



IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION

CAUSE NO: FSD 118 OF 2020 ( )

IN THE MATTER OF THE COMPANIES LAW (2020 REVISION)  
AND IN THE MATTER OF PERFORMANCE INSURANCE COMPANY SPC

PETITION



**To the Grand Court**

The humble petition of Performance Insurance Company SPC, 3rd Floor, Bayshore Centre, 31 Warwick Drive, George Town P.O. Box 455, Grand Cayman, KY1-1106, Cayman Islands (the “Company”) shows that:

**A. INTRODUCTION**

1. The Company, a segregated portfolio company, seeks the appointment of receivers over one of its segregated portfolios, being the Hudson York Insurance SP (the “Hudson York SP”), pursuant to section 224 of the Companies Law (2020 Revision) (the “Law”), upon the grounds that:
  - a. The assets attributable to the Hudson York SP are insufficient to discharge the claims of the creditors of the Hudson York SP; and
  - b. The appointment of receivers will enable the orderly closing down of the business of the Hudson York SP and the distribution of the Hudson York SP’s assets to those persons entitled to have recourse thereto.

**Background**

2. The Company was incorporated on 21 January 2016 with registration number 307829 as an exempted segregated portfolio company under the laws of the Cayman Islands.

3. The Company is the holder of a Class B (iii) Insurer's License under the Insurance Law, 2010.
4. Hudson York SP was established by the Company and Hudson York Insurance LLC (the "**Participant**") in accordance with a shareholders agreement effective 22 March 2017 under which, inter alia:
  - a. The Company and the Participant agreed that certain workers compensation and automobile liability deductible reimbursement insurance would be written for Same Day Delivery, Inc. ("**Same Day Delivery**") an affiliate of the Participant (the "**Program**") by the Hudson York SP.
  - b. The Participant was to be the sole owner of the Hudson York SP.
  - c. The Participant subscribed for three non-voting segregated portfolio shares at a subscription price of US\$33,333.33 per share in Hudson York SP (comprised of US\$1 par value and US\$33,332.33 share premium).
5. The objective of the Hudson York SP was to avoid unfair pricing within the commercial insurance market and to capture potential underwriting profits and provide a long-term risk financing solution for Same Day Delivery.

#### **Rights of recourse**

6. The creditors of the Hudson York SP only have recourse to the segregated assets of the Hudson York SP and have no recourse to the general assets of the Company or to the assets of the other segregated portfolios of the Company.

#### **B. FINANCIAL DIFFICULTIES OF THE HUDSON YORK SP**

7. On 7 May 2019, the directors of the Company ("**Directors**") met with the representatives of the Participant (including Michael Weksel who owns 23% of the Participant, Steven Pilavin who owns 24% of the Participant and Benedito Ewerton who owns 24% of the Participant) at a meeting of the Board of Directors.

8. At the 7 May 2019 meeting, the Directors discussed their concerns regarding the solvency of the Company with the Participant's representatives. It was noted that:
  - a. In the years prior to opening the Hudson York SP, Same Day Delivery's losses were significantly lower than the losses since the opening of the Hudson York SP; and
  - b. Same Day Delivery's business had been growing more quickly than anticipated, which had resulted in Same Day Delivery's claims not being controlled as expected.
9. Following the 7 May 2019 meeting, the Company wrote to the Cayman Islands Monetary Authority ("**CIMA**") by letter dated 28 May 2019 to inform CIMA of Hudson York SP's updated business plan to address the Directors' solvency concerns.
10. By letter dated 17 June 2019, CIMA responded to the Company to notify the Company that the proposals outlined in the Company's 28 May 2019 were deemed inadequate as the Hudson York SP would remain insolvent after the injection of additional capital mentioned in the action plan.
11. By letter dated 28 June 2019, the Company responded to CIMA noting that the Participant was unable to inject additional capital into the Hudson York SP by 30 June 2019 and proposed alternative options to resolve the issues CIMA had identified. These options included remedying the solvency position of the Hudson York SP by executing a deed of release between Same Day Delivery and the Hudson York SP releasing the Hudson York SP from certain losses ("**Proposed Deed of Release**").
12. By email dated 30 June 2019, the Company confirmed to CIMA that the Proposed Deed of Release had not been executed and that Directors would be meeting shortly to consider the necessary next steps.
13. By email dated 6 August 2019, Brandon White (a director of the Company at that time) wrote to Mr Weksel (a shareholder of the Participant and representative of Same Day Delivery) to inform Mr Weksel of the steps required to comply with the various regulatory bodies and to maintain an orderly wind down of the Hudson York SP which included:

- a. Bringing the premium payments up to date with payments totaling US\$678,110; and/or
  - b. Executing the Proposed Deed of Release regarding the release of certain claims made by Same Day Delivery against Hudson York SP under insurance policies.
14. From August 2019, the Directors have continued to manage the business of the Hudson York SP and to consider various options for winding down the Hudson York SP in the event that the Participant and Same Day Delivery failed to take steps to remedy the financial position of the Hudson York SP.
15. By email dated 24 January 2020, Mr White wrote to Mr Weksel to inform the Participant and Same Day Delivery of developments since Mr White's 6 August 2019 email:
- a. No response was received to Mr White's email from Mr Weksel (or any other representative of the Participant or Same Day Delivery).
  - b. No payment was received in relation to the outstanding premium payments;
  - c. The Proposed Deed of Release was not executed by Same Day Delivery.
16. As a result of the above, the Company was required to take steps to meet the regulatory responsibilities associated with an insolvent winding up of the Hudson York SP, including:
- a. The Company was forced to cancel insurance coverage effective 30 May 2019; and
  - b. The Directors agreed with Chaucer Re (the Company's reinsurer) to accept a commutation agreement to bring funding back to balance sheet for the orderly wind down of the Hudson York SP.

**Current financial position of the Hudson York SP**

17. As at 29 February 2020, the Hudson York SP has assets of US\$573,041 and liabilities of US\$2,854,523, resulting in a capital deficit of US\$2,281,482.
18. The Hudson York SP remains, as at time of the filing of this petition, insolvent.

**C. CONCLUSION**

19. For the above reasons, the Directors have concluded that the assets of the Hudson York SP are insufficient to discharge the claims of its creditors.
20. The Company considers that receivers should be appointed to Hudson York SP to conduct the orderly closing down of the business of the Hudson York SP and to attend to the distribution of the Hudson York SP's assets to those persons entitled to have recourse thereto.

**YOUR PETITIONER THEREFORE HUMBL Y PRAYS THAT:**

- (1) A receivership order be made pursuant to section 224 of the Law in relation to Hudson York SP and that David Griffin and Andrew Morrison of FTI Consulting, Suite 3212, 53 Market Street, Camana Bay, Grand Cayman, PO Box 30613, KY1-1203 be appointed as joint receivers (the "Joint Receivers") with the power to act jointly and severally.
- (2) The business and segregated portfolio assets of Hudson York SP shall be managed by the Joint Receivers for the purposes specified in section 224(3) of the Law.
- (3) That, pursuant to section 226(1) of the Law, the Joint Receivers have and be authorised to exercise, for the purpose of:
  - i. The orderly closing down of the business of or attributable to the Hudson York SP; and
  - ii. The distribution of the segregated portfolio assets attributable to the Hudson York SP to those entitled to recourse there to,

the following powers:

- a. to make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging themselves to have any claim (present or future, certain or contingent, ascertained or sounding only in damages) against the segregated assets of the Hudson York SP or for which the segregated assets of the Hudson York SP may be rendered liable;

- b. to compromise on such terms as may be agreed all debts and liabilities capable of resulting in debts, and all claims (present or future, certain or contingent, ascertained or sounding only in damages) subsisting, or supposed to subsist between the Hudson York SP and a contributory or alleged contributory or other debtor or person apprehending liability to the Hudson York SP;
  - c. to deal with any questions in any way relating to or affecting the assets or orderly closure of the business of the Hudson York SP;
  - d. to engage staff to assist them in the performance of their functions;
  - e. to engage attorneys and other professionally qualified persons to assist them in the performance of their functions;
  - f. to take possession of, collect and get in the segregated assets of the Hudson York SP and for that purpose to take all such proceedings as they consider necessary;
  - g. to do all acts and execute, in the name and on behalf of the Hudson York SP, all deeds, receipts and other documents;
  - h. to convene meetings of creditors and contributories; and
  - i. to do all other things incidental to the exercise of their powers.
- (4) The Joint Receivers' fees and expenses shall be payable out of the segregated assets of the Hudson York SP pursuant to section 228 of the Law in priority to all other claims;
- (5) No suit, action or other proceeding shall be instituted against the Company in relation to Hudson York SP except with the leave of the Court pursuant to section 226(5) of the Law;
- (6) Any act required or authorized to be done by the Joint Receivers may be done by any one of them;
- (7) The Joint Receivers be at liberty to apply for further directions and generally;

- (8) The Company's costs of this Petition shall be paid out of the segregated assets of Hudson York SP on an indemnity basis; and
- (9) Such other orders as the Court thinks fit.

AND the Company ever pray etc.

DATED 03 June 2020

*Conyers Dill & Pearman*

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Conyers, Dill & Pearman  
Attorneys at Law for the Company

NOTE: This petition is intended to be served on the Participant and CIMA.

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This Petition was presented by Conyers Dill & Pearman, SIX, 2<sup>nd</sup> Floor, Cricket Square, George Town, Grand Cayman attorneys acting on behalf of the Company