

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

WEDNESDAY 15th
THURSDAY, THE 9th 2013

THE HONOURABLE MR.

JUSTICE NEWBOULD

)
)

THURSDAY, THE 9th

DAY OF MAY, 2013

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

Applicant

- and -

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

Respondents



ORDER

THIS MOTION made by BDO Canada Limited, in its capacity as the court-appointed receiver (the “**Receiver**”), without security, of all of the assets, undertakings and properties of Peopledge HR Services Inc. (“**Peopledge**”) and each of Winston Park Financial Services Ltd. (“**WPFS**”), CMC Fraser Ltd. (“**CMC**”), and 1624452 Ontario Limited (“**162**”) (collectively, WPFS, CMC and 162 are called the “**Related Companies**”, and together with Peopledge, the “**Debtors**”) acquired for, or used in relation to a business carried on by each of Peopledge or the Related Companies, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Third Report of the Receiver dated February 15, 2013 (the “**Third Report**”), the Fourth Report of the Receiver dated April 5, 2013 (the “**Fourth Report**”), the Supplement to the Fourth Report of the Receiver dated May 1, 2013 (the “**Supplement to the Fourth Report**”), the Affidavit of Eugene Migus sworn April 5, 2013 (the “**Migus Affidavit**”), the Affidavit of Marc Mercier sworn April 4, 2013 (the “**Mercier Affidavit**” and, together with

the Migus Affidavit, the “**Fee Affidavits**”) and the Affidavit of Bonnie Cummings sworn April 25, 2013, and on hearing the submissions of counsel for the Receiver, counsel for Labatt Brewing Company Inc., counsel for Celergo LLC, counsel for PMC-Sierra Inc. and PMC-Sierra Ltd., counsel for Bonnie Cummings, in her capacity as Estate Executrix of the Estate of the Late John Cummings and not in her personal capacity (the “**Applicant**”), no one else appearing although duly served as evidenced by the Affidavit of Eleonore Morris sworn February 15, 2013 and the Affidavits of Deborah Ferguson sworn April 8 and May 6, 2013, filed,

1. **THIS COURT ORDERS** that the time for service of the notice of motion and the motion record (including service of the Fourth Report, the Supplement to the Fourth Report, and the Fee Affidavits) and the time for service of the Third Report be and are hereby abridged and that the motion is properly returnable today and the requirement for service of the notice of motion, the motion record and the Third Report upon interested parties, other than those served, is hereby dispensed with and that the service of the notice of motion, motion record and the Third Report as effected by the Receiver is hereby validated in all respects.

CLAIMS PROCESS

2. **THIS COURT ORDERS** that the Receiver be and is hereby authorized and directed to determine whether the claims (collectively, the “**Claims**”) of each person that filed a Proof of General Claim (the “**General Claims**”) or a Proof of Customer Deposit Claim (the “**Customer Deposit Claims**”) in accordance with the Claims Process Order of the Honourable Mr. Justice Campbell dated December 10, 2012 (the “**Claims Process Order**”) (collectively, all such persons are called the “**Claimants**”) should be accepted, revised or disallowed in accordance with the process established in paragraph 3 of this Order. Any Claim accepted, deemed or determined as proven in accordance with this Order will be referred to herein as a “**Proven Claim**”, and any General Claim accepted, deemed or determined as proven in accordance with this Order will be referred to herein as a “**Proven General Claim**”, and any Customer Deposit Claims accepted, deemed or determined as proven in accordance with this Order will be referred to herein as a “**Proven Customer Deposit Claim**”).

3. **THIS COURT ORDERS** that the Receiver be and is authorized and directed to administer the following process to finally determine Claimants’ Claims as Proven Claims:

- (a) the Receiver shall review each Claim and shall accept, revise or disallow the Claim;
- (b) if the Receiver determines to accept any Claim, the Receiver shall send a Notice of Acceptance in the form attached as **Schedule "A"** hereto to the respective Claimant as soon as is practicable once the Claim has been allowed, and the amount of the Claim as accepted will be deemed to be the Proven Claim of the respective Claimant upon delivery of the Notice of Acceptance;
- (c) if the Receiver determines to revise or disallow any Claim, the Receiver shall send a Notice of Revision or Disallowance in the form attached as **Schedule "B"** hereto to the respective Claimant as soon as is practicable once the Claim has been revised or disallowed;
- (d) any Claimant who disputes the amount of its Claim as set forth in a Notice of Revision or Disallowance shall deliver a Notice of Dispute to the Receiver in the form attached as **Schedule "C"** hereto by ordinary mail, courier, delivery, email or fax such that the Notice of Dispute is actually received by the Receiver by no later than 5:00 p.m. (Eastern Standard Time) on the date that is 15 Business Days (as defined in the Claims Process Order) following the date of the Notice of Revision or Disallowance, or such later date as this Court may order (the **"Dispute Deadline"**);
- (e) any Claimant who fails to deliver a Notice of Dispute by the Dispute Deadline shall be deemed to accept the amount of its Claim as set out in the Notice of Revision or Disallowance as final and binding for all purposes and, for greater certainty, the amount of its Claim as set out in the Notice of Revision or Disallowance shall be the amount of the Claimant's Proven Claim;
- (f) following delivery of a Notice of Revision or Disallowance or a Dispute Notice, the Receiver may attempt to consensually resolve the amount of any Claim with the respective Claimant and may accept, revise, disallow or settle any disputed Claim;

- (g) upon seven Business Days notice to the applicable Claimant(s), the Receiver may apply to the Court for a determination of any claim for which a Notice of Dispute has been delivered and has not been settled or received by the Receiver, and the Receiver may, in its sole discretion, seek the Court's determination of multiple disputed claims at the same hearing; and
- (h) the Receiver is hereby authorized and directed to use reasonable discretion as to the adequacy of compliance as to the manner in which the Claims are completed and executed and may, where satisfied that a Claim has been adequately proven, waive strict compliance with the requirements of this Order and the Claims Process Order as to the completion and the execution thereof.

APPROVAL OF DISTRIBUTION SCHEME

4. **THIS COURT ORDERS** that, subject to the provisions of this Order, only those Claimants with a Proven Claim shall be entitled to any distributions from funds in the Debtors' Estates, including from the "**Canadian Customer Account Funds**" or the "**US Customer Account Funds**" (as such terms are defined in Schedule 1 to the Fourth Report).

5. **THIS COURT ORDERS AND DECLARES** that only those Claimants with Proven Customer Deposit Claims filed in Canadian Dollars (collectively, "**Proven Canadian Customer Deposit Claims**") may receive a distribution from the Canadian Customer Account Funds which distributions shall be on a *pari passu ex post facto pro rata* basis, subject to prior payment of the allocated portion of the "**Receivership Costs**" (as such term is defined in Schedule 1 of the Fourth Report) in accordance with paragraph 9 of this Order.

6. **THIS COURT ORDERS AND DECLARES** that only those Claimants with Proven Customer Deposit Claims filed in United States Dollars (collectively, "**Proven US Customer Deposit Claims**") may receive a distribution from the US Customer Account Funds which distributions shall be on a *pari passu ex post facto pro rata* basis, subject to prior payment of the allocated portion of the Receivership Costs in accordance with paragraph 9 of this Order.

7. **THIS COURT ORDERS AND DECLARES** that: (i) Claimants with Proven General Claims, (ii) Claimants having deficiencies under their respective Proven Customer Deposit

Claims after distribution of all Canadian Customer Account Funds and the US Customer Account Funds, and (iii) Claimants or persons with “**Potential Priority Claims**” (as such term is defined in Schedule 1 of the Fourth Report) proven in accordance with this Order, may each receive a distribution from the “**General Estate Funds**” (as such term is defined in Schedule 1 of the Fourth Report), subject to further order of this Order.

8. **THIS COURT ORDERS AND DECLARES** that, subject to taxation in accordance with the Receivership Order of the Honourable Mr. Justice Newbould dated October 29, 2012, the Receivership Costs shall be allocated on a *pro rata* basis against all assets and funds of the Debtors in the possession of the Receiver (including the Canadian Customer Account Funds, the US Customer Account Funds and the General Estate Funds), provided that:

- (a) the Receivership Costs shall, to the extent possible, be first paid from the Ceridian Referral Fee (as such term is defined in Schedule 1 to the Fourth Report) before allocation to other estate assets and funds; and
- (b) in accordance with paragraph 17 of the Claim Process Order, the Receiver shall continue to track all time incurred in reviewing, validating and resolving any discrepancies with each of the Claimants on an individual basis and, pending final reconciliation by the Receiver and subject to further order of the Court, all fees and disbursements associated with such review and resolution of individual claims shall be allocated to and payable from any future final distributions to such Claimant following completion of the Claims Process.

9. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, the Receiver be and is hereby authorized and directed to pay all Receivership Costs (as allocated in accordance with paragraph 8 of this Order) prior and in priority to any distributions on account of Proven Claims, including Proven Customer Deposit Claims and Potential Priority Claims.

INTERIM DISTRIBUTION AND FUTURE DISTRIBUTIONS

10. **THIS COURT ORDERS** that the Receiver be and is hereby authorized and directed to distribute to Claimants with Proven Customer Deposit Claims from the Canadian Customer Account Funds and the US Customer Account Funds the “**Proposed Interim Distributions**” (as

defined and described in paragraphs 84 – 88 of the Fourth Report), provided that the Proposed Interim Distributions shall not exceed: (i) 37% of any Proven Canadian Customer Deposit Claim(s); and (ii) 62% of any Proven US Customer Deposit Claim(s).

11. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, other than the Proposed Interim Distributions expressly authorized pursuant to paragraph 10 of this Order, the Receiver shall not make any distributions on account of Proven Claims or Potential Priority Claims without further order of this Court.

FORENSIC INVESTIGATION

12. **THIS COURT ORDERS** that the Receiver be and is hereby authorized and directed to undertake the Phase 1 Forensic Investigation as defined and described in paragraphs 104 – 109 of the Fourth Report and to report back to the Court as to the outcome of such investigation.

CONSOLIDATION OF ESTATES

13. **THIS COURT ORDERS** that the Debtors' estates be and are hereby consolidated for administrative convenience and efficiency but without prejudice to this Court's approval of the distribution of assets by the Receiver pursuant to this Order and any future order of this Court.

APPROVAL OF INTERIM R&D STATEMENT

14. **THIS COURT ORDERS** that the Receiver's Consolidated Interim Statement of Receipts and Disbursements for the period from October 29, 2012 to March 31, 2013 attached at Appendix "J" of the Fourth Report be and is hereby approved.

APPROVAL OF REPORTS

15. **THIS COURT ORDERS** that the Third Report, together with the conduct and activities of the Receiver as set out therein, be and are hereby approved.

16. **THIS COURT ORDERS** that the Fourth Report, together with the conduct and activities of the Receiver as set out therein, be and are hereby approved.

17. **THIS COURT ORDERS** that the Supplement to the Fourth Report, together with the conduct and activities of the Receiver as set out therein, be and are hereby approved.

APPROVAL OF PAYMENT TO APPLICANT

18. **THIS COURT ORDERS** that the Receiver be and is hereby authorized and directed to pay to the Applicant the amount of \$64,217.76, which shall be allocated by the Receiver against the assets and funds of the Debtors on the same basis as, and as if it forms part of, the Receivership Costs pursuant to paragraph 8 of this Order.

APPROVAL OF RECEIVER AND LEGAL FEES

19. **THIS COURT ORDERS** that the fees and disbursements of the Receiver for services rendered for the period ending March 31, 2013, in the aggregate amount of \$311,031.93 plus HST as detailed in the Migus Affidavit, be and are hereby approved.

20. **THIS COURT ORDERS** that the fees and disbursements of the Receiver's legal counsel, Cassels Brock & Blackwell LLP, for the period ending March 31, 2013, in the aggregate amount of \$206,962.16 plus HST as detailed in the Mercier Affidavit, be and are hereby approved.



Newbould J.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:



MAY 17 2013

Schedule "A"

Court File No. CV 12-9896-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

Applicant

- and -

PEOPLEDDGE HR SERVICES INC., WINSTON PARK FINANCIAL SERVICES LTD.,
CMC FRASER LTD., 1624452 ONTARIO LIMITED

Respondents

NOTICE OF ACCEPTANCE

Name and Address of Claimant: _____

Pursuant to the Order of the Honourable Mr. Justice Campbell dated February 22, 2013 and the Order of the Honourable Mr. Justice Newbould dated May 9, 2013, BDO Canada Limited, in its capacity as the court-appointed receiver (the "Receiver"), without security, of all of the assets, undertakings and properties of Peopledge HR Services Inc., Winston Park Financial Services Ltd., CMC Fraser Ltd., and 1624452 Ontario Limited (collectively the "Respondent Companies") hereby gives you notice that it has reviewed your Proof of Claim and has accepted your Claim as filed as follows:

Reference No. _____

	Proof of Claim as Submitted (\$CDN or \$US)	Canadian Customer Deposit Claim as Accepted (\$CDN)	US Customer Deposit Claim as Accepted (\$US)	General Claim as Accepted (\$CDN)	
				Secured	Unsecured
Total Claim					

Comments (if any):

Dated at _____ this ____ day of _____, 2013.

BDO Canada Limited, in its capacity as Court-Appointed Receiver of the Respondent Companies

Per: _____

Schedule "B"

Court File No. CV 12-9896-00CL

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Applicant

- and -

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

Respondents

NOTICE OF REVISION OR DISALLOWANCE

Name and Address of Claimant: _____

Pursuant to the Order of the Honourable Mr. Justice Campbell dated February 22, 2013 and the Order of the Honourable Mr. Justice Newbould dated May 9, 2013, BDO Canada Limited, in its capacity as the court-appointed receiver (the "**Receiver**"), without security, of all of the assets, undertakings and properties of Peopledge HR Services Inc., Winston Park Financial Services Ltd., CMC Fraser Ltd., and 1624452 Ontario Limited (collectively the "**Respondent Companies**") hereby gives you notice that it has reviewed your Proof of Claim and has revised or rejected your Claim as follows:

Reference No. _____

	Proof of Claim as Submitted (\$CDN or \$US)	Canadian Customer Deposit Claim as Accepted (\$CDN)	US Customer Deposit Claim as Accepted (\$US)	General Claim as Accepted (\$CDN)	
				Secured	Unsecured
Total Claim					

Reason for the revision or disallowance:

If you do not agree with this Notice of Revision or Disallowance please take notice of the following:

1. If you intend to dispute the Notice of Revision or Disallowance, you must, on the day which is fifteen Business Days after the date of this Notice of Revision or Disallowance (being _____, 2013) or such later date as the Receiver agrees to in writing or the Court may order, deliver a Notice of Dispute by facsimile transmission, electronic mail, courier, personal delivery or prepaid mail to the address indicated herein such that it is actually received by the Receiver by such date. The form of Notice of Dispute is attached to this Notice of Revision or Disallowance.

2. If you do not deliver a Notice of Dispute, your Claim shall be deemed to be as set out in this Notice of Revision or Disallowance.

Address for Delivery of Dispute Notices:

BDO Canada Limited
1 City Centre Drive, Suite 1040
Mississauga, ON L5B 1M2
Canada

Attention: Peter Naumis
Fax: (905) 615-1333
Email: pnaumis@bdo.ca

IF YOU FAIL TO TAKE ACTION WITHIN THE PRESCRIBED TIME PERIOD, THIS NOTICE OF REVISION OR DISALLOWANCE WILL BE BINDING UPON YOU.

Dated at _____ this ____ day of _____, 2013.

BDO Canada Limited, in its capacity as Court-Appointed Receiver of the Respondent Companies

Per: _____

Encl.

Schedule "C"

Court File No. CV 12-9896-00CL

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Applicant

- and -

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

Respondents

NOTICE OF DISPUTE

Pursuant to the Order of the Honourable Mr. Justice Campbell dated February 22, 2013 and the Order of the Honourable Mr. Justice Newbould dated May 9, 2013, the undersigned hereby give you notice of our intention to dispute the Notice of Revision or Disallowance bearing Reference Number _____ and dated _____ issued by BDO Canada Limited, in its capacity as the court-appointed receiver (the "**Receiver**"), without security, of all of the assets, undertakings and properties of Peopledge HR Services Inc. and each of Winston Park Financial Services Ltd., CMC Fraser Ltd., and 1624452 Ontario Limited.

Name of Claimant: _____

Reference No.: _____