

**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

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

February 15, 2013

INTRODUCTION AND PURPOSE OF REPORT

1. BDO Canada Limited was appointed as receiver (the “Receiver”) pursuant to section 101 of the *Courts of Justice Act* R.S.O. 1990 C. c.43, as amended, 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”, and together with Peopledge, the “Debtors”) pursuant to the Order of the Honourable Mr. Justice Newbould dated October 29, 2012 (the “Receivership Order”). The Receivership Order and additional information on the receivership may be obtained from the Receiver’s website at www.bdo.ca/Peopledge.
2. The Receivership Order provided that the Receiver set down a date on notice to all parties within 30 days of the issuance of the Receivership Order to report to the Court and to seek additional relief as appropriate, including the implementation of a claims process for claims against the Debtors (the “Comeback Motion”). The Comeback Motion was heard on December 10, 2012.
3. As part of the relief granted at the Comeback Motion, the Honourable Mr. Justice Campbell granted an Order (the “Claims Process Order”) directing and empowering the Receiver to administer the Claims Process (as defined therein), which Claims Process included the following terms:
 - a) that all Claims, including General Claims and Customer Deposit Claims (all as defined in the Claims Process Order) were to be submitted to and received by the Receiver by 5:00 p.m. (Eastern Standard Time) on Friday, January 18, 2013 (the “Claims Bar Date”);
 - b) that the Receiver shall review all Claims filed and seek to validate, including resolving any discrepancies with the applicable Claimant, the quantum of such Claims;
 - c) that all time incurred by the Receiver in reviewing, validating and resolving any discrepancies with each Claimant shall be tracked on an individual Claimant basis and, subject to further order of this Court, all fees and disbursements

associated with such review and resolution of individual Claims shall be allocated to and payable from any future distribution to such Claimant following completion of the Claims Process;

- d) that, on or before February 15, 2013, the Receiver shall deliver a report setting out a summary of the Claims received in accordance with the Claims Process Order to every Claimant that has filed a Proof of General Claim or Proof of Customer Deposit Claim by the Claims Bar Date (collectively, all such Claimants will be called the “Eligible Claimants”); and
- e) that the Receiver shall schedule with the Court a hearing on February 22, 2013 for further advice and directions from the Court with respect to the Claims Process.

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- 4. A copy of the Claims Process Order is attached Appendix “A”.
 - 5. This is the Receiver’s Third Report to the Court (the “Third Report”) and is filed in connection with the Receiver’s obligation to report to Eligible Claimants on the Claims Process as provided in the Claims Process Order. The Third Report will set out a summary of the Claims received in accordance with the Claims Process Order.
 - 6. All references to currency or dollars (\$) in this Report shall mean Canadian dollars unless otherwise stated. Defined terms used in this Third Report and not otherwise defined have the meaning ascribed to them in the Claims Process Order.

THE CLAIMS PROCESS AND OVERVIEW OF CLAIMS RECEIVED

- 7. Pursuant to the Claims Process Order, the Receiver notified all known customers and creditors of Peopledge and the Related Parties in writing of the Claims Process and the requirement to file a proof of claim by the Claims Bar Date. The Receiver developed the list of known customers and creditors from an extensive review of all available books and records. A copy of the affidavits of service of the Receiver’s notice of the Claims Bar Date, including a copy of such notice and a claim form is attached as Appendix “B”.

8. Additionally, in accordance with the Claims Process Order, the Receiver published a notice of the Claims Process in the National Editions of The Globe & Mail and USA Today on December 14, 2012 and December 13, 2012, respectively. A copy of each advertisement is attached as Appendix “C”.

Overview of Claims Filed

9. The Receiver received an aggregate of \$7,306,723 in total Claims pursuant to 118 claims as filed.
10. The Receiver received \$5,934,131 in Customer Deposit Claims, representing 82 claims as filed. Attached as Appendix “D” is a Claims Registry summarizing the Customer Deposit Claims.
11. The Receiver received \$1,372,592 in General Claims, representing 36 claims as filed, plus four General Claims each having an unspecified or unknown quantum. Attached as Appendix “E” is a Claims Registry summarizing the General Claims. The General Claims are comprised of the following classes of claims, each as discussed further below: Customer claims; the claim of Burloak No. 1 Investment LP (the “Landlord”); CRA claims; supplier claims; shareholder/miscellaneous claims (including one employee claim); and unqualified reservation of rights claims.
12. In addition to the General Claims received, the Receiver has its own analysis for further claims of Peopledge’s former employees pursuant to the *Wage Earner Protection Program Act* (“WEPPA”), which is discussed further with the General Claims below.
13. The Customer Deposit Claims make up 81.2% of the total claims received. Together with the General Claims submitted by customers, customer claims represent 89.2% of all claims received in the Claims Process.
14. Pursuant to the Claims Process Order, persons filing Customer Deposit Claims were not required to specify against which Debtor the Customer Deposit Claim was being made since the claim was presumed to be in the nature of recovery of funds deposited for payroll processing. The Claims Process Order required, however, that persons filing

General Claims specify against which one or more of the Debtors the Claims were being asserted.

15. Of the General Claims received, 28 of 33 of the claims were filed only as against Peopledge. Three of the General Claims were filed against all of the Debtors. In addition, CRA filed a specific General Claim against only 162 in respect of unpaid HST (discussed below). Finally, a General Claim filed by Attridge Coach Lines Inc. does not indicate against which of the Debtors the claim is made.
16. As directed by the Claims Process Order, the Receiver has tracked its time in respect of its review and validation of each claim received.

Overview of Customer Deposit Claims

17. Since the Claims Bar Date, the Receiver has reviewed the claims seeking to validate the quantum of the claims filed. Other than a high level review of the General Claims to determine the overall quantum and nature for reporting in this Third Report, the focus of the Receiver has been on reviewing the Customer Deposit Claims.
18. The Receiver has made substantial progress in the review of the Customer Deposit Claims but additional review is necessary to validate many of the claims (including requiring further information from a large number of customers).
19. Significantly, a large number of the Customer Deposit Claims are missing critical information or documents required to substantiate the full amount of the claims as submitted.
20. Furthermore, the Receiver notes that there were numerous other discrepancies and/or deficiencies in the Customer Deposit Claims which require some form of further analysis or clarification from the applicable customer.
21. As of the date of this Third Report, the Receiver has written to 59 Claimants seeking additional information or documentation with respect to their claim(s) as filed. Each party has been requested to respond by 5 p.m. on February 21, 2013 with the requested information.

22. As anticipated by the Receiver in the Second Report of the Receiver dated December 3, 2012 (the “**Second Report**”), the Receiver’s review of Customer Deposit Claims has been a difficult and time consuming process thus far because Peopledge’s books and records do not track the collection and distribution of Payroll Funds on a customer-by-customer basis. This has resulted in the Receiver having to expend considerable effort in tracing transactions in Peopledge’s books and records in order to validate Customer Deposit Claims.
23. The Receiver also notes that numerous Claimants did not actually sign the Proof of Claim form on behalf of the Claimant. The Receiver views the omission as a minor technical deficiency which should not be used to invalidate the affected claims and, pursuant to paragraph 18 of the Claims Process Order, intends to waive strict compliance with the requirements of this Order as to the completion and the execution of a proof of claim in this regard.

Overview of General Claims Received

24. Although the Receiver has not begun the formal process of valuing the General Claims, the below is a summary of the Receiver’s initial review of the General Claims:
25. **Customer General Claims:** claims for damages arising from or relating to the shut-down of the business of Peopledge and interruption of payroll services in an aggregate amount of \$586,915.62 (not included three General Claims submitted by customers with an unspecified or unknown quantum). The nature of claims include legal or other costs incurred in actually transferring customer payroll accounts and/or claims for penalties and interest charged from government or similar bodies in respect of late remission of payments due.
26. **Landlord Claim:** claim for accelerated rent for the unexpired portion of the lease of the Premises in the amount of \$488,641.22.

27. Secured Claims:

- a) Dell Financial Services Canada filed a secured claim totalling \$69,312.01 with respect to their lease of specific computer equipment to Peopledge. Dell's security is limited to the equipment leased to Peopledge;
- b) BMO filed an unspecified secured claim with respect to costs incurred in connection with the insolvency of Peopledge and related issues and in connection with the accounts of Peopledge and costs, expenses, damages, claims or actions directly or indirectly in connection with the account of Peopledge, including claims by any third parties. BMO has also asserted a set-off claim against Peopledge which the Receiver is separately reviewing; and
- c) Bonnie Cummings filed a claim on a secured and unsecured basis against all Debtors in the amount of \$64,217.76 with respect to certain professional fees funded prior to the receivership. A recent PPSA search against Peopledge does not indicate any PPSA registration in favour of Bonnie and the Receiver is not aware of any security having been granted to her by the Debtors.

28. CRA Claims: CRA did not submit any claim or priority for amounts related to payrolls administered by Peopledge on behalf of its customers. CRA did however file claims in respect of certain of the Debtors themselves, as follows:

- a) \$16,591.64 asserted against Peopledge for outstanding arrears of HST;
- b) \$12,469.84 asserted against Peopledge for outstanding payroll source deductions relating to Peopledge's payroll to Peopledge employees only. Of this amount, \$8,969.71 was submitted as a proof of property claim and represents the employees' portion of payroll source deductions and the balance of \$3,500.13 was submitted as an unsecured claim; and
- c) \$5,644.63 asserted against 162 for outstanding arrears of HST. The Receiver understands that 162 provided certain management services to Peopledge on which HST was charged.

29. **Supplier Claims:** claims for services rendered to Peopledge in the course of its business operations totalling \$27,738.46.
30. **Shareholder and other Miscellaneous Claims:** Bonnie Cummings and Middlebank Holdings Inc. (“Middlebank”) have filed unspecified claims for amounts owing to them as shareholders. In addition to their shareholder claims, Middlebank has filed a claim for a judgment debt owing to it by Peopledge in the amount of \$50,025.00 and Bonnie Cummings has filed a claim in respect of legal costs incurred by her in these proceedings in the amount of \$64,217.76 and a second claim for reimbursement of her payment of one of Peopledge’s credit cards in the amount of \$4,066.44. Finally, the Receiver reports that it has received four General Claims in the aggregate amount of \$35,874.94 without any explanation of the nature of the claim or supporting documentation.
31. **Employee Claims:** while the Receiver did not receive claims under the Claims Process Order from the former employees of Peopledge except for one individual, the Receiver is aware that 18 former employees are owed a total of \$99,663.74 based on the employees’ WEPPA claims filed for unpaid wages, vacation pay, and termination pay. Of this amount, \$33,771.96 represents the maximum amount eligible for payment from the proceeds of realization pursuant to the super-priority claims available to employees on the current assets of Peopledge prescribed by section 81.4 of the *Bankruptcy and Insolvency Act*.

NEXT STEPS

32. As directed by the Court in the Claims Process Order, the Receiver has scheduled a court hearing on February 22, 2013 (to be held at 330 University Avenue, 8th Floor, Toronto, Ontario, Canada at 10:00 a.m. or as soon *thereafter as the hearing may be held*) in order to seek any further direction from the Court with respect to the Claims Process.
33. The Receiver is in the process of discussing its recommendations with various stakeholders with respect to the Claims Process and distributions of estate funds. The Receiver anticipates that it will issue a further *report setting out the Receiver’s*

recommendations and also detailing the other activities of the Receiver since the Second Report along with a motion by the Receiver with respect thereto in advance of the February 22, 2013 hearing date. The Receiver welcomes Eligible Claimants to contact the Receiver to discuss these matters.

All of which is respectfully submitted this 15th day of February, 2013.

BDO CANADA LIMITED

In its capacity as the Receiver of
Peopledge HR Services Inc.,
Winston Park Financial Services Ltd.,
CMC Fraser Ltd. and 1624452 Ontario Limited
and not in its personal capacity

Per:



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