

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: ⁴⁴⁴ 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 S & S INSURANCE PARTNERS, LTD.**

PETITION

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. S & S Insurance Partners, Ltd. ("S&S" or "the Company") was incorporated on 12th July 2000 as an Exempted Cayman Islands company. The Authority granted the Company an Unrestricted Class 'B' Insurer's Licence on 26th July 2000.
2. The shareholders of S&S are Beverly Speer and Susan Schellenger ("the Shareholders"). Ms. Speer is the Office Manager of a consulting and risk management services company. Ms. Schellenger is the Vice President of Administration for PeopLease Corporation ("PeopLease").

3. S&S acts as re-insurer providing workers compensation cover to PeopLease and to certain client companies of PeopLease. Discover Re acts as the fronting company on the program and reinsure 100% quota share to S & S. PeopLease, established in 1994, is a Professional Employer Organisation that specialises in providing cost-effective administrative services to clients that are primarily engaged in the transportation and freight brokerage industry. PeopLease is owned equally by Denward Speer and Charles Schellenger, the spouses of Beverly Speer and Susan Schellenger respectively.
4. The Insurance Manager for S&S is Marsh Management Services Cayman Limited ("Marsh").
5. The directors of S&S are Beverly Speer, Susan Schellenger, Denward Speer (director and shareholder of PeopLease) and Charles Schellenger (director and shareholder of PeopLease) ("the Directors").
6. The auditors for the Company are Moore Stephens, P.O. Box 1782 GT Grand Cayman.
7. During July 2003, Marsh advised the Authority that the Company's year-end management accounts as at 30th April 2003 showed a net worth deficit of US\$1.6 million. The Company entered into discussions with Discover Re regarding a potential loss portfolio transfer ("LPT"). The Authority allowed these discussions to continue, seeking updates at regular intervals, as implementation of the LPT would resolve the deficit situation. On 23rd March 2004 Marsh advised the Authority that no substantive progress had been made regarding the LPT. Additionally, during the same period and subsequently the Authority made numerous requests for the necessary capital to be injected into the Company, to no avail.
8. In July 2004, the Authority received the year-end management accounts for the period ended 30th April 2004 showing the net worth deficit had continued to grow and now stood at US\$7.67 million.
9. On 22nd July 2004 the Insurance Division conducted an On-site inspection of the Company's books and records at the offices of Marsh. The On-site Inspection Report of the Company

was completed on 30th July 2004 and the Insurance Division made the following observations:

- (i) Full and proper books and records are maintained by Marsh, in accordance with Section 7(7)(a) of the Insurance Law (2004 Revision) (the “Law”);
- (ii) Marsh has control of the only liquid asset of the Company being US\$10,122.05;
- (iii) Management Accounts provided may not accurately reflect the financial position of the Company due to the uncertainty of the premium receivable of US\$3.3million. The US\$3.3million is currently the subject of litigation between PeopLease and Discover Re;
- (iv) The Company does not have sufficient assets to meet outstanding losses.
- (v) The Company is in contravention of Section 4(10) of the Law, as the net worth of the Company is below the statutorily required US\$120,000.
- (vi) The Company is in contravention of Section 10(3) of the Law, as it has not filed its 2003 Annual Return.

10. On 27th July 2004 the Authority exercised its powers under Section 13(1)(ii) of the Law and resolved to suspend the Unrestricted Class “B” Insurer’s Licence held by the Company, pending a full inquiry into the Company’s affairs made under Section 5(1)(b) of the Law.

11. On 28th July 2004 the Authority was provided with a copy of an actuarial report as at 18th May 2004, the content of which is disputed by the Company. Based on the figures provided, the net worth would be a further US\$1.9 million in deficit. The Company advised that an agreed actuarial report was to be presented by 20th September 2004.

12. On 10th August 2004 the Authority exercised its powers under Section 13(1)(vii) of the Law and resolved to appoint a person to assume control of the affairs of the Company. The regulatory considerations for the appointment included:

- (i) Since July 2003, the Authority has been working with the Company to rectify its net worth deficit. Based on the management accounts received in July 2004 for the period ended April 30, 2004, the Company's net worth deficit stood at US\$7.6 million, in contravention of Section 4(10) of the Law which requires the Company to maintain a minimum net worth of US\$120,000.
- (ii) The financial position of the Company had continued to deteriorate since July 2003 and the Shareholders had not taken any steps to bring the Company back into a solvent position.
- (iii) The Company had not filed its audited accounts for the period ended 30th April 2003 and was therefore in contravention of Section 10(3)(a) of the Law for failing to furnish the Authority with audited accounts within six months of its financial year end.

13. On 26th August 2004 Messrs. David A. K. Walker and Russell Smith of PricewaterhouseCoopers ("the Controllers") were appointed to assume control of the affairs of S & S. Subsequently Mr. Russell Smith left the firm of PricewaterhouseCoopers and has been replaced by Mr. Lawrence Edwards effective 1st June 2005.

14. In their first Report dated 10th September 2004 the Controllers reported that the Directors and Shareholders had not responded to their requests to contact them, which has delayed their progress. The management accounts as at 31st July 2004 stated that the net deficit of the Company had increased to US\$9.2 million compared to US\$7.6 million as at 30th April 2004 and US\$2.0 million as at 31st July 2003. The Controllers confirmed that the Company is insolvent and that if additional capital is not forthcoming, they would likely recommend that the Company be placed into liquidation.

15. In their Report dated 29th November 2004, the Controllars advised that they were awaiting a proposal from the Directors to transfer the Company's assets & liabilities to PeopLease, as this approach would allow the Company to be wound up on a voluntary basis. If substantial progress had not been achieved by the end of February 2005, the Controllars indicated that they would recommend that an application be made to the Grand Court of the Cayman Islands to have S & S placed into compulsory liquidation.
16. On 10th March 2005 the Controllars advised that having given the Directors a final deadline of 28th February 2005 the Directors had recently informed the Controllars that they would provide a detailed and documented response the following week. The Controllars proposed to delay further action until 18th March 2005 at which point they would again follow up with the Directors for their response.
17. In their Report to the Authority dated 30th May 2005, the Controllars advised that despite giving the Directors more than sufficient time to provide a restructuring proposal whereby PeopLease would assume the Company's liabilities, no such proposal had been submitted to the Controllars. Given the continuing insolvent position of the Company since 2003, the Controllars recommended that the Authority take steps to place the Company into liquidation. The Controllars also indicated that they are able to act as liquidator if required and to assist the Authority in the application to wind up the Company.
18. The Company is in contravention of the Law as detailed below:
- (i) The Company has not filed audited accounts for the periods ended 30th April 2003 and 2004 and is therefore in contravention of Section 10(3)(a) of the Law.
 - (ii) The Company has not maintained a minimum net worth of US\$120,000 and is therefore in contravention of Section 4(10) of the Law. The Controllars have also confirmed that the Company is insolvent.

19. Based on the information in the Controllers' reports to the Authority, the financial position of the Company as at 31st July 2004 was a net deficit of US\$9.2 million. 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 contravention 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.
20. On 21st June 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.
21. 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 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 HUMBLLY PRAYS as follows: -

- (a) That S & S Insurance Partners, Ltd. be wound up by the Court subject to the provisions of the Companies Law (2004 Revision);
- (b) That Messrs David A. K. Walker and Lawrence Edwards of PricewaterhouseCoopers 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 exercise 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 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;
 - (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;

