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August 27, 2021

Via email: tpozen@gmpllp.com

Mr. Thorn Pozen
Goldblatt Martin Pozen LLP
1432 K Street NW
Suite 400
Washington, DC 20005

Re: Responses from Amalgamated Casualty Insurance Company ("Amalgamated") to the August 3, 2021, Initial Interrogatories and Document Requests

Dear Mr. Pozen:

We write with regard to the August 12, 2021 written responses and additional documentation Amalgamated provided (collectively, the "Responses") to the Interrogatories and Document Requests served on behalf of Commissioner Karima M. Woods. We have had an opportunity to consider the Responses and appreciate Amalgamated's efforts in getting them to us in a timely fashion. Indeed, much of the information is very helpful, and will assist the Commissioner's review of Amalgamated's proposed demutualization plan pursuant to DC Stat. 31–901 *et seq*. (the "Demutualization Act"). However, we are concerned that, taken as a whole, the Responses reflect a view of the scope of the Commissioner's role and obligations that are at odds with her explicit statutory authority under the Demutualization Act.

The Commissioner's role in reviewing any proposed demutualization is not a perfunctory function—it is a substantive review to ensure that Amalgamated has established all independent elements necessary for approval of the proposed demutualization plan. There are three specific and independent standards that Amalgamated must establish have been met before the Commissioner can approve the proposed demutualization plan:

(1) The provisions of this section have been complied with;
(2) The plan will not prejudice the interests of the members; and
(3) The plan's method of allocating subscription rights is fair and equitable.

DC Stat. 31–903(a). Even if Amalgamated's management establishes to the Commissioner's satisfaction that "[t]he provisions of this section have been complied with" and "[t]he plan's method of allocating subscription rights is fair and equitable," Amalgamated must also establish on the record to the Commissioner's satisfaction that "[t]he plan will not prejudice the interests of the members" under the particular facts and circumstances of the demutualization plan before her. There is no need for the Commissioner to seek any further codification by the D.C. Council

of the elements she finds to be necessary to satisfy this prong of the test for approval, which is of equal importance with the other two prongs.

The circumstances matter in evaluating whether or not Amalgamated's demutualization will prejudice the interests of its members. Under Amalgamated's proposed demutualization plan, substantially all of its members will receive cash in exchange for their interests as members, regardless of how the plan is clothed. Amalgamated's management could have proposed a demutualization plan based in whole on subscription rights; however, such an approach under the circumstances of (1) a well-capitalized mutual insurer that, under Amalgamated's own analysis, has no current need for additional capitalization, and (2) mutual members who are mostly small owner-operated taxi businesses, would have made it difficult for the Commissioner to find that such a demutualization plan would "not prejudice the interests of the [Amalgamated] members." Moreover, since the demutualization plan anticipates that as many as 98% of Amalgamated's members will elect (or default to) the cash option, the Commissioner is compelled to consider the application of the standards under DC Stat. 31-908 for an alternative plan of conversion.

What appears to be lacking so far is a cohesive rationale for why the Commissioner should find that the plan for the demutualization of Amalgamated would not prejudice the interests of its members. The justifications for the demutualization proffered by Amalgamated appear internally inconsistent. On the one hand, Amalgamated's business has been harmed by COVID-19 and competition from non-conventional competitors (Uber and Lyft) and Amalgamated needs to expand into other markets. On the other hand, Amalgamated is so well capitalized in relation to its business that very little of the proceeds from the stock issuance by what will become Amalgamated's Holding Company will go to Amalgamated. The proceeds raised from the stock sale will be used by the Holding Company to acquire other businesses. That begs the ultimate question of why must Amalgamated be demutualized to achieve the objectives to be accomplished *outside* of Amalgamated, and why would the demutualization of a well-capitalized mutual company not prejudice the members' interests when the ultimate business focus of the demutualized insurer will shift from policyholder interests to shareholder returns?

These are critical questions and require resolution in order for a record to be developed that is sufficient for the Commissioner to find that each prong of the D.C. Demutualization Act's approval standard has been satisfied; and these questions require direct responses.

Consistent with the foregoing, we have identified below certain Responses for which additional information is needed in order for the Commissioner to review the proposed plan for conformity with the Demutualization Act.

Follow Up Inquiries on Specific Responses

A. Response B.3:

Initially, we observe that Amalgamated's Bylaws provide that "[a] *quorum* at any meeting of the Policyholders shall consist of *a majority of the members represented in person or by proxy*. (As Amended, September 28, 1982.) When a quorum is present at any meeting, *a majority of the voting members thereat* shall decide any question that may come before the meeting. In the *absence of a quorum*, those present may *adjourn the meeting* to a future date, but *until a quorum is secured may transact no other business*." (Article I, Section V.)

If general proxies are used to establish a quorum, how many general proxies from the 1,589 members are currently held and by whom, and how many votes by members present in person or by special proxy will be needed in the opinion of Amalgamated's counsel to secure approval of the demutualization? For example, if 400 special proxies are returned in favor of the demutualization, how many of the remaining general proxies (1,189 if there are general proxies from all members) would be used to establish a quorum? Would all remaining general proxies be used? Or, would only 395 general proxies be used to meet the minimum quorum requirement of 795 members who would be present by special proxy and by general proxy (which is what the Application implies)? Who will make that decision and on what basis will it be made? A majority of the members present at a meeting where a quorum is present (in person or by proxy) must vote to approve the demutualization. If all remaining general proxies are used to establish a quorum, it would be impossible (assuming general proxies from all members) in this scenario to achieve a majority vote in favor of the demutualization (only 400 affirmative votes from special proxies when 795 votes would be needed if all members were present by special proxy and general proxy) unless the holder of the general proxies (Amalgamated management or ARM) votes the general proxies it holds in favor of the demutualization. On the other hand, using only 395 general proxies and withholding as many as 794 general proxies in this example to assure adoption by a majority of a minimum quorum could be seen as manipulative. There are of course more extreme scenarios that could be encountered.

Please provide further explanation as to the extent to which general proxies will be used to secure member approval, including specific legal authority for all conclusions. Also, please confirm how members may participate in the special meeting.

B. Response B.5:

Please provide a list of the "numerous appraisals" conducted by Boenning related to demutualizations of property and casualty insurers under "similar statutory regimes." For each transaction, please indicate (1) the valuation methodology Boenning used in its appraisal and the resulting market value of the demutualizing company, (2) the consideration offered to the members (e.g., subscription rights, cash, stock, premium credits, other consideration, and/or any combination thereof), (3) for any demutualization where a cash alternative for members was included, the methodology Boenning used to value the amounts that would be delivered to the members and whether that was accepted without modification by the reviewing Commissioner,

(4) the statutory capital, surplus and risk-based capital ratio of the demutualizing insurer as of the year-end immediately preceding the demutualization, (5) for any demutualizations based in any part on subscription rights, the percentage of the subscription rights exercised by the members, and (6) whether the governing demutualization statutes required a specific methodology for either the appraisal of the company or the value to be provided to the members. We also call to your attention (by way of example) the demutualization of Saucon Mutual Insurance Company under a Pennsylvania demutualization statute substantially similar to the DC Demutualization Act where a valuation was conducted by the Pennsylvania Department utilizing a combination of a discounted cash flow analysis and a "sum of parts" analysis (e.g., an adjusted statutory balance sheet analysis) to establish the cash value to be delivered to the members.

Other Amalgamated responses acknowledge that Amalgamated's policyholders are highly unlikely to have the wherewithal to exercise their subscription rights in any material way. So, please explain why the benefit "from an investment standpoint, [of] purchasing stock at 51.6% of proforma book value" is a benefit to the members? Please also explain why this benefit of a lower purchase price is not one that redounds principally to Amalgamated's insiders (trustees, officers and employees), especially where "senior management will own 35% of the stock based upon current midpoint valuation"?

Please also explain and substantiate the assertion that 35% ownership of the voting stock of a publicly traded company is "less than voting control" in the face of a statutory presumption of control at 10% under DC Stat. 31-701.

C. <u>Response B.7</u>:

First, please consider the overarching approval standards initially identified in this letter. Second, while the use of an "independent evaluation of pro forma market value" is the statutory metric for valuing the total price of the capital stock to be issued (with no specific methodology specified), please provide the justification for concluding it is also the proper foundation for using the Black-Sholes model to determine the default cash consideration alternative to subscription rights to be provided to Amalgamated's members in exchange for their interests as mutual members of a company whose book value is significantly higher than its market value, and where that book value appears to have been accumulated in significant part as a result of the board of trustees' prior decisions not to declare and pay dividends to Amalgamated's members.

D. <u>Response B.11</u>:

This Response is legal advocacy challenging the Interrogatory and does not by and large respond to the questions. The Commissioner is not in agreement with the legal positions argued in the Response. Please respond to the questions. For clarity, please see the concerns initially identified in this letter, and the entire standard that Amalgamated must satisfy for Commissioner approval.

E. Response C.16a (Document Request):

DC Stat. 31-906(l) prohibits any person acquiring more than 5% of the stock to be issued in a demutualization unless the Commissioner approves the acquisition in excess of 5%. Amalgamated has requested that approval from the Commissioner for the Roumell Opportunistic Value Fund to acquire more than 5% of the stock to be issued. The Commissioner has requested information consistent with what would be provided under DC Stat. 31-703 in order for her to evaluate whether to approve the request. The information identified in the Interrogatory should be provided, or Amalgamated's request withdrawn (in which case the statutory restriction will apply).

F. Response C.16b (Document Request):

Please see above comment and request on the C,16a Response. Moreover, any information delivered to the Commissioner in connection with the 2011 Form A is now a decade old and cannot be relied upon in connection with the pending request.

G. Response C.16c (Document Request):

Please see above comment and request on the C.16a Response.

We look forward to receiving responsive information. It may be helpful to schedule a call to discuss the status and Amalgamated's intentions concerning these additional requests.

Sincerely,

Shaunda Patterson-Strachan

Shaunda Patterson-Strachan

cc: Adam Levi
Philip Barlow
Nathaniel (Kevin) Brown
Dana Sheppard