

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 372 OF 2003

IN THE MATTER OF: THE COMPANIES LAW (2002 REVISION)

AND IN THE MATTER OF: NATIONAL WARRANTY INSURANCE RISK  
RETENTION GROUP.

---

PETITION

---



TO THE GRAND COURT OF THE CAYMAN ISLANDS

The Humble Petition of National Warranty Insurance Group Risk Retention Group of Registered office address Crusader International Management (Cayman) Limited Building, Phase III, Elizabethan Square, George Town, Grand Cayman, Cayman Islands shows that:

1. National Warranty Insurance Group Risk Retention Group. (hereinafter called "the Company") was incorporated under the name Auto Warranty Insurance Group on the 19th of December, 1984. It was incorporated as an exempted company under the Companies Law ( 2002 Revision) ("the Companies Law") of the Cayman Islands. The Company changed its name to National Warranty Insurance Company on January 16, 1986 and again changed its name to National Warranty Risk Retention Group on May 17, 1987.
2. The registered office of the Company is situated at Crusader International Management (Cayman) Limited Building, Phase III, Elizabethan Square, George Town, Grand Cayman, Cayman Islands. The objects for which the Company was established are not restricted in the Company's Memorandum of Association and this permits the carrying of unlimited general business.
3. The authorised share capital of the Company at the date of it's incorporation was US\$900,000 divided into 900,000 shares of US \$1.00 each, of which 105,256 shares have been issued and are fully paid up and are held as of December 31, 2002. The Company holds a category B insurance license, granted on December 20, 1984, subject to the provisions of the Insurance Law (2001 Revision) as amended.

4. The Company was formed to operate as an Insurance Company, and is a subsidiary of the Pro Distributors Inc. (which owns approximately 99% of the outstanding stock). The Company operates principally out of Lincoln, Nebraska, USA and conducts business throughout the United States.
5. The principal activity of the Company consists of operation as a risk retention group, formed under the United States Product Liability Risk Retention Act of 1981, writing continuously policies on its group members covering:
  - a. mechanical breakdown warranty costs on new and used cars and motorcycles (hereinafter referred to as "vehicle service contracts");
  - b. auto rust, paid and interior warranty costs incurred by auto dealerships as a result of product failures on new and used automobiles and trucks;
  - c. warranty costs incurred by dealers associated with the following products: anti-theft devices, glass-etching, auto-theft alarms;
  - d. tire hazard warranty costs incurred by tire dealers as a result of tire failures due to road hazards; and
  - e. van conversion component warranty costs on new vehicles.

The Company writes the policies directly with distributors/manufacturers, all of whom are members of the risk retention group. The Company also insures Road Service contracts issued by its Parent, Pro Distributors Inc.

6. The Company reinsures its business through American Safety Insurance Services. The reinsurance limits for 2003 is \$5,000,000 multiplied by the percentage of paid loss that exceeds 105% of direct premium or \$42 million, whichever is greater.
7. The Company has assets with face value of US \$47.7mm as of December 31, 2002, and assets with face value of US \$52.6mm as of April 30, 2003. Of this sum on April 30, 2003, there is approximately \$7.186mm in bank deposits, and other liquid assets composed of equity investments valued at \$7.145mm, and fixed income investments valued at \$14.462mm. Additionally, the Company has a accounts receivable of \$10.497mm, of which \$3.291mm is due from the Delta Group, and has a \$4mm Loan to the Delta Group without a guarantee. The company has plant and equipment of \$985,227, and other assets totaling \$8,328mm (including \$4.237mm of income tax receivable for the 2002 tax year). All of the asset portfolio was originally denominated in US dollars.
8. The Company has insured auto warranties and service contracts since starting business in an approximate amount in excess of \$800mm, many of which have

expired by term. As of April 30, 2003, the Company had liabilities with a stated value of \$44.9mm. The liabilities consist of \$.478mm of Current Liabilities, Unearned Premium of \$38.6mm, Incurred But Not Report Reserve of \$5.8 mm. All of the Company's obligations are denominated in dollars.

9. The Company's stated value of its stockholder equity consists of \$7.7mm.
10. The Company insures the obligors (automotive dealers) on vehicle service contracts both as (a) primary insurer and (b) excess coverage insurer. The largest insured of the Company is the group of companies known as the Delta Group ("Delta"), which includes SC&E Administrative Services ("SC&E") and American Prime Asset, which consists of over 1mm vehicle service contracts. Delta and the Company are involved in a dispute regarding a Bordereaux Agreement ("the Delta Dispute") between the Company and Pacific Fiduciary Investment Corporations ("PFIC") dated 10<sup>th</sup> January 2003 ("Bordereaux Agreement") under which PFIC assumed liability to pay for claims on a number of contracts transferred to them by the Company ("Bordereaux Claims") but which the company continued to administer. Delta via SC&E subsequently purchased PFIC and assumed that liability and Delta has now refused to fund Bordereaux Claims. The Company is unable to authorise or pay Bordereaux Claims due to lack of funding from Delta.
11. The Company's inability to adjudicate and process the Bordereaux Claims resulted in escalating the Delta dispute and Delta is not directing any new business to the Company or PFIC. As a direct consequence, the AM Best Insurance rating service lowered the Company's rating from B++ to B, and major lending institutions have refused to finance any service contracts that are insured by the Company. Both of these actions dramatically affect the Company's other non-Delta business, which are dependent upon an A or B++ rating and bank financing of insured automotive service contracts.
12. The Company's inability to adjudicate or process claims due to lack of funding from Delta to pay such claims has also caused numerous complaints and threats of litigation from contract holders, repair shops, automotive dealers, selling agents, regulatory agencies, etc including threats to seek orders from courts in the U.S. to freeze or segregate assets of the Company of behalf of complainant.
13. Delta and its parent company Yamagata Enterprises Inc. ("YEI") have purported to rescind the Bordereaux Agreement and a related Contribution Agreement alleging, among other things, that the Company misrepresented the future claims liability of PFIC and have refused to fund the Bordereaux Claims. The Company's position is that the Bordereaux Agreement and all related agreements are valid and enforceable and that the Company has no liability in respect of the Bordereaux Claims

- 14 The dollar amount of future claims on the Delta and PFIC business are in dispute between the parties. Delta and YEI orally estimated the claims could exceed \$100mm on Bordereaux Claims. The Company would be rendered insolvent if the Company is not successful in proving its position with regard to the Bordereaux Claims or in negotiating a resolution of the Delta Dispute.
- 15 Although on the figures in the un-audited Balance Sheet for the year ended 31 December 2002 the assets of the Company exceed its liabilities the existence of the Delta Dispute means that some of the Company's accounts receivable may not be collectible. In addition if the Company is liable to pay the Bordereaux Claims then that liability would exceed the Company's assets considerably. Accordingly the Company does have potential insolvency issues although at the moment it is able to pay its undisputed debts, not counting the disputed liability to pay Bordereaux Claims, as they fall due.
- 16 In all the circumstances it is submitted that it is just and equitable that the Company should be wound up.

**AND YOUR PETITIONER THEREFORE HUMBLY PRAYS** as follows:

1. That at such time as the Petition is listed for hearing, if so moved by the Company, the Petition be adjourned or alternatively the Company be wound up by the Court under the provisions of Part V of the Companies Law (2002 Revision).
2. That should the Court make an Order winding up the Company, that Simon Whicker and Theo Bullmore of KPMG, Cayman Islands, (to hold their offices jointly and severally) be appointed joint official liquidators of the Company;
3. That the joint official liquidators be authorized to do any actual things considered by them to be necessary or desirable in connection with the liquidation of the company and the winding of its affairs;
4. That the joint official liquidators be authorized to exercise all the powers set out in section 109 of the Companies Law (2002 Revision) without further sanctions or interventions of this Honourable Court;
5. That the joint official liquidators do file with the clerk of the court a report in writing of the position of and the progress made with the winding up of the company with the realization of the assets thereof and as to any other matters connected to the winding up of the company, every six calendar months or as the Court may from time to time direct;

- 6 That the joint official liquidators be at liberty to appoint attorneys, counsel, professional advisors, whether in the Cayman Islands or elsewhere as they may consider necessary to advise and assist them in the performance of their duties and on such terms as they may think fit;
- 7 That the joint official liquidators and their staff be remunerated out of the assets of the company at their usual customary rates, such fees and expenses to be approved by the court;
8. Such further and/or other relief as this Honourable Court deems appropriate.

Dated this 4th day of June 2003

*Solomon Harris*

**SOLOMON HARRIS**  
**Attorneys for the Company**

NOTE: This Petition is intended to be served on the Company, the Registrar of Companies and on the Cayman Islands Monetary Authority

This petition, having been presented to the Grand Court of the Cayman Islands on the 4<sup>th</sup> June 2003 will be heard at the Grand Court of the Cayman Islands on:

**DATE:**  
**TIME:**

(or as soon thereafter as the petition can be heard).