

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION

CAUSE NO: OF 2021 (DDJ)

IN THE MATTER OF SECTIONS 94 AND 159 OF THE COMPANIES ACT (2021  
REVISION)

AND IN THE MATTER OF ORDER 102 r.18 OF THE GRAND COURT RULES 1995

AND IN THE MATTER OF MARGARA SHIPPING LTD.



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WINDING UP PETITION

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To: The Grand Court of the Cayman Islands

The Petition of Shipowners Insurance and Guaranty Company Ltd. of Ascot House, 28 Queen Street, Hamilton, P.O. Box HM3398, Bermuda, HM PX (the "Petitioner" or "SIGCo") shows that:-

INTRODUCTION

1. Margara Shipping Ltd. (the "Company") was incorporated and registered under the laws of the Cayman Islands on 10 October 2003 as an exempted company with limited liability incorporated under the Companies Act (as amended) with registration number 129190.
2. The Company was established to act as the registered owner of a vessel "MARGARA" (the "Vessel") registered in the Cayman Islands from November 2003 through to June 2010.
3. The last known registered office of the Company was at the offices of Ocorian Trust (Cayman) Limited, Windward 3, Regatta Office Park, P.O. Box 1350, Grand Cayman, KY1-1108, Cayman Islands (the "Registered Office").

4. The Company was struck from the Register of Companies (the "Register") on 30 December 2011 due to the non-payment of annual fees.
5. The Minister of Finance consented to the presentation of this Petition on 3 June 2021.
6. The amount of the reinstatement and penalty fee payable upon restoring the Company to the Registrar of Companies is CI\$15,236.69.
7. Exclusive of fees and costs, the Petitioner has a claim against the Company in the amount of US\$4,455,398.98 now being demanded from the Petitioner by the U.S. Department of Justice. As set out more fully below, the U.S National Oceanic and Atmospheric Administration ("NOAA") submitted a claim to the National Pollution Fund Center ("NPFC") under the U.S. Oil Pollution Act of 1990 ("OPA") asserting that the Petitioner was obliged to pay for all damages recoverable under OPA for the grounding of a vessel owned by the Company.
8. In addition to the claim set out above, the Company is indebted to the Petitioner in the sum of US\$1,202,199.84 in legal fees and expenses for the reasons more particularly set out below.

#### BACKGROUND

##### The Petitioner and the Company

9. The Petitioner was incorporated in Bermuda. It specialises in the provision of Certificate of Financial Responsibility Guaranty ("COFR Guaranty") to interested parties in accordance with the provisions of OPA.
10. To comply with OPA and the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), vessels using the navigable waters of the United States must have a Certificate of Financial Responsibility ("COFR").
11. COFRs are issued by the US authorities and are evidence that a vessel owner has demonstrated financial responsibility that is adequate under the applicable

rules and given the characteristics of the vessel. A guarantor enables a vessel owner to make that demonstration and qualify for a COFR, by providing a guaranty against the vessel owner's potential liability under OPA or CERCLA. The guaranty is for the benefit of the U.S. government or other parties that may be harmed by an incident covered by these laws; a claimant that is unable to obtain compensation swiftly from the vessel owner can demand it from the guarantor. The guarantor is not meant to assume the liability instead of the vessel owner, but rather to facilitate compensation to the injured parties. The guarantor may then seek reimbursement from the vessel owner.

12. The Petitioner provides COFR Guaranty documentation pursuant to its Standard Terms and Conditions ("STCs"). An interested party applies to the Petitioner for cover on the basis of the Petitioner's STCs and the Petitioner thereafter provides the necessary financial guaranty.
13. By a premium quotation dated 7 December 2005 (the "Premium Quotation"), the Petitioner offered to provide a COFR Guaranty to the Company. The signed Premium Quotation (which included the incorporated material, notably the STCs) took effect as a contract between the Petitioner and the Company (the "Financial Guarantee Agreement"). The Petitioner relies on the Financial Guarantee Agreement for its full terms and legal effect.
14. The fundamental nature of the Financial Guarantee Agreement was that the Company would pay a premium, in consideration of which the Petitioner would issue a COFR Guaranty and support the Company in its application for a COFR.
15. The Financial Guarantee Agreement also provided that the Company would indemnify the Petitioner in the event of the Petitioner being obliged to pay under the COFR Guaranty; that the Company would indemnify the Petitioner for the Petitioner's costs and expenses incurred in matters relating to the COFR Guaranty.
16. As set out in the STCs, in the event that the Petitioner is ultimately called on to settle any claim by the US authorities, the Petitioner is *prima facie* entitled to

be indemnified by the Company in respect of any such liabilities, as well as the Petitioner's expenses in responding to such a demand, pursuant to clause 3.1 of the STCs.

17. Clause 3.1 provides that the Company shall on demand jointly and severally indemnify SIGCO and hold it harmless in respect of, *inter alia*, (i) amounts paid by SIGCO under the terms of the COFR Guaranty, (ii) interest in respect of amounts paid under the COFR Guaranty, and (iii) expenses of every kind incurred by SIGCo in relation to the CORF Guaranty.

#### THE UNDERLYING CLAIM

18. On or about 27 April 2006, the Vessel ran aground on shallow coral reef off Tallaboa, Puerto Rico. At the time, the Vessel was carrying about 300,000BBLs of fuel oil. The grounding of the Vessel caused damage to the coral reef habitat. The Vessel was successfully refloated less than 24 hours later.
19. In 2015, the Puerto Rican Department of Natural and Environmental Resources ("NER") and the NOAA issued a Final Primary Restoration Plan and Environmental Assessment to restore the coral reef habitat.
20. In July 2016, the NOAA presented a claim based on damages caused by a substantial threat of oil pollution under OPA in the sum of US\$5,932,380.20 to the Company and Ernest Jacob GmbH & Company KG (the beneficial owner and operator of the Vessel at the time of the incident). This claim was not satisfied by any of the interested parties. As permitted under OPA in the event of an unsatisfied claim, the NOAA submitted this claim to the NPFC as a claim against the Oil Spill Liability Trust Fund ("OSLTF").
21. The NPFC determined in its February 2019 and 30 May 2019 rulings that the NOAA had presented a proper claim for compensation under OPA for damages resulting from the April 27, 2006 grounding, and correspondingly that the grounding was a pollution event under OPA.

22. In May 2019, the NPFC issued a determination of the NOAA's Primary Restoration Plan claim for US\$4,403,590.98 in total compensation and a contingent authorisation for future reimbursements in the amount of US\$794,183.46. A total of US\$4,403,590.98 was paid to the NOAA from the OSLTF. The NPFC thereupon became subrogated to NOAA's claim.
23. Further, on 23 September 2019, the Petitioner received a demand from the NPFC for US\$4,455,391.98, consisting of the original NPFC award plus an additional US\$51,808.00 in "Coast Guard Personnel" Itemized Expenses, and insisting that response to the "debt" be forthcoming within 60 days (the "Underlying Claim").
24. In October 2020, a draft Compensatory Restoration Plan for Phase II of the coral reef restoration project was issued (the "Compensatory Restoration Plan").
25. There are claims against the Petitioner in the United States of America for US\$4,455,391.98 for primary restoration, and further unresolved claims for compensatory damages in the approximate amount of US\$29,000,000.
26. In addition to the claim stated above, as particularised below, the Petitioner has incurred legal fees and expenses recoverable from the Company in the amount of US\$1,202,199.84 as of 23 November 2020, which has been demanded from the Company but not paid and is now due and owing. Additional recoverable legal fees and expenses have been incurred but not yet billed.

#### LEGAL FEES DUE AGAINST THE COMPANY

27. On or about 20 June 2017, the Petitioner engaged the services of Moseley Prichard Parrish Knight & Jones ("MPPK&J"), a US firm of attorneys to act on its behalf in negotiations and settlement discussions with the US Department in respect of the Underlying Claim.
28. On 23 November 2020, MPPK&J sent a formal demand by way of an interim invoice for the payment of the legal fees to the Company care of its P&I

Insurers' counsel, Blank Rome and others, in the amount of \$1,202,199.84. This demand was sent to the Company in accordance with clause 3.1.2(c) of the STCs as a demand for "*expenses of every kind . . . incurred by SIGCo.*"

29. As of 23 November 2020, the Petitioner had incurred legal fees and expenses in the amount of US\$1,202,199.84 in this respect (the "Claim"). Since that date, the Petitioner has incurred significantly more costs and expenses but not yet billed.
30. The Petitioner has not received a response from the Company to its 23 November 2020 demand due to the Company remaining struck from the Register.
31. The legal fees remain due and owing and the Company is unable to pay its debts.

#### GROUNDS FOR RESTORATION TO THE REGISTER AND WINDING UP OF THE COMPANY

32. The Petitioner submits that it is just that the Company be restored to the Register so that: (i) official liquidators may be appointed to investigate the affairs of the Company and identify and realise its assets; (ii) the Petitioner can submit proof of debt for sums outstanding in respect of the Claim and the formal demand served on the Company; (iii) the affairs of the Company can be properly wound down in an official liquidation; and iv) the Petitioner can present its claims to the Company's insurers in the name of the Company.
33. In the circumstances, it is just and equitable that the Company be restored to the Register and wound up pursuant to Section 92(e) provisions of the Companies Act.
34. Further and/or in the alternative, the Company is liable to be wound up under section 92(d) of the Companies Act on the basis that it is unable to pay its debts pursuant to section 93(c) of the Companies Act, as evidenced by:

- (i) It was struck off due to the resignation of the Registered Office for non-payment of fees;
- (j) It is unable to pay the amounts due and owing to the Petitioner arising out of the demand or the Claim.

#### NOMINATION OF JOINT OFFICIAL LIQUIDATORS

- (i) The Petitioner nominates Richard Lewis and Andrew Joseph Childe of FFP Limited, 2<sup>nd</sup> Floor, Harbour Place, 159 Mary Street, George Town, Grand Cayman, Cayman Islands as Joint Official Liquidators of the Company.

#### THE PETITIONER THEREFORE HUMBL Y PRAYS THAT

1. The Company be restored to the Register.
2. The Company be wound up by the Court pursuant to the Companies Act.
3. Richard Lewis and Andrew Joseph Childe of FFP be appointed Joint Official Liquidators of the Company.
4. The Joint Official Liquidators be permitted to exercise any of the powers specified in Part I of Schedule 3 of the Companies Act with further sanction of the Court, and any of the powers specified in Part II of Schedule 3 of the Companies Act with or without further sanction of the Court.
5. The Joint Official Liquidators have sanction to engage attorneys and other professionally qualified persons both in and outside the Cayman Islands pursuant to paragraph 11 of Part I of Schedule 3 of the Companies Act.
6. The Joint Official Liquidators have sanction to seek recognition of their appointment in the United States of America, the United Kingdom, and any other jurisdictions that the Joint Official Liquidators deem appropriate.
7. The costs of and incidental to the Petition be paid forthwith out of the assets of the Company as an expense of the liquidation.

8. Such other order or directions may be made as the Court deems fit.

Dated: 5th November 2021

*Conyers Dill & Pearman LLP*

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CONYERS DILL & PEARMAN LLP

Attorneys for the Petitioner

NOTE: It is intended to serve this Petition upon:

1. Margara Shipping Ltd. at its last known registered office located at Ocorian Trust (Cayman) Limited, Windward 3, Regatta Office Park, P.O. Box 1350, Grand Cayman, KY1-1108, Cayman Islands; and
2. The Registrar of Companies.

NOTICE OF HEARING

This Petition having been presented to the Court on the 5th day of November 2021 will be heard at the Law Courts, George Town, Grand Cayman on the 6th day of December 2021 at 2:30pm am/pm or as soon thereafter as the Petition can be heard.

