

**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 -

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

Respondents

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

**December 3, 2012**

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## INTRODUCTION

1. BDO Canada Limited (in its corporate capacity, “**BDO**”, or, in its capacity as receiver, the “**Receiver**”) was appointed as 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**”) pursuant to the Order of the Honourable Mr. Justice Newbould dated October 29, 2012 (the “**Receivership Order**”). A copy of the Receivership Order together with the Endorsement of Mr. Justice Newbould is attached as **Appendix “A”**.
2. The Receivership Order was issued on the application (the “**Application**”) of Bonnie Cummings, in her capacity as the Estate Executrix (the “**Estate Executrix**”) of the Estate of the Late John Cummings (the “**Cummings Estate**”).
3. As intended by the Application, the Receiver was appointed to, among other things, oversee the orderly wind-down of the business of Peopledge and accordingly the business of Peopledge was terminated by the Receiver immediately following its appointment.
4. The Receivership Order provides that the Receiver shall 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 a claims process (the “**Comeback Motion**”).
5. This Second Report of the Receiver (the “**Report**”) is filed in connection with the Comeback Motion.

## PURPOSE OF REPORT

6. The purpose of this Report is to report to the Court with respect to:
  - (A) the activities of the Receiver and the status of the receivership;
  - (B) the Receiver’s recommendations with respect to a claims process to identify claims against Peopledge and the Related Companies;

- (C) an outline of the likely steps and costs of any forensic investigation into pre-receivership transactions involving Peopledge and the Related Companies as requested by the Court;
- (D) the Receiver's motion for:
  - (a) an Order authorizing and directing Bank of Montreal ("BMO") to transfer to and release to the Receiver all funds still held in any account held with BMO in the name of Peopledge or the Related Companies;
  - (b) an Order authorizing and directing the Receiver to return to the applicable customer(s) any deposits into the Canadian Consolidated Account (as defined below) that were scheduled to be deposited on or after October 29, 2012, (i) provided such deposit was actually received on or after October 29, 2012, (ii) provided such deposit has not already been returned, and (iii) only to the extent such deposit has not been processed, in whole or in part, by way of scheduled payroll payments or third party remittances;
  - (c) an Order approving the Agreement dated November 2, 2012 between the Receiver and Labatt Breweries of Canada L.P., by its general partner Labatt Brewing Company Inc.;
  - (d) an Order authorizing the Receiver to file assignments in bankruptcy for Peopledge and each of the Related Companies;
  - (e) an Order approving a claims process for claims against Peopledge and the Related Companies as set out below and in the form of Claims Process Order attached to the Receiver's notice of motion;
  - (f) advice and direction with respect to any financial investigations into pre-receivership transactions involving Peopledge and the Related Companies;
  - (g) approving the Preliminary Report dated October 26, 2012 prepared by BDO in connection with the Application (the "Preliminary Report"), along with the conduct and activities of BDO set out therein;

- (h) approving the First Report of the Receiver, filed as Tab 3 of the Receiver's motion record, along with the conduct and activities of the Receiver set out therein; and
- (i) approving this Report, along with the conduct and activities of the Receiver set out herein.

#### **TERMS OF REFERENCE**

- 7. All references to currency (\$) or dollars in this Report shall mean Canadian dollars unless otherwise stated.
- 8. The 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 Receiver has not been provided with any books and records of the Related Companies, and continues to have a very limited information concerning the business, share structure, and liabilities of the Related Companies.
- 9. The information contained in this Report has been obtained from the accounting records of Peopledge and/or the Related Companies (where available) and is based on discussions with and representations made by Peopledge's management and the Estate Executrix. The information has not been audited in any manner by BDO or the Receiver.

#### **OVERVIEW OF PEOPLEDGE'S BUSINESS AND BACKGROUND OF APPOINTMENT**

- 10. BDO was retained by Peopledge on September 10, 2012 to conduct an assessment of the operations and bank accounts of Peopledge used in processing customers' payrolls and deduction remittances and provide a recommendation for any potential restructuring, wind-down, or other proposed course of action for Peopledge.
- 11. BDO prepared the Preliminary Report for the Court which was included by the Cummings Estate as part of its application record. The Preliminary Report is attached, without appendices, as **Appendix "B"**. Much of the Preliminary Report is based on information provided to BDO by the Cummings Estate, and should be read in conjunction with the affidavit of the Estate Executrix sworn October 24, 2012 (the

“Executrix Affidavit”). The Executrix Affidavit is attached, without exhibits, as Appendix “C”. Additional information was also provided by Jennifer Hughes (“Hughes”) who was then the former Manager of Finance and Administration of Peopledge.

12. Prior to its appointment as Receiver, BDO had restricted access to Peopledge, its books and records, and management. In respect of the Related Companies, there was limited, if any, information available to BDO for review. The restrictions on BDO were a result of the lack of senior management at Peopledge and were required by the Cummings Estate in order to seek to avoid disruption to the continued operation of Peopledge until such time as the Cummings Estate could determine the appropriate course of action to take in respect of Peopledge.

### ***The Business of Peopledge***

13. Peopledge conducted business as a provider of payroll processing, human resources, and benefits services. Peopledge serviced 152 Canadian customers and eight US customers. The estimated number of employees paid through Peopledge’s services was 9,926, in Canada and 482 in the U.S.
14. To administer payroll services for its customers, Peopledge licensed a third party payroll processing software package called ePersonality, which was used by employers to administer personnel records, position control, salary administration, benefit administration, and other needs of human resource departments. Peopledge is one of the only payroll companies in Canada that used this software.
15. The general business model of Peopledge is as follows:
  - (A) customers inputted their payroll data into ePersonality for processing by Peopledge. Peopledge reviewed the data, calculated the required payroll taxes and other deductions, and forwarded 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;
  - (B) once the fund summary report was approved by the customer:

- (a) Peopledge generated a data file through ePersonality containing each individual employee's net payroll amount and bank account information. The data was then converted to a format which is readable by banking systems and provided the necessary information for the distribution of payroll funds directly to employees' bank accounts; and
  - (b) customers arranged to deliver to Peopledge funding for payrolls, comprised of customer's employee payrolls, payroll taxes and other remittances, and the payroll processing fees earned by Peopledge (collectively, the "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;
- (C) Payroll Funds were deposited into one of two "Consolidated Payroll Accounts", being (i) the "Canadian Consolidated Account" held with BMO which was used to administer payrolls for customers with Canadian employees, and (ii) the "US Consolidated Account" held with BMO Harris Bank ("BMO Harris") in the United States which was used to administer payrolls for customers with US employees;
- (D) there were no separate or designated trust or other like accounts for deposits on a customer-by-customer basis. The effect of this was that whenever a customer deposited Payroll Funds, regardless of the nature of the funds, the deposited funds were co-mingled with all other funds held in the Consolidated Payroll Accounts, including funds which had been deposited by other customers and with all funds from processing fees earned by Peopledge;
- (E) customer payrolls, payroll tax and other remittances, along with the payroll processing fees earned by Peopledge, were paid directly from the Consolidated Payroll Accounts as follows:
- (a) Peopledge typically disbursed customers' payrolls to their respective employees within three days of receiving Payroll Funds;

- (b) however, the portion of Payroll Funds representing payroll tax and other deductions could remain in the Consolidated Payroll Accounts for longer. Generally, such funds would remain in the account for up to 45 days before they would be distributed by Peopledge. For those customers who chose to remit tax and other deductions quarterly, funds deposited for payment of such tax and other deductions could remain in the Consolidated Payroll Accounts for more than three months;
  - (c) payroll processing fees earned by Peopledge were transferred from the Consolidated Payroll Accounts to the other corporate bank accounts held by Peopledge with BMO twice a month; and
  - (d) interest earned on funds held in the Consolidated Payroll Accounts was also regularly transferred to these corporate bank accounts; and
- (F) as a result of the above practices, there was usually a significant balance on hand in the Consolidated Payroll Accounts at any given time (the “Float”), which balance was comprised of any combination of various customers’ payrolls, payroll tax and other remittances associated with various customers’ payrolls (and not always those same customers with payrolls on deposit), and the payroll processing fees and interest earned by Peopledge.

### ***Accounting Practices***

16. While the Receiver has not undertaken a review of all customer contracts to-date, the practice of depositing all customer Payroll Funds into either of the Consolidated Payroll Accounts appears to have been contrary to the terms of a number of significant customers of Peopledge and contrary to the terms of the standard form outsourcing agreement used by Peopledge for its customers, which agreements provide that Peopledge would hold Payroll Funds received from a customer in separate accounts(s) and in the case of some refers to Peopledge holding such funds in trust for the customer.
17. The above co-mingling of funds comprising the Float was further compounded by certain accounting practices (or lack thereof) used by Peopledge.



18. Peopledge maintained two general ledgers:
  - (A) The “Peopledge GL”, which was used to report Peopledge’s revenues (i.e. payroll processing fees and interest earned) and related business expenses, and which tracks all debit and credit transactions related to the corporate bank accounts held with BMO; and
  - (B) the “Customer GL”, which was used to record transactions related to the processing of customer payrolls, payroll tax, and other remittances.
19. Copies of sample pages of each of the Peopledge GL and the Customer GL are appended to the Preliminary Report as Appendix “C” and “D”, respectively.
20. The Customer GL maintains all accounting and transactions relating to the Consolidated Payroll Accounts. However, 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.).
21. The practical result of this is that Peopledge’s records do not readily demonstrate current liabilities to specific customers and the Receiver would therefore have to reconstruct the funds that were received and subsequently disbursed on behalf of each of Peopledge’s former customers.
22. The Receiver, with the assistance of Hughes, is in the process of reconstructing the accounting records on a customer-by-customer basis using transaction records, which the Receiver is using to attempt to assist customers in understanding remittances that may be outstanding on their employee payroll and which will be needed to assist the Receiver in reviewing claims against the Peopledge estate.

***The Receiver's Initial Investigations into Movement of Funds***

23. As detailed in the Executrix Affidavit, when conducting or directing the initial investigations into the business and affairs of Peopledge, the Estate Executrix discovered that money had been withdrawn from the Float held in the Canadian Consolidated Account and deposited into what the Customer GL described as a "High Yield Account", which was purportedly held with CMC Fraser and/or Winston Park Financial Services or WPFS.
24. The Customer GL indicates that the balance held in the "High Yield Account" as at September 30, 2012 is \$3.400 million.
25. As investigated and initially confirmed by the Receiver, with the exception of one cheque for \$200,000 drawn directly on the Canadian Consolidated Account on or about February 17, 2012, it appears that funds described in the Customer GL as transferred to the "High Yield Account" were moved during the period from May 2007 to February 2012 as follows:
  - (A) the funds were moved via online banking transfers from the Canadian Consolidated Account to Peopledge's corporate bank account;
  - (B) cheques were then drawn on Peopledge's corporate bank account, which cheques were made payable to "CMC Fraser" and/or "Winston Park Financial Services", the business trade names of 162 and WPFS;
  - (C) the funds drawn were deposited into at least two accounts: (i) one held by 162 with BMO, which received \$1,365,900; and (ii) a second held by WPFS with TD Canada Trust ("TD"), which received \$1,300,000; and
  - (D) the recipient of the remaining approximately \$800,000 is not evident on the face of the records before the Receiver.
26. As at the date of the receivership, the balance of 162's account was \$1,745.07, and the balance of WPFS' account was \$116,709.44. As discussed later in the Report, these funds have been released to the Receiver.

27. The Receiver's review of the account statements of the accounts of 162 and WPFS which received funds as described above show significant withdrawals of such funds over a lengthy period of time. As directed by the Court, the Receiver has not yet investigated in depth how those funds were further disbursed.
28. To date, despite the Receiver's enquires of former Peopledge staff and BMO, and its preliminary review of the financial records of Peopledge (but without forensic audit), the Receiver has not located any evidence such as bank statements, account numbers, or other evidence to corroborate that the accounts held with 162 and WPFS are the "High Yield Account" to which the Customer GL was referring.
29. As directed by the Court in granting the Application, the Receiver has not undertaken a forensic investigation but has simply assessed the potential work to be done, on which it intends to seek further direction from the Court.
30. In addition to the money withdrawn from the Float as described above, Peopledge was regularly drawing down on available funds in the Float to fund its own business operations, including the payroll of its own employees. Peopledge's books and records suggest management utilized available Float funds to fund their own operations beginning in September 2007. Peopledge would return a portion of the funds to the Float when sufficient receipts were available from payroll processing fees or interest revenue.
31. As also discussed in the Preliminary Report, the Receiver's initial investigation into the transfers of funds from the Float to Peopledge's corporate bank accounts indicates that Peopledge utilized \$464,000 of the Float for its own expenses as at October 15, 2012, but the balance was reduced to \$313,570 by October 29, 2012. Given the comingling of funds, it may be difficult to ascertain which deposits of Payroll Funds on a customer by customer basis were affected by these withdrawals or how much of the withdrawals would have been attributed to fees and interest earned by Peopledge.
32. Finally, the Receiver has become aware of various transfers of funds between the Consolidated Payroll Accounts and Peopledge's US denominated corporate account which do not appear to represent transfers of interest earned or payroll processing fees. The Receiver is in the process of determining the extent of such transactions.

***Basis of Ex Parte Appointment under the CJA***

33. In the context of all of the above, the Cummings Estate sought the appointment of a receiver on an *ex parte* basis over Peopledge on the following primary grounds:
- (A) the Cummings Estate is the majority and controlling shareholder of Peopledge;
  - (B) there were no registered acting directors of Peopledge and there was no senior management in place to oversee the business operations;
  - (C) as funds were deposited into the Consolidated Payroll Accounts, they became co-mingled with funds from other customers and Peopledge's funds and there had been no proper or ordinary course safeguards (such as the use of a separate account on a customer by customer basis) put into place by Peopledge to distinguish streams of funds entering and leaving the Consolidated Payroll Accounts;
  - (D) Peopledge was operating at a deficit and was using the Float to fund its operations;
  - (E) approximately \$3.400 million appeared to have been diverted from the Float to an account only known as the "High Yield Account";
  - (F) the Estate Executrix's investigations into the records of the cheques drawn from the Consolidated Payroll Account, as well as the transfer of funds to the Peopledge corporate account were largely incomplete and needed to be continued and completed;
  - (G) the "High Yield Account" could not be located and only less than \$120,000 had been successfully traced in and to accounts held by or with the Related Companies;
  - (H) the Cummings Estate was not willing or able to fund and/or oversee the continued operation of Peopledge;
  - (I) although the immediate termination of Peopledge's business was difficult for customers (as often occurs on a shutdown of an insolvent business), an ordinary

course notice to customers of the situation would likely have resulted in a “race to the swiftest” among customers that would create chaos to the detriment of all stakeholders, as customers would likely have taken action to seize funds or other assets from Peopledge and the Float; and

(J) given the missing funds of at least \$3.400 million and the co-mingled nature of the Consolidated Payroll Accounts, remedies exercised by certain customers would be to the potential detriment of other customers who had also contributed to the Consolidated Payroll Accounts and the Float.

34. The Receiver understands that the Cummings Estate chose to proceed by way of appointment of the Receiver instead of by way of an assignment in bankruptcy in an effort to minimize disruption (to the extent possible in the circumstances) to customers and to have a receiver in place to more effectively assist, as is practical and subject to available resources of the receivership, with the transitioning of data to new service providers.

#### **RECEIVER’S ACTIVITIES TO DATE**

35. Since its appointment, the Receiver has, among other things, engaged in the following activities in conjunction with its mandate:

- (A) the Receiver took steps to immediately terminate the business operations and employment of all employees of Peopledge, but for those key employees required by the Receiver to assist in transitioning customer payroll information where cost-effective or practicable to do so (collectively, those former employees of Peopledge engaged by the Retainer are referred to herein as the “Independent Contractors”);
- (B) the Receiver delivered notice to all customers of Peopledge in the form substantially attached to the Receivership Order;
- (C) the Receiver effected service of the Receivership Order on the two secured creditors of Peopledge, BMO and Dell Financial Services Canada Limited (“Dell”), on Canadian taxation and other government entities which may be impacted by the receivership, and on the minority shareholders of Peopledge;

- (D) the Receiver immediately sought to take possession of and secure the remaining funds in the Consolidated Payroll Accounts and the other accounts held in the name of Peopledge, as discussed below;
- (E) the Receiver immediately sought to take possession of and secure the remaining funds in the accounts held in the name of the Related Companies, as discussed below;
- (F) the Receiver took possession of Peopledge's primary operating premises located at 5515 North Service Road, Suite 303, Burlington, Ontario (the "Premises") and made appropriate arrangements with Peopledge's former landlord for interim occupancy of the Premises on a per-diem basis;
- (G) the Receiver arranged to change the locks on the Premises, cancelled existing passcodes to the alarm system, and issued new passcodes for a select number of individuals;
- (H) the Receiver has received and responded to numerous inquiries from creditors, former customers and other stakeholders of Peopledge;
- (I) the Receiver instructed the Independent Contractors to terminate external access to Peopledge's computer servers, programs, and databases;
- (J) the Receiver has maintained a publicly assessable website ([www.bdo.ca/peopledge](http://www.bdo.ca/peopledge)) to provide information to interested parties;
- (K) the Receiver has engaged in discussions with many of the former customers of Peopledge, and, where cost-effective or practicable to do so, the Receiver has assisted customers in retrieving electronic data to provide to alternate payroll source providers;
- (L) the Receiver has entered into a limited access arrangement with Labatt Breweries of Canada LP ("Labatt"), Peopledge's largest former customer, to accommodate the transfer of data required by Labatt to service the payrolls of its approximately 3,500 employees;

- (M) the Receiver has entered into an interim facilitation agreement (the “IFA”) with Activpayroll Ltd. (“Activpayroll”) in order to accommodate certain unique circumstances for Activpayroll and the 1,104 employees of Activpayroll’s customers, in respect of which the Receiver sought and obtained the approval of this Court prior to entering into the IFA as discussed below;
- (N) the Receiver and Ceridian have transitioned 59 former customers of Peopledge to Ceridian, representing approximately 1,800 employees;
- (O) the Receiver has assisted an additional 56 former customers in obtaining and transitioning their respective payroll information to other service providers, representing approximately 2,900 employees;
- (P) the Receiver has commenced a preliminary 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, and has devised recommendations to the Court in this regard as detailed below;
- (Q) the Receiver has taken steps to safeguard and handle all of Peopledge’s personal information in accordance with the *Personal Information Protection and Electronic Documents Act*;
- (R) the Receiver has taken steps to take control of and safeguard Peopledge’s records, including confidential customer information;
- (S) the Receiver has begun to canvass customers to determine the ultimate steps required to destroy and/or safeguard confidential customer information, and has begun to develop a protocol in this regard;
- (T) the Receiver has notified by letter the Estate Executrix of the potential for claims of the estate and/or customers and/or third parties as against the Cummings Estate;
- (U) the Receiver notified Peopledge’s insurance broker(s) of the Receivership order, and requested that the Receiver be added as an additional insured to all existing insurance policies; the Receiver arranged payment of insurance premium(s) in order to keep the insurance policies in good standing;

- (V) the Receiver has provided notice by letters to Peopledge's insurers of the adjustment for claims to be made under the insurance;
- (W) the Receiver has identified and taken steps to preserve access to critical services required by the Receiver to effectively administer the receivership, including internet usage, offsite computer hosting, and offsite record retention;
- (X) the Receiver has recently received a cheque payable to one of Peopledge's former customers in the amount of \$31,717.47 from WSIB which appears to be an "Experience Rating Refund" in favour of the customer, which the Receiver will be forwarding on to the customer; and
- (Y) the Receiver has taken steps to commence applications for terminated employees of Peopledge as is required under the *Wage Earner Protection Program Act*, S.C. 2005, c. 47, s. 1.

36. The Receiver has not operated and is not operating the business of Peopledge.

#### **OVERVIEW OF ACCOUNTS HELD BY PEOPLEDGE AND THE RELATED COMPANIES**

37. On October 29, 2012, the Receiver delivered notification letters by facsimile and/or electronic mail to the various financial institutions at which Peopledge and the Related Companies held various bank accounts which letters provided information with respect to the receivership appointment, including a copy of the Receivership Order (the "Notices to Financial Institutions"). Each financial institution was requested to freeze all bank accounts held by Peopledge and/or the Related Companies and to remit bank balances directly to the Receiver. Copies of the Notices to Financial Institutions are attached (without attachments) as **Appendix "D"**.
38. As directed in the Receivership Order, the Receiver has opened a separate Post-Receivership Account (as such term is defined in the Receivership Order) for Peopledge and each of the Related Companies.
39. An overview of the accounts held by Peopledge is as follows (with details of the current status column to be discussed further below):



Banking Institution	Account Description	Opening Balance as at October 29	Current Status of Funds
BMO	Consolidated interest bearing bank account used to administer payrolls for customer with Canadian employees (one of the two Consolidated Payroll Accounts) (the "Canadian Consolidated Account")	\$3,729,582.91	\$2,057,078.50 held with the Receiver; A balance of \$984,566.22 remains in the BMO account; \$788,406.31 was automatically disbursed as payroll on or after October 29, 2012.
BMO Harris (in the United States)	Consolidated interest bearing bank account used to administer payrolls for customer with United States employees (one of the two Consolidated Payroll Accounts) (the "US Consolidated Account")	USD\$237,140.68	USD\$147,204.90 held with the Receiver. A balance of USD\$2,428.96 remains with BMO Harris Bank. \$88,091.07 was automatically disbursed as payroll on or after October 29, 2012
BMO	US Dollar banking account, used for general operating purposes ("USD Account")	UDS\$2,081.15	USD\$2,081.15 held with the Receiver
BMO	Used for Outsourcing Canadian Payroll	\$19.22	\$19.22 held with the Receiver
BMO	Used for general operating purposes	\$55,636.46	\$87,351.15 remains with BMO. <sup>1</sup>
BMO InvestorLine	BMO InvestorLine account	\$619.32 Cash \$8,700 Securities	Being wound down. <sup>2</sup>
ING Direct Canada	Used for general operating purposes	\$0.09	\$0.09 is held with the Receiver

<sup>1</sup>The increase in the balance of the general operating account is a result of funds transfers between Peopledge's' BMO accounts the morning of October 29, 2012 prior to the Receiver's appointment.

<sup>2</sup>Peopledge maintained a BMO InvestorLine Account and the Receiver has requested a collapse of the securities held therein following which all cash will be forwarded to the Receiver.

40. As at October 28, 2012, the Related Companies held the following accounts:

(A) 162 maintains three accounts as follows:

Banking Institution	Account Description	Balance	Amount remitted to Receiver
BMO InvestorLine	Canadian deposit account	\$1,745.07	\$1,745.07
BMO InvestorLine	BMO InvestorLine account	\$72,500	Being wound down. <sup>1</sup>
BMO InvestorLine	BMO InvestorLine account	\$Nil	Being wound down. <sup>1</sup>

<sup>1</sup>162 maintained BMO InvestorLine Accounts and the Receiver has requested a collapse of the securities held therein following which all cash will be forwarded to the Receiver.

(B) WPFS maintains one account as follows:

Banking Institution	Account Description	Balance	Amount remitted to Receiver
TD Canada Trust	Canadian deposit account	\$116,709.44	\$116,709.44

(C) CMC maintains two accounts as follows:

Banking Institution	Account Description	Balance	Amount remitted to Receiver
BMO	Canadian deposit account	\$330.99	\$330.99
BMO	US savings account	\$486.31	\$486.31

41. To date, the Receiver is not aware of, nor has it been advised of, any other accounts held by Peopledge or the Related Companies.
42. The status of Peopledge's accounts with BMO and BMO Harris accounts are discussed in further detail below.

#### RELEASE OF BMO FUNDS

43. On November 12, 2012, BMO released the funds held in the following accounts:
  - (A) for Peopledge, the (i) US Dollar Account in the amount of \$149,286.05 USD; and (ii) Canadian corporate bank account in the amount of \$19.22;
  - (B) for CMC, the (i) Canadian corporate bank account in the amount of \$330.99; and (ii) US corporate bank account in the amount of \$486.31 USD; and
  - (C) for 162, the Canadian corporate bank account in the amount of \$1,745.07.

44. The funds were delivered to the Receiver by BMO on the condition that they not be co-mingled with any other funds held by the Receiver (a practice consistent with the Receiver's requirement to open Post-Receivership Accounts for each of Peopledge and the Related Parties) or paid out to any party until an order from this Court has been obtained. The letter accompanying the funds is attached as Appendix "E".
45. BMO still holds an aggregate of approximately \$984,566.22 in the Canadian Consolidated Account.
46. BMO has advised the Receiver that it intends to comply with the Receivership Order and the Receiver's request to have the funds paid to its Post-Receivership Account for Peopledge. However, BMO requires a further court order prior to releasing the funds held in the Canadian Consolidated Account and Peopledge's general corporate account in consideration of its concerns regarding possible (competing) trust claims in and to the funds held by BMO, and in particular, deemed trust claims of the CRA. BMO has therefore requested that the Receiver obtain a court order authorizing and directing BMO to release these funds and releasing BMO from any liability in doing so.

#### **FUNDS HELD IN THE CANADIAN CONSOLIDATED PAYROLL ACCOUNT**

47. As described above, certain funds of Peopledge were held in the Canadian Consolidated Account, the balance of which was \$3,729,582.91 as at 11:59 p.m. on October 28, 2012.
48. The following activity occurred within the Canadian Consolidated Account on October 29, 2012:
  - (A) \$3,377,146.91 was deposited by customers after the Receivership Order notwithstanding the receivership. Of the deposits received, an aggregate sum of \$2,989,377.01 was successfully recalled by the respective depositing customer and \$387,769.90 remains on hand with BMO. For the reasons discussed below, the Receiver is recommending that the court grant an order authorizing and directing the release of the remaining funds to the applicable depositing customers;

- (B) \$788,406.31 had been pre-processed through from the Canadian Consolidated Account for automatic distribution of payroll or other third party remittances. This automated distribution process is discussed in detail below; and
- (C) \$845,164.34 which had been deposited into the Canadian Consolidated Account prior to October 29, 2012 was successfully recalled by Durham College of Applied Arts & Technology ("Durham College"). Of these funds, Durham College has returned \$588,627.96 to the Receiver, as discussed below.

49. The Receiver has investigated the above activities, and understands and reports as follows:

*Post-Receivership Deposits*

- 50. 18 customers' Payroll Funds were deposited into the Canadian Consolidated Account on or after October 29, 2012, notwithstanding the receivership. The Receiver understands that 12 of these deposits were automated pre-arranged debits of customer accounts and 6 were wire transfers for scheduled deposits on October 29, 2012.
- 51. The total of such deposits is \$3,377,146.91. Of those post-receivership deposits, approximately \$2,989,377.01 were recalled by the customer on their instructions to their respective financial institutions to reverse the deposits. Durham College also falls into this category, subject to a unique difference as discussed below.
- 52. In the Receiver's view, because the business of Peopledge was immediately ceased following the Receiver's appointment and customer contracts were immediately terminated, the Peopledge estate is not entitled to the receipt of such funds, which were only received as a result of a mistake or as a result of automated or scheduled processing that should not have occurred. This situation is not, in the Receiver's opinion, akin to the payment of an account receivable owing to the company post-receivership which the estate is still entitled to notwithstanding the receivership.
- 53. It is also the Receiver's view that it would be unfair and unjust to distinguish between deposits made by automated debit on or after October 29, 2012 (which were clearly not completed prior to the receivership) and wire transfers (which may have been

initiated prior to the receivership for a deposit schedule to be made on October 29, 2012 or after). It is the Receiver's view that making any such distinction would be arbitrary and would treat customers differently simply based on the choice of deposit mechanism that they used. In the Receiver's opinion, any deposits that were "scheduled" to be made on or after October 29, 2012 would be returned to the applicable customer.

54. The Receiver is therefore recommending and requesting an Order that authorizes and directs the Receiver to return to the applicable customer(s) any deposits into the Canadian Consolidated Account that were scheduled to be deposited on or after October 29, 2012, (i) provided such deposit was actually received on or after October 29, 2012, (ii) provided such deposit has not already been returned, and (iii) only to the extent such deposit has not been processed, in whole or in part, by way of scheduled payroll payments or third party remittances
55. If this recommendation is accepted by the Court, the amount of \$387,769.90 would be distributed to the applicable customers by the Receiver, following receipt of the funds currently held by BMO.

*Automatic Payroll Processed*

56. Payment of payroll funds to individual employees was an automated process which was administered by Peopledge electronically through a banking module called "File Transfer Facility" ("FTF").
57. Generally, the process of paying payroll from the Canadian Consolidated Account involves the following steps:
  - (A) customers input their payroll data into ePersonality for processing by Peopledge;
  - (B) Peopledge uses the data to create a draft fund summary report, which itemizes, among other things, the calculation of each individual employee's net pay, payroll tax and other deductions, and which is sent to customers for approval;

- (C) once approved, Peopledge generates a data file through ePersonality containing each individual employee's net payroll amount and bank account information (the "Payroll File");
- (D) customers arrange to deliver to Peopledge Payroll Funds in advance of the scheduled payroll date;
- (E) the Payroll File is converted into a format readable by banking systems and uploaded into FTF;
- (F) the upload is generally done within two days of the scheduled payroll date, but can be done farther in advance or as late as the same day as the scheduled payroll date;
- (G) once uploaded, the FTF Payroll File is accessible by BMO;
- (H) the uploaded FTF Payroll File provides the necessary instructions to BMO to enable it to automatically direct deposit payroll funds into employee accounts;
- (I) BMO then "warehouses" the FTF Payroll File and begins the steps to process the payroll:
  - (a) BMO confirms there are sufficient funds in the Canadian Consolidated Account to cover the proposed distributions to employees and holds the necessary funds until such time as the file is processed;
  - (b) on the value date, the funds held for the purpose of processing the file are automatically debited to the Canadian Consolidated Account and credited to the employees' accounts at their respective financial institutions; and
  - (c) the transactions are queued and processing commences immediately at 12:01 on the scheduled payroll date.

58. BMO has explained to the Receiver that when an FTF Payroll File is "warehoused" and the funds required to process the payroll are held by BMO, although the required funds are not debited from the Canadian Consolidated Account and the balance of the

Canadian Consolidated Account continues to reflect such funds, Peopledge (and other third parties) are no longer able to access or use such funds, which are considered to be spent.

59. The Receiver understands a similar process was used as between Peopledge and BMO Harris Bank in respect of the US Consolidated Account, which is discussed below.
60. In summary, on October 29, 2012, (before the Receivership Order had been issued):
  - (A) beginning at 12:01 a.m., \$33,005.98 was automatically processed as payroll or remittances from the Canadian Consolidated Account; and
  - (B) at approximately 10:00 a.m., BMO received five FTF Payroll Files from Peopledge and began to process such files. The aggregate payroll to be processed from the five FTF Payroll Files was \$755,400.33 and these files had been “warehoused” prior to receipt of the Receiver’s Notice to Financial Institutions and before the Canadian Consolidated Account was frozen. The payroll was automatically disbursed beginning at 12:01 a.m. on November 1, 2012.
61. BMO advises the Receiver that, because the funds were deposited into individual employee bank accounts, once the “warehoused” files were processed BMO was unable to reverse or recall such funds without the consent of both the individual employee and its financial institution.
62. The Receiver continues to review whether the Peopledge estate may have rights to seek recovery of Payroll Funds that were deposited pre-receivership and were processed post-receivership notwithstanding the receivership. There are however complicated factual and legal issues raised in those circumstances, which the Receiver and its counsel continue to review. The Receiver expects to report to the Court further on those issues and seek further direction from the Court.

*Recall of Pre-Receivership Funds and Durham College Deposits/Payments*

63. Durham College pre-arranged for deposits of Payroll Funds by electronic fund transfers on October 26, 2012 of \$845,164.34 (the "First Payroll") and on October 29, 2012 of \$1,998,615.03 (the "Second Payroll"), totalling \$2,843,779.37.
64. On October 29, 2012, Durham College received the Receiver's Notice of the receivership, and contacted its financial institution (also BMO) to recall both electronic fund transfers. As a result, \$2,843,779.37 was returned to Durham College.
65. It was discovered shortly after the recall had been processed that net payroll amounts had also been distributed to Durham College employees from the Canadian Consolidated Accounts as follows:
  - (A) in respect of the First Payroll, \$588,627.96; and
  - (B) in respect of the Second Payroll, \$1,467,769.33.
66. Given that funds were automatically disbursed as payroll but the funds to pay such payroll were also returned to Durham College, BMO commenced a process of trying to retrieve the payroll distributions, while the Receiver and BMO attempted to resolve the issue directly with Durham College (BMO advises the Receiver that because of the electronic transfer nature of the original deposit, BMO was unable to prevent or stop the recall of the deposit instructed by Durham College).
67. Ultimately, Durham College voluntarily returned funds equal to the net amount paid out to its employees to correct the "double dip" created by the concurrent withdrawals;
68. As a result, Durham College deposited \$2,057,078.50 (being the total of the \$588,627.96 and \$1,467,769.33 payrolls processed) on November 2, 2012 directly into an account maintained by the Receiver.
69. Given that the balance returned to Durham College for the Second Payroll was in relation to a deposit made on October 29, 2012, if the Court grants the order recommended by the Receiver above with respect to post-receivership deposits, then Durham College would similarly be entitled to the return of the balance of the Second



Payroll. Thus, no action would be required in respect of the balance of the Second Payroll.

70. However, in respect of the First Payroll, Durham College has only returned the amounts equal to the payroll processed, but not the entire amount that it was able to reverse post-receivership. Thus, it has not returned \$256,536.38, being the balance of the First Payroll representing the profit earned by Peopledge for processing the First Payroll and the tax and other deduction portion of the First Payroll.
71. The Receiver and its counsel are reviewing the legal claims of the estate and will report further to the court with respect to any action that the Receiver may recommend.

#### **FUNDS HELD IN THE US CONSOLIDATED PAYROLL ACCOUNT**

72. As noted above, prior to the appointment of the Receiver, certain funds of Peopledge were held in the US Consolidated Account. The balance of the US Consolidated Account as at 11:59 p.m. on October 28, 2012 was \$237,140.68.
73. In consideration of the limited resources which would be available to the Receiver post-appointment, it appeared there would not be sufficient funds available to recognize and enforce the Receivership Order in the United States. Accordingly, it was proposed and provided for at paragraph 2(g) of the Receivership Order to have the funds in the US Consolidated Account moved to USD Account maintained by BMO in Canada. It was understood that, without a recognition order, the Receiver may encounter difficulties in taking possession and control of the funds in the US Consolidated Account.
74. Following its appointment, the Receiver instructed the Independent Contractors to transfer the funds held with BMO Harris in the US Consolidated Account to the USD Account held with BMO in Canada. The sum of \$147,218.90 USD was received by BMO on October 31, 2012 and delivered to the Receiver on November 12, 2012, as discussed above.
75. Although the balance of the US Consolidated Account appears to have been \$237,140.068 as at October 28, 2012, only \$147,218.90 was available to the Receiver

to be transferred out of the account on October 29, 2012. Similar to the situation discussed above for the Canadian Consolidate Account, the difference had been “warehoused” and pre-processed for payroll, and such funds were automatically distributed beginning at 12:01 a.m. on October 29, 2012.

76. Because the Receivership Order has not been recognized in the United States, BMO Harris has advised that it is not in a position to recognize the Receiver’s authority and is therefore unable to provide information requested by the Receiver regarding the details of the US Consolidated Account.
77. However, from its limited discussions with BMO Harris and from its review of the online banking account to which the Receiver has access in Canada, the Receiver understands the following:
  - (a) as at 12:01 a.m. on October 29, 2012 the US Consolidated Account held \$237,140.68 USD;
  - (b) \$147,218.90 USD was successfully transferred into the USD Account thereafter as discussed above;
  - (c) it appears that \$88,091.07 USD was processed to the credit of certain US tax authorities due on October 31, 2012;
  - (d) \$59,386.57 USD was deposited by a customer on October 29, 2012 and the corresponding payroll, (in the amount of \$58,788.32 USD), was released on October 29, 2012; and
  - (e) there may be a remaining balance of approximately \$2,428.96 in the BMO Harris account.
78. BMO Harris has advised that it is unable to reverse such transactions, unable to comment as to any balance, and unable to remit any balance to the Receiver. Effectively, without a recognition order, BMO Harris is unable or unwilling to recognize the Receiver’s authority.
79. At this time, it is not cost effective to take any further steps with respect to the balance of \$2,428.96 USD held with BMO Harris. The Receiver continues to review

issues concerning the \$88,091.07 USD which was automatically distributed to certain US tax authorities on October 29, 2012. The Receiver will report to the Court further on this point as may be required.

#### **NOTICE TO CUMMINGS ESTATE AND INSURANCE COMPANIES OF POTENTIAL CLAIMS**

80. The Receiver has advised the Estate Executrix that Peopledge, though the Receiver, or customers of Peopledge may have claims in, to or against the Cummings Estate, and put the Estate Executrix on notice that no distributions or dispositions of any of the Cummings Estate's property should be made by the Estate Executrix without order of the Court on notice to the Receiver. A copy of the letter to the Cummings Estate is attached as **Appendix "F"**.
81. Similarly, the Receiver has notified Peopledge's insurance of the potential for claims to be made under Peopledge's insurance policy. A copy of such letters (without attachments) are attached as **Appendix "G"**.

#### **PRELIMINARY OVERVIEW OF CLAIMS/FUNDS POOL**

82. Based on the Receiver's preliminary review and analysis (including the information summarized above), it appears that:
  - (A) there may be approximately \$10.4 million in claims by customers in relation to Payroll Funds deposited with Peopledge prior to the receivership which were not processed;
  - (B) of that amount, (i) approximately \$1.4 million relates to unprocessed employee payroll; (ii) approximately, \$4.47 million relates to unremitted deductions owing to CRA, (iii) approximately \$2.23 million relates to unremitted benefits plan payments, and (iv) approximately \$1.7 million relates to other third party remittances not made;
  - (C) in addition, customers appear to have provided advanced deposits with Peopledge for future unspecified payroll in the amount of approximately \$617,000; and

(D) Peopledge may have approximately \$99,000 of its own employee related liabilities, which may include unremitted source deductions to CRA.

83. The current funds available in the Peopledge estate are approximately CDN\$3,128,995.87 and US\$149,286.05 (without accounting for receivership fees and costs but also not accounting for additional claims that may be available to the estate to recover additional funds, including the \$256,536.38 pre-receivership deposit recalled by Durham College). Of those funds, approximately \$387,769.90 relate to customer deposits made post-receivership, which are discussed above and which the Receiver recommends be returned to the depositing customer.
84. As a result, the Receiver is of the view that an orderly, but efficient, process be conducted to determine the universe and nature of claims against Peopledge in order to develop a streamlined and coordinated manner of resolving claims and ultimately distributing funds to the entitled parties.

#### **CLAIMS PROCESS**

85. The Receiver is therefore proposing to conduct a claims process pursuant to which the Receiver will call for, review and report on claims against Peopledge and the Related Companies.
86. The Receiver expects that some parties may hold, or assert, trust or propriety claims against Peopledge's funds in relation to such claims and at least two former customers have already expressly asserted such rights.
87. It is the Receiver's view that it is necessary for the Receiver (and ultimately the Court) to have a complete understanding of not only the quantum of potential trust claims against Peopledge but the factual circumstances surrounding each claim in order to make informed and proper decisions as to which, if any, persons may have priority or trust claims to funds which are generally commingled in Peopledge's accounts. The Receiver believes that it is in the interests of Peopledge's stakeholders as a whole for the assertion and determination of such claims to be undertaken in an orderly manner to prevent a flood of individual competing motions seeking trust determinations.

88. Further, given that many of those claims will likely raise difficult common legal issues between multiple claimants and potentially raise claims that may be legally or factually dependent on the claims of other parties (i.e. multiple claimants asserting a trust claim to the same dollar), the Receiver does not believe it is efficient and appropriate to engage in a traditional claims process that includes the Receiver's making firm determinations on the claims filed, issuing acceptances/disallowances and creditors having the ability to accept or dispute the Receiver's determinations with finality on all parties.
89. Instead, the Receiver is proposing and recommending that it conduct a claims process by which it calls for and receives all claims divided into two categories of class: customer deposit claims and all other claims. The Receiver will then review the claims and attempt to settle the questions of the claims and report on to the stakeholders and the Court. The Receiver also proposes that a further Court attendance then be held (on notice to all claimants) in order for the Receiver to seek advice and direction as to the most appropriate and efficient process to determine or adjudicate the filed claims.
90. The claims process being proposed by the Receiver is particularly set out in the draft form of Claims Process Order appended to the Receiver's Notice of Motion and includes the following key deadlines:

December 10, 2012	Claims Process Order granted
December 14, 2012	Claims Bar Notice, forms of Proof of Claim and Instruction Letter to be delivered to all known creditors, customers, employees and governmental authorities
December 14, 2012	Claims Bar Notice, Proof Claim and Instruction Letter to be published in the Globe and Mail (National Edition) and the Wall Street Journal
January 18, 2013	Claims Bar Date (5:00 pm EST)
February 15, 2013	Receiver to report on claims filed
February 22, 2013	Court appearance for advice and directions

91. The Receiver notes that in relation to the Related Companies, the Receiver has not received any documents which would show that there are any known creditors, employees or other stakeholders of the Related Companies (other than the Applicant's potential equity interest) and thus the "notice" to parties with potential claims against the Related Parties will, in effect, solely consist of the newspaper publication.
92. The Receiver also notes that it has sought to tailor the proofs of claim form and claim instructions in order to streamline and expedite the filing of claims to the greatest extent possible.
93. The Receiver recommends and requests that the Court approve the proposed claims process substantially in the form of the draft Claims Process Order and the most appropriate and efficient manner to conduct an orderly identification and assessment of claims against Peopledge and the Related Companies.

#### **CUSTOMER TRANSITION PROCESS**

94. Immediately following its appointment, the Receiver attended at the Premises and met with Hughes. The Receiver informed Hughes of the receivership appointment and sought her assistance. After a lengthy discussion, Hughes recommended that the Receiver retain the Independent Contractors, comprised initially of Hughes and three other former employees to facilitate, among other things, the transfer of payroll data to Ceridian Canada Ltd. ("Ceridian") and/or other service providers selected by Peopledge's former customers, and to arrange the preparation and distribution of Records of Employment and T4 slips to Peopledge's employees. As there were further requests of the Receiver to facilitate in the transitioning process (as discussed below), the Receiver engaged further Independent Contractors to meet these needs. The Receiver initially engaged the services of six Independent Contractors.
95. As described in the Preliminary Report, in an effort to establish potential transition options for Peopledge's customers, discussions were initiated with certain payroll service providers with a view to exploring possibilities, where possible, to ease the transition of customers to new service providers following cessation of Peopledge's business and to allow for a potential benefit to the receivership estate.

96. Prior to the Receiver's appointment, all discussions with Ceridian were on a confidential basis and Ceridian had no knowledge of the identity of Peopledge's customers. A Referral Agreement with Ceridian (described in the Preliminary Report and appended as Appendix "K" of the Preliminary Report) was negotiated and finalized, and approved by the Court in the Receivership Order. As described in the Preliminary Report and as set out in the terms of the Referral Agreement, Ceridian has no positive obligation to enter into service contracts with any of Peopledge's former customers, but must pay a referral fee to the Receiver if it does enter into an agreement with a former Peopledge customer before December 15, 2012.
97. Upon granting the Receivership Order, the Honourable Mr. Justice Newbould encouraged the Receiver to facilitate transition where reasonable, which the Receiver has sought to do, having regard to the limited financial resources in the receivership and the limited number of personnel with the skill set required to operate Peopledge's software system (discussed below).
98. As discussed above, Peopledge is the only Canadian providers that used the payroll processing software, ePersonality. Prior to the appointment, Ceridian believed and informed the Receiver that information technology personnel should be able to export existing customer payroll data to Microsoft Excel spreadsheets which Ceridian could then use to upload data onto their own payroll processing system. Ceridian provided a Microsoft Excel template for the proposed customer payroll data.
99. Significant effort was made to have Peopledge's information technology personnel (the "IT Personnel") formulate a customized computer program ("Script") to export customer payroll data to the Microsoft Excel spreadsheet templates provided by Ceridian. However, due to the fact that Ceridian IT personnel could not engage directly with Peopledge counterparts prior to the receivership, advance testing of the proposed transfer of customer payroll data to a suitable format for Ceridian could not be perfected in advance.
100. Upon the appointment of the Receiver, the communication channels between Ceridian and the IT Personnel were opened immediately such that information could flow freely between the two teams. IT Personnel modified the Script and new results from the Script were provided to Ceridian. Although improvements were achieved, there

remained some incompatibilities which required the temporary engagement of additional IT personnel in order to assist in the transition of customers. The Receiver also worked with Ceridian to determine how Ceridian could utilize the currently available customer payroll data with the direct assistance of customers.

101. Using this cooperative approach, the Receiver and Ceridian were ultimately able to create the appropriate Script required to transition data required to process payrolls, subject to ongoing troubleshooting required on a customer by customer basis.

***General Overview of Customers Transition Status***

102. Effective October 29, 2012, all of Peopledge's customer contracts were terminated.
103. The Receiver issued notification letters by electronic mail to Peopledge's customers in the afternoon of October 29, 2012, immediately after informing Peopledge employees of the receivership. Attached as **Appendix "H"** is a copy of the Notice to Customers, which advised customers of: i) the receivership; ii) the termination of all customer contracts and cessation of services; and iii) the transition options available for customers to Ceridian.
104. Ceridian offered to contact Peopledge customers directly as well to advise them of the opportunity to transition payroll services. Accordingly, the Receiver provided Ceridian with a customer contact list on October 31, 2012.
105. On November 8, 2012, the Receiver delivered a second notice to customers, to ensure all parties were aware of the receivership, and would have the opportunity to make alternate arrangements for payroll. The second notice is attached as **Appendix "I"**.
106. Some customers that contacted the Receiver directly inquired whether the Receiver would be offering ongoing services required to process their upcoming payrolls. The Receiver advised those customers that because the Receiver was not operating the business of Peopledge, the Receiver itself was not in a position to continue to process upcoming payrolls. Instead, the Receiver sought to assist customers in their arrangements to transition their services to alternative providers, on a commercially reasonable basis given its limited resources.
107. In addition to the unique situations involving Activpayroll and Labatt discussed below:



- (A) the Receiver and Ceridian have transitioned 59 customer payrolls to Ceridian, resulting in a net referral fee to the Receiver of \$434,265.89;
- (B) the Receiver has assisted an additional 56 former customers in obtaining and transitioning their respective payroll information to other service providers;
- (C) the Receiver understands that 25 customers have made alternative arrangements and did not require direct assistance from the Receiver; and
- (D) other than delivering the notices to customers discussed above, the Receiver has not been able to make direct contact with 7 remaining customers.

***Activpayroll Inc.***

- 108. Activpayroll was a customer of Peopledge, with its head office in Aberdeen, Scotland serving clients in various international jurisdictions. Activpayroll is one of two customers of Peopledge that is itself a payroll processor for whom Peopledge administered payrolls.
- 109. On behalf of Activpayroll, Peopledge serviced payrolls for 12 customers with an aggregate of 1104 employees. Activpayroll's largest customer represents the majority of employees serviced through it, with an aggregate of 965 employees in the United States and Canada.
- 110. The Receiver understands that, following the Appointment Order and the cessation of Peopledge's business, Activpayroll had greater difficulty in securing transition of payroll service compared to certain other customers of Peopledge, for various reasons. In addition, contrary to the Receiver's understanding prior to its appointment, the Receiver was advised after its appointment that Ceridian would not be able to process U.S. payrolls.
- 111. By November 2, 2012, Activpayroll concluded that it had no options to avoid disruption in payroll processing services to its most significant customer, which had payrolls in both Canada and the U.S. that had to be immediately processed, without having access to Peopledge's own systems and former employees to process payroll. Activpayroll requested that the Receiver retain certain former Peopledge personnel

involved in processing the specific payrolls and arrange the continuation of payroll processing services.

112. As indicated elsewhere in this Report, due to the limited funding beyond the Receiver's charge and limited operational resources, the Receiver had sought to limit its involvement to facilitating an orderly transition of customers to new providers.
113. However, due to the relatively large number of employees affected in relation to Activpayroll and the fact that there did not appear to be any alternate immediate solution for Activpayroll's payroll processing requirements, the Receiver agreed to provide assistance to Activpayroll on a temporary basis.
114. In response to these urgent requests by Activpayroll, the Receiver contacted former Peoplesedge personnel designated by Activpayroll ("Staff"), whom Activpayroll had also already contacted, to confirm that the Staff would agree to process data on behalf of Activpayroll.
115. After extensive discussions and negotiations with Activpayroll, and as no alternate means of processing the payroll data was then available to Activpayroll, the Receiver agreed, on an interim and exceptional basis, to engage certain Staff to provide data processing services for Activpayroll. Activpayroll agreed to be fully responsible for all direction to and work of the Staff, and for all activities relating to flow of funds in relation to any payrolls. The Staff's remuneration was to be paid and prefunded by Activpayroll.
116. At Activpayroll's request, the Receiver also inquired with BMO to determine whether the payroll system of Peoplesedge could be used to allow Activpayroll to run payrolls. Following discussions with representatives from BMO it was determined that the current Peoplesedge system could not be used as there would be undue risks to all parties and because the system could not be implemented within the time required by Activpayroll.
117. On Monday, November 5, 2012, Activpayroll advised that it had succeeded in making at least temporary arrangements for the flow of funds required for the Canadian payrolls and that it had made separate arrangements to fund U.S. payrolls for its customers. However, Activpayroll required the continuing processing services of the

Staff for a short term period in order to process the data for certain customer payrolls.

118. On November 5, 2012, the terms of the IFA between the Receiver and Activpayroll were negotiated and finalized. Due to the urgent and unique nature of Activpayroll's concerns, court approval of the IFA was sought that afternoon on an *ex parte* basis.
119. The Receiver prepared its First Report in connection with that *ex parte* application, a copy of which is attached as Tab 3 to the Receiver's motion record. The appendices to that report, namely the Report of the Proposed Receiver, the Affidavit of Bonnie Cummings and the Receivership Order are not attached to avoid duplication.
120. Late on November 5, 2012, the Honourable Mr. Justice Morawetz issued an order and endorsement approving the Interim Facilitation Agreement in form and content agreed to by the Receiver and Activpayroll. A copy of that order, with the IFA attached as a schedule thereto, is attached as **Appendix "J"**.
121. The IFA expired on November 30, 2012 in accordance with its terms.

***Labatt Canada Inc.***

122. Labatt was Peopledge's largest customer with approximately 3,500 employees. Labatt was referred to in the Preliminary Report as "Customer 1".
123. Labatt is a notable customer not only due to its size but by the fact it owns and uses a copy of ePersonality to administer its payroll and certain other human resources functions. Part of the contract between Labatt and Peopledge is for hosting and technical support for ePersonality.
124. Under its contract with Labatt, Peopledge was required to maintain all Labatt payroll information on two computer servers (the "Labatt Servers") separate and apart from data and information for all other customers of Peopledge.
125. As a result, the Receiver was of the view that Labatt would not likely turn to Ceridian for alternate payroll processing arrangements but would seek its own solution.

126. Indeed, Labatt has done so. However, Labatt sought the assistance of the Receiver in providing direct access to the Labatt Servers to transition its payroll services to a new computer server. In addition, Labatt requested temporary access to such payroll information in order to process its own payrolls in the event the transition was not completed in time before any payrolls became due, which request ultimately proved unnecessary as the transition was completed prior to the due dates of Labatt's payrolls.
127. Labatt and the Receiver negotiated an Access and Indemnity Agreement which was finalized and executed on November 3, 2012. A copy of the Access and Indemnity Agreement is attached as **Appendix "K"**. The Receiver is seeking the approval of the Access and Indemnity Agreement from the Court.
128. The Receiver understands that Labatt also extended temporary employment contracts with seven former Peopledge employees to facilitate their payroll processing.

#### **POENTIAL FORENSIC INVESTIGATION**

129. As discussed above, the Receiver has identified various questionable transfers of funds from the Peopledge accounts, as follows:
  - (A) Online banking transfers from the Canadian Consolidated Account to the Peopledge corporate account, which transfers have been identified as the "High Yield Account" on the Customer GL. Cheques were then drawn on the corporate account payable to the Related Companies either directly or to a trade name used by the Related Companies;
  - (B) withdrawals from the Float to Peopledge's general corporate accounts; and
  - (C) transfers of funds between the Consolidated Payrolls Accounts.
130. As requested by the Court, the Receiver has prepared an overview as to a possible forensic investigation in respect of such transfers and related activities funds.
131. The Receiver believes that any forensic investigation should be undertaken in stages in order to control costs. The first two stages would be as follows:

(A) Stage #1:

- (a) The purpose of Stage #1 of the forensic review is to trace the known cheques into either the WPFS or CMC account and then to determine how and to whom the funds were dispersed from those accounts. This would involve tracing each known cheque drawn on the Consolidated Payroll Account to its deposit in the WPFS or CMC account. The deposited funds would then be matched to disbursements from the WPFS or CMC accounts to determine to whom the funds were disbursed. A detailed source and use analysis will be prepared matching each known Consolidated Payroll cheque deposit to the associated disbursement(s) of funds from the WPFS or CMC account.
- (b) This review and analysis would be based upon the banking records (including cancelled cheques) some of which is in the Receiver's possession or readily available to the Receiver. However, given that it appears from the records available to the Receiver that the questionable transfers date back to May 2007, the Receiver would need to obtain all banking records for the period May 2007 to date that are not currently in its possession.
- (c) The Receiver has estimated the professional fees required to complete Stage #1 are in the range of \$20,000.

(B) Stage #2:

- (a) It is likely that the Stage #1 analysis of disbursements from WPFS or CMC accounts will identify other potentially related parties and bank accounts for which it will be necessary to obtain information. If it is found that funds have been transferred from WPFS or CMC accounts to another bank account(s), it will be necessary to determine the owner of the subsequent account and whether that account could be said to be owned by WPFS, CMC or another related party. Once the additional related party bank accounts are identified it will be incumbent on the Receiver to obtain the necessary authorizations to obtain the further banking information to complete the source and use of funds analysis.

- (b) To the extent that intervening related party bank accounts have been used to flow funds prior to their final disbursement, the Stage #1 analysis will need to be repeated to analyze the further intercompany transactions, and subsequent tracing exercises will be required to trace funds into third and related party accounts.
  - (c) In order to carry out this review, there are certain supporting documents which will be required, including copies of the bank statements and cancelled cheques for any bank accounts identified as belonging to additional related parties. To the extent that funds have been disbursed to what appear to be third parties, the forensic review will identify, where possible, the business carried on by the third party to understand the nature of the disbursement.
- 132. Prior to engaging in a Stage #2 analysis, the Receiver would propose to file a report with the Court advising of the outcome of the Stage #1 analysis. This will guide any recommendation to proceed further in the forensic investigation.
- 133. Costs associated with Stage #2 would depend upon the number of intermediary accounts and transactions identified during Stage #1, and a fee estimate would be provided in conjunction with the proposed report to be filed following completion of Stage #1.
- 134. As noted above, the Receiver recommends that any forensic investigation should be conducted in stages. In that way, costs can be contained until it is better known where any ultimate recovery for the estate may be possible or likely.
- 135. The Receiver is also sensitive to the fact that some creditors may wish to incur cost to be borne by the estate to pursue these matters, while others may not.
- 136. Accordingly, the stage approach provides the option of incurring a relatively small amount of cost by way of initial investigation, which will ideally provide the creditors with the information necessary to determine if they wish to incur further costs.

137. Additionally, the Receiver notes that a forensic imaging of the data on Peopledge's servers may be necessary for evidence preservation purposes, which will likely cost an estimated \$7,000 to \$10,000.

#### **PROPOSED ASSIGNMENTS IN BANKRUPTCY**

138. In discussions since the Receiver's appointment, counsel for certain of the significant customers and stakeholders of Peopledge have also advised the Receiver of their preference to ensure that any applicable review periods for potential challenges to any preferences or transfers at under value be preserved and have accordingly requested that the Receiver seek authority to make assignments in bankruptcy on behalf of Peopledge and the Related Parties.
139. The Receiver agrees that it is prudent to do so, but is of the view that the administrative costs associated with the requisite notices to creditors and the calling and holding of meetings of creditors is an unnecessary cost to the estate given the notifications and claims process being proposed by the Receiver herein, and is therefore of the opinion that the administrative steps triggered by the assignments should be suspended until at least the results of the claims process are known.
140. Accordingly, the Receiver is recommending and requesting an order of the Court authorizing it to file assignments in bankruptcy for Peopledge and each of the Related Parties, but suspending the administration of the bankruptcy estates by the Trustee until further order of this Court. The Receiver will be serving its motion record (including this Report and the draft form of order being sought) on the OSB.

**SUMMARY OF RELIEF SOUGHT**

141. Based on the above, the Receiver respectfully requests the relief as set out in paragraph 6(d) of this Report and in the Receiver's notice of motion and draft orders be granted.

All of which is respectfully submitted this 3rd day of December, 2012.

**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