

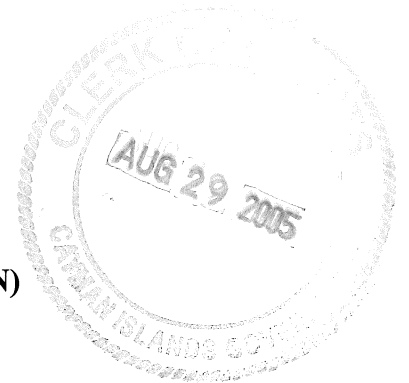
IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: <sup>384</sup> OF 2005

IN THE MATTER OF THE COMPANIES LAW (2004 REVISION)

AND IN THE MATTER OF THE INSURANCE LAW (2004 REVISION)

AND IN THE MATTER OF MTU, LTD.



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PETITION

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**TO: HER MAJESTY'S GRAND COURT OF THE CAYMAN ISLANDS**

The Humble Petition of THE CAYMAN ISLANDS MONETARY AUTHORITY (hereinafter called "the Authority" or "the Petitioner")

SHOWETH as follows:

1. MTU, Ltd. ("MTU" or the "Company") is an Exempted Cayman Islands company that was incorporated on 23<sup>rd</sup> May 2000. The Company was granted an Unrestricted Class 'B' Insurer's Licence by the Authority on 30<sup>th</sup> June 2000.
2. The Shareholders and Directors of MTU are Gregory Bonnell (50%), David Yoran (25%), Jay Calvert (12.5%), and Jeffrey Davis (12.5%).
3. At the time of inception MTU acted as a re-insurer of Gulf Insurance Company ("Gulf"), providing property and liability coverage of business produced by Motor Transport

Underwriters, Inc. (“MTUI”). MTUI are a retail general agency operating nationwide from Indianapolis, Indiana. MTUI places insurance coverage for large trucking companies operating in the United States and at date of licensing of MTU, MTUI were an exclusive representative of Gulf Insurance Group (a member of St Paul Travelers Companies). Based on the information available to the Authority, MTUI is owned by Gregory Bonnell (41.2%), David Yoran (20.6%), Richard Nelson (20.6%) and Travelers Indemnity (17.6%).

4. The Insurance Manager for the Company is Aon Insurance Managers (Cayman) Ltd. (“Aon” or the “Insurance Manager”).
5. On 12<sup>th</sup> October 2004 the Authority exercised its powers under Section 13(1)(vii) of the Insurance Law (2004 Revision) (the “Law”) and resolved to appoint a person to assume control of the affairs of the Company. The regulatory considerations for the appointment included:
  - (a) The Company did not appear to have sufficient assets to meet its loss reserves; the estimated shortfall appeared to be approximately US\$837,894.51. In order to comply with the minimum statutory net worth requirements of the Law a further US\$120,000 would be required to meet the minimum capital requirement, resulting in a total deficit of US\$957,894. The Company was in contravention of Section 4(10) of the Law for failing to maintain its prescribed net worth;
  - (b) The Company had not filed audited accounts since December 2001 and was therefore in contravention of Section 10(3)(a) of the Law for failing to furnish the Authority within six months of its financial year end with audited accounts; and
  - (c) Since August 2003, the Authority had been trying to work with the Company to rectify its net worth deficit and agreement with Gulf of disputed IBNR (Incurred But Not Reported) figures. Despite numerous requests by the Authority for the

Company to take corrective action, the Company remained in contravention of the Law.

6. On 27<sup>th</sup> October 2004 Messrs. Stuart Sybersma and Ian Wight of Deloitte & Touche (the “Controllers”) were appointed to assume control of the affairs of MTU.
7. The Auditors for the Company were PricewaterhouseCoopers (“PwC”), P.O. Box 1322GT Grand Cayman. PwC resigned effective 29<sup>th</sup> October 2004. The auditors had encountered significant difficulties in performing their audit of MTU’s December 31, 2002 financial statements. Based on the information they received from the Insurance Manager upon being advised that the Company had been put into controllership, coupled with the fact that no progress was made in resolving the issues with the December 31, 2002 audit, PwC concluded that they no longer wished to remain as auditors of MTU.
8. In the Interim Report of the Controllers dated 26<sup>th</sup> November 2004, the Controllers advised that the shareholders had conditionally agreed to the Controllers recommendation that the controllership continue for a period of another 90 days subject to the condition that the shareholders of MTU provide an immediate capital injection of US\$60,000 and a guarantee to provide an additional US\$60,000 as and when required to fund the cost of the controllership. The reason for the continued period of controllership was to allow for a concerted effort by all parties to negotiate a commutation (transfer of liabilities) agreement between Gulf and MTU. It was agreed that if during this period the Controllers determine that a satisfactory settlement with Gulf cannot be achieved, or the shareholders default on their commitment to fund the ongoing costs of the controllership, then the Controllers would recommend that immediate steps be taken to place the Company in compulsory liquidation.
9. On 6<sup>th</sup> December 2004 the Authority confirmed to the Company its agreement for the controllership to continue subject to the conditions set out by the Controllers. The required US\$60,000 capital injection was paid to the Controllers by the shareholders on December 9, 2004.

10. On 7<sup>th</sup> January 2005 by order of the Grand Court (Cause No: 479 of 2004), the Controllers obtained the authority to exercise all the powers set out under Sections 74 to 85 of the Bankruptcy Law (1997 Revision).
11. On 20<sup>th</sup> January 2005 the Controllers' requested the shareholders remit a further sum of US\$30,000 to fund the continuing cost of the controllership and these funds were remitted in late February. Subsequent requests to the Shareholders for payment of the remaining US\$30,000 commitment have not, however, been paid to the Controllers.
12. In an Update Report to the Authority dated 11<sup>th</sup> March 2005, the Controllers gave details of the commutation negotiations between the Company and Gulf. The Controllers advised that on 14<sup>th</sup> February 2005 the Controllers wrote to Gulf and the shareholders of MTU imposing a timeline for the progression of the commutation negotiations. On 28<sup>th</sup> February 2005, Gulf and the shareholders of MTU wrote to the Controllers updating the position of the negotiations, which the Controllers noted had reached an impasse. The Controllers stated that MTU, having been unable to commute its treaties with Gulf, now faced an immediate liquidity shortfall and that the paid losses owed to Gulf alone, in the sum of US\$286,900, were sufficient to cause MTU to be insolvent. In light of the impasse that had been reached in the commutation negotiations between Gulf and the shareholders of MTU and the current financial position of MTU, the Controllers recommended that MTU be placed into liquidation.
13. On 22<sup>nd</sup> March 2005 the Authority met with the Controllers to discuss their Update Report. During these discussions, the Controllers raised the option of a Court supervised voluntary liquidation. The main advantage of this option would be that it would result in the Company being placed into liquidation quicker than if a winding up hearing had to be listed. The Authority's chief concern was that the Company would again be under the control of the directors and shareholders of the Company, especially given the reasons for the appointment of the Controllers and their determination, based on the information available to them, that the Company is insolvent. The matter was further discussed, and

after taking into account the concerns raised by the Authority, the Controllers wrote to the Authority on 22<sup>nd</sup> April 2005 and recommended the Company be placed into compulsory liquidation.

14. Based on the information in the Controllers' reports to the Authority, the financial position of the Company as at 28<sup>th</sup> February 2005 was a net deficit of US\$1,082,291. Furthermore, the Company is not able to pay its debts as they fall due. As this constitutes grounds for the winding up of a company under Sections 94 and 95 of the Companies Law (2004 Revision), and the net worth deficit is a violation of Section 4(10) of the Law, it is recommended that the Company be wound up in accordance with Section 13(4)(d) of the Law.
15. On 20th May 2005 the Authority resolved, pursuant to Section 13(4)(d) of the Law, to revoke the licence of the Company and apply to the Grand Court for an Order that the licensee be forthwith wound up by that Court.
16. Pursuant to Section 13(4)(d) of the Law, the Petitioner applies under Section 94 of the Companies Law (2004 Revision) for the Company to be wound up by the Court on the grounds that it is just and equitable to do so for the following reasons:
  - (i) Based on the information available to the Authority, the Company is insolvent and is unable to pay its debts as and when they fall due; and
  - (ii) It is in the public interest that the Company be wound up expediently.

YOUR PETITIONER THEREFORE HUMBL Y PRAYS as follows: -

- (a) That MTU, Ltd. be wound up by the Court subject to the provisions of the Companies Law (2004 Revision);

- (b) That Messrs. Stuart Sybersma and Ian Wight of Deloitte & Touche Cayman Islands, be appointed as Joint Official Liquidators of the Company, and that the Joint Official Liquidators be authorised to do any acts or things jointly and severally considered by them to be necessary or desirable in connection with the liquidation of the Company and the winding up of its affairs;
- (c) That the Joint Official Liquidators shall not be required to give security for their appointment;
- (d) That the Petitioner be at liberty to apply to the Court at any time, *inter alia*, for the removal of the Joint Official Liquidators;
- (e) That the Joint Official Liquidators be authorised:
  - (i) to bring or defend any action, suit, prosecution or other legal proceedings, whether criminal or civil, by way of court process or arbitration, in the name and on behalf of the Company.
  - (ii) to take possession of, collect and get in all property or assets (of whatever nature) to which the Company is or appears to be entitled;
  - (iii) to do all things as may be necessary or expedient for the protection of the Company's assets;
  - (iv) to do all things (including the carrying on of the business of the Company) so as may be necessary or expedient for the beneficial realisation of the property or assets of the Company (including power to borrow money);
  - (v) to appoint attorneys, solicitors and other professional qualified persons both in the Cayman Islands and elsewhere to assist them in the performance of their duties;

- (vi) to appoint agents both in the Cayman Islands and elsewhere to do any business which they are unable to do themselves or which can more conveniently be done by an agent and power to employ and dismiss officers and employees of the Company;
- (vii) to make any power which is necessary or incidental to the performance of their duties;
- (viii) to open and maintain bank accounts in the name of the Company or themselves anywhere in the world as may be necessary for the better performance of their duties;
- (ix) to exercise and execute all the powers set out in Section 109 of the Companies Law (2004 Revision) without sanction or intervention of the Court and unprejudiced by the generality hereof;
- (x) to compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims whether present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the Company and any contributory or alleged contributory or other debtor or person apprehending liability to the Company, upon receipt of such sums payable at such times and generally on such terms as may be agreed upon, with power to take securities for the discharge of such debts or liabilities and to give complete discharges in respect of all or such calls debts, or liabilities; and
- (xi) to do and execute all such other things as may be necessary for winding-up the affairs of the Company and distributing its assets;


and for the avoidance of doubt the powers bestowed on the Official Liquidators may be exercised by them within and outside the Cayman Islands.

- (f) 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 and with the realisation 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;
- (g) That the Joint Official Liquidators engage attorneys in the Cayman Islands satisfactory to the Petitioner to assist in the winding up of the Company;
- (h) That, save as aforesaid, the Joint Official Liquidators be at liberty to employ attorneys, counsel and professional advisors whether in the Cayman Islands or elsewhere as they may consider necessary to advise and assist them in performance of their duties and on such terms as they may think fit;
- (i) That the Joint Official Liquidators be at liberty to and do pay themselves, their agents, employees, attorneys, solicitors and whomsoever else they may employ or instruct, remuneration and costs in priority to all other debts of the Company pursuant to Section 123 of the Companies Law (2004 Revision), and:
  - (i) The Joint Official Liquidators shall be entitled to receive remuneration for their services by reference to the time properly given by them and their staff in attending to matters arising in the winding-up and the hourly rates and the amount of remuneration shall be determined in accordance with Rules 4.127 - 131 of the Insolvency Rules.
  - (ii) The Joint Official Liquidators be at liberty to pay their agents, employees, attorneys, solicitors and whomsoever else they employ or instruct either weekly or monthly or at such intervals as they consider appropriate;
  - (iii) The Joint Official Liquidators be at liberty to meet all disbursements reasonably incurred in connection with the performance of their duties;

- (j) The Joint Official Liquidators shall provide to the Petitioner copies of all reports filed with this Court and/or sent to creditors or contributories of the Company;
- (k) The Joint Official Liquidators shall serve on the Petitioner copies of all applications made to this Court for directions or other relief and any evidence in support thereof, such service to be within a reasonable time of date of the hearing of any such applications;
- (l) That the costs of this petition be paid out of the assets of the Company as an expense of the liquidation;
- (m) Such other orders and directions may be made as the Court thinks fit.

AND YOUR PETITIONER will ever pray etc.

DATED this 29<sup>th</sup> day of August 2005.

  
Langston R.M. Sibbles  
General Counsel for the  
Cayman Islands Monetary Authority

**INDORSEMENT**

This Petition having been presented to the Grand Court of the Cayman Islands on the \_\_\_\_\_ day  
of \_\_\_\_\_ 2005 will be heard by the Grand Court of the Cayman Islands:

DATE: 30<sup>th</sup> September 2005

TIME: 10.00 a.m

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

This Petition is filed by the Legal Division of the Cayman Islands Monetary Authority, whose address for service is 80e Shedden Road, Elizabethan Square, PO Box 10052 APO, Grand Cayman, Cayman Islands.