
  - (d) the transition time may be minimized;

- (e) Ceridian is a well known and reputable payroll provider in the industry and has experience in similar situations;
  - (f) a considerable referral fee may be recognized for the benefit of creditors; and
  - (g) a deposit of \$400,000 has been provided by Ceridian.
95. An immediate shut-down of operations without a transition plan would cause significant disruption to those hundreds of employees that are paid through Peopledge's payroll services. In the Proposed Receiver's opinion, it is in the best interest of the customers of Peopledge to offer those customer's options as to substitute payroll providers.
96. The Proposed Receiver proposes that all customers be notified of the shut-down in real-time, by way of an e-mail notice. Attached as **Appendix "L"** is a copy of the notice to be provided to customers, which will advise customers of: i) the receivership; ii) the termination of all customer contracts and cessation of services; iii) the transition options available for customers to Ceridian.

## **THE PROPOSED WIND-DOWN PROCESS**

97. If appointed by this Court, the Proposed Receiver intends to take the following course of action to cease the operations of Peopledge (the "**Wind-Down Process**"):
- (a) immediately terminate the business operations and employment of all employees of Peopledge, but for those key employees required by the Proposed Receiver to assist in transitioning customer payroll information in accordance with the Referral Agreement and to give effect to the Wind-Down Process;
  - (b) immediately take possession of and secure the remaining funds in the Consolidated Payroll Accounts, and to consolidate all funds of Peopledge in preparation of an orderly claims process;

- (c) immediately commence an investigation into the transfer of funds from Peopledge, to and through the Related Companies to determine whether a formal forensic examination is warranted and advisable;
  - (d) immediately contact the customers and creditors of Peopledge to inform them of the Receivership Order, and to provide them information to assist in the transitioning of services previously provided by Peopledge to a new service provider;
  - (e) where cost-effective or practicable to do so, or in accordance with any agreement which may be arranged with Ceridian, assist customers in transitioning electronic data to either Ceridian or alternate payroll source providers;
  - (f) to the extent there is value for the estate, take possession of and liquidate the non-monetary assets; and
  - (g) safeguard and deal with of all personal information in accordance with the *Personal Information Protection and Electronic Documents Act*.
98. If appointed by this Court, the Proposed Receiver intends to take the following course of action in respect of the Related Companies (the “RC Process”):
- (a) immediately terminate, to the extent necessary, and appropriate any business operations of the Related Companies;
  - (b) immediately terminate the employment of all employees (if any);
  - (c) immediately take possession of and secure all funds on hand; and
  - (d) to the extent there is value for the estate, take possession of and liquidate the non-monetary assets of the Related Companies.
99. In due course, the Proposed Receiver’s expects to recommend a claims process, to be approved by the Court, which, depending on the findings of any investigations conducted into the Related Companies, may include certain or all of the Related Companies.

100. Without limitation, as part of the proposed Wind-Down Process and RC Process, the Receiver will not do the following:
- (a) operate the business of any of Peopledge or the Related Companies in any capacity; and
  - (b) take possession of any non-monetary assets of Peopledge or the Related Companies, unless it is of value to the estate that such assets be liquidated.

### **URGENCY AND RELIEF SOUGHT**

101. The application made on behalf of the Cummings Estate for a Receivership Order is being made on an *ex parte* basis so as to preserve remaining assets.
102. The Proposed Receiver supports the application being made on this basis as notice would likely result in panicked actions by customers and/or creditors that would create chaos to the detriment of all stakeholders. Customers could and likely would take action to seize funds or other assets from Peopledge, and, given the missing funds, such seizures would be to the potential detriment of other customers.
103. The *ex parte* application serves to protect the interest of all customers and stakeholders. The business cannot continue to operate in its current state. The appointment of a receiver will bring control and order to the state of accounts, and flow of funds of the four companies, such that the proper investigations can be made and an orderly claims process can be established.
104. To accomplish this in the most cost-effective and practical way, the proposed appointment would extend to the Related Companies. As discussed above, the only known stakeholder in the Related Companies is the Estate Executrix, who supports and requests the appointment.
105. Additionally, a priority administrative charge over the assets, undertaking and property of Peopledge and the Related Companies is sought for the benefit of

the Proposed Receiver and its legal counsel, including over property which may be subject to third party or trust claims (the “Charge”). It is recognized that certain of funds subject to the Charge may be subject to trust claims, but in the circumstances an order securing the fees with such a charge is required. The expenditure and effort of the Proposed Receiver will benefit all claimants in and to the funds over which the Charge will be granted, including trust claims.

## CONCLUSIONS

106. Peopledge is insolvent and continues to generate operating losses.
107. The Proposed Receiver is of the view that the relief requested by the Estate Executrix is reasonable and justified. The Proposed Receiver is also of the view that granting the relief requested will provide the best opportunity to preserve value and maximize recoveries for Peopledge’s stakeholders, and those as yet unknown stakeholders of the Related Companies.

All of which is respectfully submitted this 24<sup>th</sup> day of October, 2012.

**BDO CANADA LIMITED**  
in its capacity as the Proposed Receiver of  
Peopledge HR Services Inc.,  
and not in its personal capacity  
Per:



Eugene P. Migus, CA•CIRP  
Senior Vice-President