

BEFORE THE DEPUTY INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

In Re:	:	Pursuant to Sections 204, 205, and
	:	207 of the GAA Amendments Act of
Application of Daily Underwriters of	:	1990, Act of December 19, 1990,
America in Support of the Request for	:	P.L. 834, No. 198, <u>as amended</u> , 15
Approval to Recapitalize	:	P.S. §§21204, 21205, and 21207.
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	:	
	:	Order No.: ID-RC-04-05

DECISION AND ORDER

AND NOW, on this 24th day of March, 2004, Stephen J. Johnson, Deputy Insurance Commissioner of the Commonwealth of Pennsylvania (“Deputy Commissioner”), hereby makes the following Decision and Order:

Pursuant to the GAA Amendments Act of 1990 and in consideration of the documents, presentations, and reports received, as well as other inquiries and studies as permitted by law, the Deputy Commissioner hereby makes the following findings of fact:

FINDINGS OF FACT

Identity of Parties

1. Daily Underwriters of America (“Daily Underwriters”) is a domestic stock property insurance company organized pursuant to the laws of the Commonwealth of Pennsylvania with its principal place of business located in Carlisle, Pennsylvania.

Filing of the Application

2. On January 26, 2004, the Pennsylvania Insurance Department (“Department”) received an initial application (which together with all material received subsequently is collectively referenced as “Application”) from Daily

Underwriters requesting approval of a plan of recapitalization.

3. The GAA Amendments Act of 1990, Act of December 19, 1990, P.L. 834, No. 198, as amended, 15 P.S. §§21205 and 21207 (“GAA Amendments Act”) provides that any recapitalization of a domestic insurance corporation must be filed with the Department for approval or disapproval.
4. The Application was filed with the Department pursuant to Section 205 of the GAA Amendments Act.

#### Department Procedures

5. On February 21, 2004, the Department published notice in the *Pennsylvania Bulletin* that the Application was submitted by Daily Underwriters and such notice invited interested persons to submit comments to the Department regarding the Application for a thirty-day period, ending March 22, 2004.
6. The Department received no comments regarding the Application during the thirty-day period.

#### Description of the Proposed Transaction

7. On January 22, 2004, the Board of Directors and the shareholders of Daily Underwriters approved an amendment to Daily Underwriters’ Articles of Incorporation that would reduce the par value of its common stock from \$12.00 per share to \$10.50 per share (herein afterwards referenced as the “Amendment”).
8. As described in the Application, Daily Underwriters’ Articles of Incorporation currently authorize 300,000 shares of common stock with a par value of \$12.00.
9. As described in the Application, Daily Underwriters currently has 150,000 shares of common stock issued and outstanding for a total stated capital of \$1,800,000.
10. As described in the Application, Daily Underwriters would distribute a previously declared and approved 15 percent per share stock dividend prior to the implementation of the Amendment (“Stock Dividend Distribution”).
11. As Described in the Application, the Stock Dividend Distribution would result in an increase in the number of issued and outstanding shares of common stock from 150,000 shares to 172,500 shares with a related increase to Daily Underwriters’ stated capital from \$1,800,000 to \$2,070,000.
12. As described in the Application, Daily Underwriters would implement the Amendment upon the Stock Dividend Distribution.

13. As described in the Application, Daily Underwriters' stated capital would decrease from \$2,070,000 to \$1,811,250 upon implementation of the Amendment, (herein afterwards referenced as the "Plan of Recapitalization").
14. As described in the Application, the reduction in the amount of capital stock as a result of the Plan of Recapitalization would immediately be recorded as paid in surplus.
15. As described in the Application, the paid in surplus of Daily Underwriters would be \$442,244 immediately following the Plan of Recapitalization.
16. As described in the Application, no cash would be removed from Daily Underwriters as a result of the Plan of Recapitalization.

#### Standards for Review

17. In accordance with Section 204(a) of the GAA Amendments Act, any amendment of the articles of incorporation of a domestic insurance corporation that may be affected only by action or with the approval of the shareholders shall become effective only if approved by the Department.
18. In accordance with Section 204(c) of the GAA Amendments Act, the capital stock of an insurance corporation shall not be reduced below the minimum amount of capital stock required by law for the formation of the corporation.
19. In accordance with Section 205(b) of the GAA Amendments Act, a recapitalization shall be approved if it is in accordance with law and not injurious to the interests of the policyholders and creditors.
20. The line or lines of insurance for which an insurance company may be incorporated and become licensed to write are set out in Section 202 of the Insurance Company Law of 1921, May 17, P.L. 682 as amended ("Insurance Company Law") (40 P.S. §382).
21. Section 206 of the Insurance Company Law (40 P.S. §386) sets out the minimum amount of paid up capital stock and paid in surplus required of a stock property insurance company for each class of insurance for which it is incorporated.
22. In accordance with Section 206 of the Insurance Company Law (40 P.S. §386), Daily Underwriters is required to maintain a minimum paid up capital stock of \$850,000 to write the classes of insurance for which it is presently licensed.
23. In accordance with Section 206 of the Insurance Company Law (40 P.S. §386), Daily Underwriters is required to maintain a minimum paid in surplus of \$425,000 to write the classes of insurance for which it is presently licensed.

24. Upon completion of the transaction, Daily Underwriters would have paid up capital stock in an amount that would satisfy the statutory minimum required of a stock property insurance company licensed to write the classes of authority currently held by Daily Underwriters.
25. Upon completion of the transaction, Daily Underwriters would have paid in surplus in an amount that would satisfy the statutory minimum required of a stock property insurance company licensed to write the classes of authority currently held by Daily Underwriters.
26. If any of the above Findings of Fact are determined to be Conclusions of Law, they shall be incorporated in the Conclusions of Law as if fully set forth therein.

#### CONCLUSIONS OF LAW

1. Under Section 205 of the GAA Amendments Act, the Department has jurisdiction to review for approval or disapproval the recapitalization of a domestic insurance corporation.
2. The Deputy Commissioner has concluded that the Plan of Recapitalization is consistent with the definition of a recapitalization as defined by Section 205(g) of the GAA Amendments Act.
3. The Deputy Commissioner has concluded that the Application was properly filed pursuant to and in accordance with the GAA Amendments Act.
4. In accordance with Section 204(c) of the GAA Amendments Act, the Deputy Commissioner, based on the Application, has concluded that the Plan of Recapitalization will not reduce the capital stock of Daily Underwriters below the minimum amount of capital stock required by law for the formation of the corporation.
5. In accordance with Section 205(b) of the GAA Amendments Act, the Deputy Commissioner, based on the Application, has concluded that the Plan of Recapitalization is in accordance with law and is not injurious to the interests of the policyholders and creditors of Daily Underwriters.
6. If any of the above Conclusions of Law are determined to be Findings of Fact, they shall be incorporated in the Findings of Fact as if fully set forth therein.

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ORDER

Upon consideration of the foregoing, the Deputy Commissioner hereby makes the following Order:

An approving determination for the Plan of Recapitalization of Daily Underwriters of America, as set forth in the Application, is hereby granted.

This Order is effective immediately, and valid for one year provided there are no material changes to the Application.

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STEPHEN J. JOHNSON  
Deputy Insurance Commissioner  
Office of Corporate and Financial Regulation