

**BEFORE THE COMMISSIONER OF INSURANCE**

**STATE OF GEORGIA**

**IN THE MATTER OF:**

**REORGANIZATION PLAN  
FOR MAG MUTUAL  
INSURANCE COMPANY**

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**CASE NUMBER 11018870**

**ORDER**

**Background**

MAG Mutual Insurance Company, a Georgia domestic mutual insurance company (the "Company"), filed with the Georgia Insurance Department (the "Department") on March 17, 2017, the First Reorganization Plan for MAG Mutual Insurance Company and on May 4, 2017, the First Amended and Restated Reorganization Plan for MAG Mutual Insurance Company (the "Plan") (J-1, J-7, J-14). The Company filed a Restated Plan of Reorganization, which superseded the Plan in its entirety, on May 24, 2017 (the "Restated Plan") (J-12). Both the Plan and the Restated Plan concern the proposed reorganization of the Company by the creation of a mutual insurance holding company system, including the conversion of the Company from a Georgia domestic mutual insurance company to a Georgia domestic stock insurance company (the "Converted Stock Company") pursuant to §§33-13A-1 *et seq.*, the Mutual Insurance Holding Company Act.

On May 5, 2017, the Georgia Insurance Commissioner Ralph Hudgens (the "Commissioner") signed a Notice of Public Hearing regarding the Plan pursuant to O.C.G.A. §§33-13-3(d), 33-13A-3 and 33-13A-4 (Exhibit J-6, Transcript, p 3, 10). On May 10, 2017, the Company received the Notice of Public Hearing regarding the Plan from the Department (Exhibit J-6, Tr., p 6).

The public hearing regarding the proposed transactions described in the Restated Plan was convened on May 31, 2017, at 9:00 a.m., in the Hearing Room, 7th Floor, West Tower, Floyd Building, 2 Martin Luther King Drive, Atlanta, Georgia 30334, the scheduled time, date, and place as specified in the Notice of Public Hearing (J-6). Brian Casey, Esq. and Elizabeth Campbell, Esq. with Locke Lord, LLP, Atlanta, Georgia, represented the Company at the public hearing (Tr., p 8). Michael Yaworsky, Esq. and Sarah Crittenden, Esq. represented the Legal Division of the Department (“Legal Division”) at the public hearing (Tr., p 7). There were no motions by any parties to intervene in the public hearing. The Legal Division and representatives of the Company presented documentary evidence by joint stipulation, and those documents are entered in the record as Joint Exhibits J-1 through J-14<sup>1</sup> (Tr., pp 9-12).

The Company presented two witnesses: Neil Morrell, President of the Company, (Tr., pp 23-44) and Naveed Anwar, C.A., Chief Financial Officer and Treasurer of the Company (Tr., pp 44-60). The Legal Division presented one witness: Christopher Taylor, Assistant Director of the Insurance and Oversight Division of the Department (Tr., pp 66-76). Alan Joffe, M.D., a policyholder of the Company, also testified (Tr., pp 64-65). All documentary exhibits were jointly stipulated to by the Company and the Department, and were duly admitted into evidence as Exhibits J-1 through J-14 (Tr., p 12). These exhibits included the Notice of Hearing, the Plan, the Restated Plan, and associated correspondence, procedural documents, and affidavits from certain of the witnesses. All of the testimony and exhibits that were received into evidence are shown by the official transcript of the public hearing.

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<sup>1</sup> All documentary evidence entered into the record at the May 31, 2017, public hearing in this matter is available for public examination at [www.oci.ga.gov](http://www.oci.ga.gov).

At the conclusion of the public hearing, both counsel waived their closing statements (Tr., p 76). However, the Legal Division reiterated its request that any approval of the Restated Plan by the Commissioner be conditioned upon the [Department's] receipt of a "no action" letter from the U. S. Securities and Exchange Commission (the "SEC") relating to the proposed reorganization (Tr., p 77). At that point, the Commissioner adjourned the hearing (Tr., p 77). After careful consideration of the record as a whole, the substantial evidence presented at the public hearing and entered into the record supports the following Findings of Fact and Conclusions of Law:

**Findings of Fact**

1.

The Notice of Public Hearing was signed on May 5, 2017, and sent to the Company on May 10, 2017 (Tr., p 6, Exhibit J-6). The Notice of Public Hearing scheduled the hearing in this matter for May 31, 2017 (Tr., p 6, Exhibit J-6). On May 12, 2017, the Company caused a copy of the Notice of Public Hearing to be mailed to the Company's approximately 8,000 policyholders at least (7) seven days before the public hearing (Exhibit J-8, Tr., pp 32-33).

2.

As required by the Notice of Public Hearing, the Department caused the Notice of Public Hearing to be published in *The Fulton County Daily Report*, the official legal organ for legal and administrative proceedings in Fulton County, Georgia on May 11, 2017 (Exhibit J-9).

3.

Over the course of the Department's review of the Company's proposed reorganization, the Department has received from the Company the Plan, the Restated Plan and other materials

filed with the Department by the Company (Exhibits J-1, J-3, J-5, J-7, J-8, J-10, J-11, J-12 and J-13).

4.

Under the terms of the Plan and the Restated Plan, the Company declared its intention to reorganize its corporate organizational structure. Mr. Morrell testified that the Board of Directors of the Company unanimously approved both the Plan on March 20, 2017, and the Restated Plan on May 24, 2017 (Tr., p 32). Mr. Anwar testified that the Company will form two new companies: a mutual holding company, which will be named MAG Mutual Holding Company (the "MHC"), and a subsidiary intermediate holding company, which will be named MAG Mutual Intermediate Holding Company (the "IHC") (Tr., pp 49-50).

5.

If the proposed reorganization is approved by the Commissioner and by a two-thirds (2/3) vote of the Company's policyholders that vote, either in person or by proxy, at the annual meeting of the Company's policyholders scheduled for July 26, 2017, the Company would then be converted into a stock insurer ("Converted MMIC") (Tr., pp 21-23, 33-34, 40-41, 43, 50, 54-55). The mutual policyholder membership interests of all the Company's policyholders will be exchanged for mutual membership interests in the MHC (Tr., p 51). Thereafter, Converted MMIC will issue one hundred percent (100%) of its common stock to the IHC (Tr., p 50). In turn, the IHC will issue one hundred percent (100%) of its common stock to the MHC (Tr., p 49).

6.

One of the reasons the Company is pursuing the Restated Plan is to allow IHC to issue shares as consideration for potential transactions (Tr., pp 58-59, Exhibit J-14). Those

transactions in the current structure can generally only be financed through cash or the issuance of surplus notes (Tr., pp 58-59). Therefore, the approval of the proposed reorganization would provide the Company with more flexibility to compete in today's insurance environment (Tr., p 21).

7.

The Company presently qualifies as a Georgia domestic mutual insurer under the insurance laws of Georgia and, following the closing of the proposed reorganization, the Converted MMIC will qualify as a domestic *stock* insurer under the insurance laws of Georgia (J-14).

8.

At the request of the Legal Division, the Company provided an affidavit of its CFO and Treasurer, Naveed Anwar, which provided evidence that the proposed reorganization would not violate any of the six requirements set forth in O.C.G.A. §33-13-3(d) (Exhibit J-5, Tr., p 3, 10, pp 16-17, 51-52). In support of his affidavit, Mr. Anwar testified that the statements contained in the affidavit were still true and correct (Tr., p 52). Mr. Anwar also testified that the Company's outside tax advisors have confirmed that the reorganization plan contemplated by the Restated Plan would be a tax-free transaction under the federal Internal Revenue Code - - both to the Company and to its policyholders (Tr., pp 53-54).

9.

Both Mr. Morrell and Mr. Anwar testified that the proposed reorganization would allow the Company to improve its capital position and its operational flexibility (Tr., pp 25-26, 45-46, Exhibit J-13). They also testified that these stated advantages do not harm or adversely affect the policyholder's rights in any way (Tr., p 28, 57).

10.

Messrs. Taylor, Morrell, and Anwar concluded that the terms of the Restated Plan are fair and equitable to the Company's policyholders (Tr., p 34, 39, 58, 59, pp 69-70). These same witnesses also concluded that the Restated Plan properly protects the interests of the Company's policyholders, specifically by preserving their membership interests and voting rights at the MHC level, and by protecting their contractual rights under the insurance policies issued by Converted MMIC (Tr., p 39, 46, 58, pp 69-70, Exhibit J-15).

11.

No evidence in the record exists to cause the Department to have any concerns regarding the competence, experience and integrity of the persons who would control the operation of the MHC, the IHC and Converted MMIC following the reorganization (Tr., pp 38-39, 69-71, p 74, Exhibit J-14). Following the reorganization, Converted MMIC, the IHC and the MHC would be managed by the very same directors and executive officers who currently manage the Company (Tr., pp 36-38). The biographical affidavits of the existing directors and executive officers of the Company are all on file with the Legal Division and no questions or reservations have been raised by the Legal Division about any of those persons or their fitness to serve (Tr., pp 38-39).

12.

On several occasions subsequent to the filing of the Plan and the Restated Plan, the Legal Division requested the Company to provide additional information and documents concerning the reorganization and the transactions contemplated thereby (Exhibits J-2, J-4, Tr., p 6, pp 15-16). The Company filed or submitted to the Legal Division additional information and documents, ultimately to the satisfaction of Mr. Taylor and the Legal Division (Exhibits J-3, J-5, J-8, J-11, J-13, J-14, Tr., p 6, pp 15-17, 69-71).

13.

Both of the witnesses for the Company, Neil Morrell and Naveed Anwar, recommended that the Restated Plan be approved by the Commissioner (Tr., p 39, 58). The sole witness for the Legal Division, Mr. Taylor, testified that he recommended that the Commissioner approve the Restated Plan, contingent upon the Department's receipt of the SEC letter (Exhibit J-14, Tr., pp 69-71).

14.

Alan Joffe, M.D., has been a policyholder of the Company for approximately 18 years. (Tr., p. 61). He testified that if the proposed reorganization is something that will make the Company stronger, he supports it (Tr., pp 64-65).

#### **Conclusions of Law**

1.

The record demonstrates full compliance with O.C.G.A. §33-13-3(d)(2), which required the Department to provide notice to the Company of the public hearing in this matter at least 20 days prior to the scheduled public hearing.

2.

The record demonstrates full compliance with O.C.G.A. §33-13-3(d)(2), which required the Company to provide notice of the scheduled public hearing to its policyholders.

3.

The record demonstrates full compliance with O.C.G.A. §§33-13A-3 and 33-13A-4, which provide that the Commissioner shall hold a public hearing prior to his approval or disapproval of a Mutual Holding Company Reorganization Plan.

4.

The substantial evidence of the record demonstrates that the Restated Plan properly protects the interests of the Company's policyholders. This satisfies the first standard set forth in O.C.G.A. §33-13A-3(a).

5.

The substantial evidence of the record demonstrates that the Restated Plan is both fair and equitable. This satisfies the second standard of O.C.G.A. §33-13A-3(a).

6.

There is a lack of clarity in the record regarding the applicability of O.C.G.A. §33-13-3(d)(1) to the instant case (Tr., pp 16-17, J-5, J-14). By way of background, according to language in O.C.G.A. §33-13-3(d)(1), the code section is applicable to "merger(s) or other acquisitions of control... [of a domestic insurer]." One argument is that O.C.G.A. §33-13-3(d)(1) is inapplicable to the pending case for the following reasons: (1) all of the Company's current policyholders will become all of the members of the new mutual insurance holding company, and (2) the Company will simply convert from a mutual insurance company form to a stock insurance company form. Therefore, there will not be any change in the ultimate control of the Company (Exhibit J-5). Consequently, the proposed reorganization should not logically be considered a "merger or other acquisition of control."

Additionally, the statutory scheme of O.C.G.A. §33-13-3(d)(1) appears to contemplate the involvement of a domestic insurer *and* a separate and distinct acquiring or merging company or other entity. Such a statutory scheme does not appear to fit easily within the confines of the Company's proposed reorganization. It is significant to note, however, that O.C.G.A. §33-13A-3(a) provides in key part: "A reorganization pursuant to this Code section is subject to the requirements of Code Section 33-13-3." Moreover, O.C.G.A. §33-13A-4(b) provides in key



part: “A merger of policyholders’ membership interests in a mutual insurer into a mutual insurance holding company shall be deemed to be the acquisition of an insurance control company pursuant to Code Section 33-13-3 and is subject to the requirements of Code Section 33-13-3.”

With regard to the requirements in O.C.G.A. §33-13-3(d)(1), both the Company and the Legal Division contributed to the stipulated exhibits in evidence (Exhibits J-5, J-14). An examination of that documentation shows that, to the extent the requirements in §33-13-3(d)(1) are applicable to the instant case, the Company has satisfied all of the requirements in that code section (Exhibits J-5, J-14).

7.

The Department is not in a position to ensure that the Company’s policyholders will ultimately benefit from the proposed reorganization. Based on a thorough review of all documents and testimony in evidence, however, the Restated Plan meets all of the statutory criteria for approval.

**WHEREFORE**, it is hereby **ORDERED** as follows:

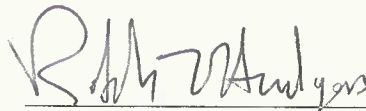
1. The proposed reorganization of MAG Mutual Insurance Company, as described in the Restated Plan and the documentary exhibits and testimony admitted at the public hearing, is hereby **APPROVED**, subject to the condition that the Department receives, prior to the Company’s July 26, 2017, annual meeting, a no-action letter from the SEC to the effect that the staff of the SEC will not recommend enforcement action against the Company if the Company causes its current and future policyholders to become members of the MHC in connection with or after the reorganization without registration under the Securities Act of 1933 or the Securities Exchange Act of 1934.

2. The Company is ordered to send a copy of this Order, along with the Company's notice of its annual meeting, to its policyholders for the purpose of their voting on the Restated Plan, pursuant to the requirements of O.C.G.A. §33-13A-10. The Company shall provide to the Department a copy of the final materials sent by the Company to its policyholders regarding the Restated Plan, along with a certification that the materials have been sent to all policyholders, within five (5) business days of such mailing to the policyholders.

3. The Company is further ordered that any material changes to the Restated Plan prior to the Company's policyholders' vote thereon, must be presented to the Commissioner and obtain his approval before such policyholder vote.

4. The Company shall also notify the Department of the result of the vote of the Company's policyholders on the Restated Plan within five (5) business days of such policyholder vote.

Given under my hand and Official Seal, effective this 14<sup>th</sup> day of June, 2017.



**RALPH T. HUDGENS**  
**COMMISSIONER OF INSURANCE**  
**STATE OF GEORGIA**



OFFICE OF THE COMMISSIONER OF INSURANCE

STATE OF GEORGIA

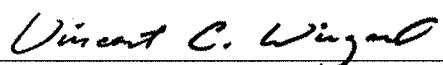
IN THE MATTER OF: )  
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REORGANIZATION PLAN ) CASE NUMBER 11018870  
FOR MAG MUTUAL )  
INSURANCE COMPANY )

CERTIFICATE OF SERVICE

I do hereby certify that I have this date served copies of the within and foregoing *Order* by placing one copy in the United States Mail, postage prepaid, certified, with return receipt requested, properly addressed as follows:

Brian T. Casey, Esq.  
Locke Lord, LLP  
Terminus 200  
3333 Piedmont Road, NE  
Suite 1200  
Atlanta, Georgia 30305

This 14<sup>th</sup> day of June, 2017.

  
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Vincent C. Wiegand, Esq.  
Director, Administrative Procedure Division  
Georgia Department of Insurance