

**BEFORE THE COMMISSIONER OF INSURANCE  
OF THE STATE OF KANSAS**

In the Matter of the Joint Application	)	
Filed Pursuant to K.S.A. 40-1220 by	)	
	)	
KANSAS MEDICAL MUTUAL INSURANCE	)	
COMPANY,	)	
	)	
FARMERS HAIL INSURANCE COMPANY,	)	Docket No. 2940-M
	)	
MCPHERSON HAIL INSURANCE COMPANY	)	
	)	
and	)	
	)	
CROP INSURANCE PROTECTIVE	)	
ASSOCIATION OF DENVER	)	

**ORDER**

NOW on this \_\_\_\_\_ day of December, 2000, the above matter comes before the Commissioner of Insurance of the State of Kansas upon the filing of a Joint Application pursuant to K.S.A. 40-1220 (“Joint Application”) by Kansas Medical Mutual Insurance Company, a Kansas domestic mutual insurer organized and operated pursuant to K.S.A. 40-12a01 *et seq.* (“KaMMCO”), Farmers Hail Insurance Company, a Kansas domestic mutual insurer organized and operated pursuant to K.S.A. 40-1501 *et seq.* (“Farmers”), McPherson Hail Insurance Company, a Kansas domestic mutual insurer organized and operated pursuant to K.S.A. 40-1501 *et seq.* (“McPherson”), and Crop Insurance Protective Association of Denver, a Colorado mutual insurer (“CIPA”). KaMMCO, Farmers, McPherson and CIPA are sometimes collectively referred to as the “Applicants”. Farmers, McPherson and CIPA are sometimes collectively referred to as the “FFIC Mutuals”.

The Joint Application, which was filed by the Applicants with the Kansas Insurance Department on December 15, 2000, pursuant to K.S.A. 40-1220, relates to the proposed merger of the FFIC Mutuals with and into KaMMCO, which shall be the surviving company. It is

proposed in the Joint Application that the mergers will occur pursuant to three (3) merger agreements, as follows: (i) a merger agreement among KaMMCO, FFIC and Farmers dated November 17, 2000; (ii) a merger agreement among KaMMCO, FFIC and McPherson dated November 17, 2000; and (iii) a merger agreement among KaMMCO, FFIC and CIPA dated November 17, 2000. The above-referenced merger agreements are sometimes collectively referred to herein as the “Merger Agreements.”

KaMMCO is represented by its attorneys, Polsinelli Shalton & Welte, P.C. The FFIC Mutuals are represented by their in-house attorneys, Claudia Knox and Raymond Fisher. The Kansas Insurance Department is represented by its General Counsel, Kathy Greenlee. Also appearing for the Kansas Insurance Department are Don Gaskill, Chief Examiner, and Patrick Mulvihill of the Financial Surveillance Division.

All parties are relying on documentary and contractual representations filed with the Kansas Insurance Department.

### **FINDINGS OF PUBLIC INTEREST AND POLICY**

The purpose of filing the Joint Application was to obtain the approval of the Kansas Insurance Department for the proposed merger of the FFIC Mutuals with and into KaMMCO. The terms and conditions of the proposed mergers are more fully set forth in the Merger Agreements and the Joint Application.

Significant documents have been reviewed by representatives of the Financial Surveillance Division and the Legal Division of the Kansas Insurance Department, and the Commissioner has had the benefit of their technical expertise and advice.

The Applicants have submitted the following documents as Exhibits to the Joint Application:

- Exhibit A Two (2) originally executed versions of each of the Merger Agreements.
- Exhibit B Affidavit of the secretary of KaMMCO, setting forth the facts necessary to show that KaMMCO complied with all requirements of law with respect to notices to persons entitled to vote with respect to the mergers.
- Exhibit C Affidavit of the secretary of Farmers, certifying that Farmers has no policyholders.
- Exhibit D Affidavit of the secretary of McPherson, certifying that McPherson has no policyholders.
- Exhibit E Affidavit of the secretary of CIPA, certifying that CIPA has no policyholders.
- Exhibit F An instrument appointing the Commissioner of Insurance and her successor or successors in office as the true and lawful attorney of KaMMCO, which shall be the surviving company resulting from the mergers, for service of process, containing and having the same effect as the instrument required by K.S.A. 40-218.
- Exhibit G Certification by KaMMCO's secretary setting forth the number of policyholders of KaMMCO, the number of policyholders represented in person and the number represented by proxy at the special meeting at which the Merger Agreements were considered by the policyholders of KaMMCO, and the number of votes cast by said policyholders for and against such Merger Agreements.
- Exhibit H Financial statement of KaMMCO as of November 30, 2000.
- Exhibit I Financial statement of Farmers as of November 30, 2000.
- Exhibit J Financial statement of McPherson as of November 30, 2000.
- Exhibit K Financial statement of CIPA as of November 30, 2000.
- Exhibit L Certification of the President of KaMMCO, attested to by the secretary of KaMMCO and under the corporate seal of KaMMCO, verifying that KaMMCO has not paid, and will not pay, any fees, commissions or other compensations, or valuable considerations, directly or indirectly, to any person in any manner securing, aiding, promoting or assisting in the merger of the FFIC Mutuals with and into KaMMCO.
- Exhibit M Certification of the President of Farmers, attested to by the secretary of Farmers, verifying that Farmers has not paid, and will not pay, any fees, commissions or other compensations, or valuable considerations, paid or

to be paid, directly or indirectly, to any person in any manner securing, aiding, promoting or assisting in the merger of Farmers with and into KaMMCO.

- Exhibit N Certification of the President of McPherson, attested to by the secretary of McPherson, verifying that McPherson has not paid, and will not pay, any fees, commissions or other compensations, or valuable considerations, paid or to be paid, directly or indirectly, to any person in any manner securing, aiding, promoting or assisting in the merger of McPherson with and into KaMMCO.
- Exhibit O Certification of the President of CIPA, attested to by the secretary of CIPA, verifying that CIPA has not paid, and will not pay, any fees, commissions or other compensations, or valuable considerations, paid or to be paid, directly or indirectly, to any person in any manner securing, aiding, promoting or assisting in the merger of CIPA with and into KaMMCO.
- Exhibit P Certification of the President of Fireman's Fund Agribusiness, Inc. ("FFIC"), attested to by the secretary of FFIC, verifying all fees, commissions or other compensations, or valuable considerations, paid or to be paid, directly or indirectly, to any person in any manner securing, aiding, promoting or assisting in the merger of FFIC with and into KaMMCO.
- Exhibit Q Correspondence from FFIC and KaMMCO as to the current state of affairs of the FFIC Mutuals and the reasons for, and process used, to determine that KaMMCO was a suitable party for the proposed mergers.

The staff of the Kansas Insurance Department has inspected and reviewed the contents of the Joint Application and all Exhibits attached thereto and found that the filing of the Joint Application and Exhibits attached thereto is in accordance with K.S.A. 40-1220 and that the Joint Application and Exhibits attached thereto have provided all the information required under Kansas statutes to enable the Commissioner to render a decision on the Joint Application.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

KaMMCO, a Kansas mutual insurance company, was organized under the laws of Kansas on March 20, 1989, and became authorized to do business in Kansas on June 26, 1989. The mailing address of KaMMCO is 623 W. Tenth Street, Topeka, Kansas 66612.

1. Farmers, a Kansas mutual insurance company, was organized under the laws of Kansas on February 15, 1912 under the name of "The Home Mutual Hail Insurance Company." The present name was adopted on November 3, 1915. The mailing address of Farmers is 10895 Lowell Avenue, Suite 300, Overland Park, Kansas 66210.

2. McPherson, a Kansas mutual insurance company, was organized under the laws of Kansas on February 27, 1899 under the name of "The Kansas State Mutual Hail Association." The present name was adopted on January 21, 1914. The mailing address of McPherson is 10895 Lowell Avenue, Suite 300, Overland Park, Kansas 66210.

3. CIPA is a Colorado mutual insurance company. The mailing address of CIPA is 10895 Lowell Avenue, Suite 300, Overland Park, Kansas 66210.

5. Pursuant to her authority under K.S.A. 40-222, the Commissioner conducted an examination of the financial condition and business affairs of both Farmers and McPherson. These examinations commenced on July 5, 2000 and covered the intervening period from January 1, 1995 through December 31, 1999. The examiners found that Farmers and McPherson have not written any business since 1997.

6. The final paragraph of K.S.A. 40-222 states:

Whenever it appears to the commissioner of insurance from such examination or other satisfactory evidence that the solvency of any such insurance company is impaired, or that it is doing business in violation of any of the laws of this state, or that its affairs are in an unsound condition so as to endanger its policyholders, the commissioner of insurance shall give the company a notice and an opportunity for a hearing in accordance with the Kansas administrative procedures act. If the hearing confirms the report of the examination, the commissioner shall suspend the certificate of authority of such company until its solvency shall have been fully restored and the laws of the state fully complied with. The commissioner may, if there is an unreasonable delay in restoring the solvency of such company and in complying with the law, revoke the certificate of authority of such company to do business in this state. Upon revoking any such certificate, the commissioner shall commence an action to dissolve such company or to enjoin the same from doing or transacting business in this state.

7. K.S.A. 40-1501 describes the conditions that must be met in order for persons to form a mutual hail insurance company. It states,

Any number of persons, not less than four hundred, residing in this state, who collectively own not less than twenty thousand acres of growing grain, in this state, which they desire to insure against loss or damage by hail, and who shall actually subscribe for such insurance to the amount of two hundred thousand dollars, in not less than four hundred separate risks, located in not less than ten counties, and upon not more than five risks of one hundred sixty acres each in any one township, may form an incorporated company for the purpose of mutually insuring growing grain against loss or damage by hail . . .

8. Because Farmers Hail Insurance Company and McPherson Hail Insurance Company have not written any business since 1997, they are both operating in violation of the requirements set forth in K.S.A. 40-1501 and the Commissioner has the authority pursuant to K.S.A. 40-222 to take further action against the companies.

9. FFIC, Farmers and McPherson have voluntarily approached the Commissioner with proposed agreements and plans of merger.

10. FFIC holds control, as defined by K.S.A. 40-3302(c), of the FFIC Mutuals by virtue of a Management Agreement effective as of January 1, 1997.

11. Following the effective date of the Management Agreement, FFIC decided to release control of the FFIC Mutuals. FFIC engaged the services of Merger and Acquisition Services (M&A Services), a Georgia-based company that facilitates the transfer of control of property/casualty and life insurance companies.

12. In 1998, M&A Services and FFIC held preliminary discussions with Barrington Insurance Group (Barrington), a mutual holding company and corporate parent of Florida Family Mutual Insurance Company. That transaction, however, did not materialize.

13. Following the termination of the Barrington transaction, FFIC, Farmers and McPherson re-considered and rejected two alternatives for divesting of the two Kansas mutuals:

a) FFIC and the mutuals determined that dissolution was not feasible primarily because Farmers and McPherson have no policyholders and each company has limited surplus, and

b) FFIC and the mutuals considered transferring or assigning the management agreements, however, since there is no business to administer, this option seemed unattractive.

14. FFIC, Farmers and McPherson ultimately determined that merger of the FFIC Mutuals with and into another mutual insurer was the most viable alternative for several reasons, including the fact that merger would ensure that any and all liabilities of the FFIC Mutuals would be assumed by the surviving company.

15. In mid-2000, FFIC contacted M&A Services to assist FFIC in the divestiture of the FFIC Mutuals. As a result of M&A Services' efforts, FFIC received indications of interest from potential suitors across the country, including several from Kansas domestic insurers.

16. On July 12, 2000, KaMMCO received an unsolicited notice from M&A Services indicating that FFIC was interested in divesting the FFIC Mutuals. After receiving the July 12th notice, KaMMCO began preliminary due diligence and then expressed to M&A Services its interest in merging with the FFIC Mutuals.

17. FFIC and the FFIC Mutuals evaluated the indications of interest they received and selected KaMMCO as the successful candidate. KaMMCO was chosen because it is located in Kansas, is financially viable, has a good reputation and is willing to fully assume and be responsible for any and all liabilities of Farmers and McPherson.

18. According to K.S.A. 40-1217:

Any, other than life, solvent domestic mutual insurance company, organized pursuant to the provisions of K.S.A. chapter 40, article 10, 12 or 15, may:

- (1) Merge or consolidate with any other, other than life, solvent domestic mutual insurance company as hereinafter provided.
- (2) Merge or consolidate with any other, other than life, solvent non-domestic mutual insurance company which is authorized to do an insurance business in this state if such merger or consolidation is authorized by the laws of the state or territory in which such non-domestic company is organized as hereinafter provided.
- (3) (omitted)

19. KaMMCO, Farmers and McPherson are each solvent domestic mutual insurance companies.

20. CIPA is not authorized to do the business of insurance in the state of Kansas.

21. K.S.A. 40-1218 sets forth the procedure that must be followed when merging domestic mutual insurance companies. The first requirement is that the directors of each company shall enter into a joint agreement prescribing the terms and conditions of the merger.

22. The Merger Agreements and the transactions contemplated thereby have been approved by the Board of Directors of each of the following: (i) KaMMCO, (ii) Farmers, (iii) McPherson, (iv) CIPA, and (v) FFIC. The Merger Agreements comply with K.S.A. 40-1218.

23. The second requirement of K.S.A. 40-1218 is that the agreement shall not be effective unless the same shall be approved by the policyholders of the companies and the Commissioner of Insurance.

24. On November 20, 2000, KaMMCO mailed, postage prepaid, to its policyholders written notice of a Special Meeting of Policyholders, which was held on December 15, 2000, regarding consideration of the Merger Agreements and the transactions contemplated thereby by the policyholders of KaMMCO (“Special Meeting”).



25. Fifty-six and eight-tenths percent (56.8%) of KaMMCO's policyholders were present in person or by proxy at the Special Meeting, representing a quorum.

26. The Merger Agreements and the transactions contemplated thereby were approved by the policyholders of KaMMCO at the Special Meeting in compliance with K.S.A. 40-1218 and 40-1219.

27. K.S.A. 40-1219a describes two scenarios whereby approval of the merger by the policyholders of the insurers is not required: If a domestic mutual insurer is impaired in that the insurer's surplus is less than the amount required for authority to transact the kinds of insurance being transacted by the insurer, or the insurer has attained a financial condition such that its continued operation might be hazardous to the insuring public, then the commissioner may approve the agreement or merger or consolidation.

28. Farmers and McPherson have no policyholders from whom to obtain approval and both companies are impaired because they fail to meet the requirements for authority to insure growing grain as set forth in K.S.A. 40-1501.

29. Pursuant to K.S.A. 40-103, 40-222, 40-1218 and 40-1219a, the Commissioner has the authority to approve the merger of Farmers and McPherson into KaMMCO.

30. The Joint Application is in compliance with the provisions of K.S.A. 40-1220.

31. The proposed merger of CIPA with and into KaMMCO is also subject to the approval of the Commissioner of Insurance of the State of Colorado because CIPA is a Colorado domestic mutual insurer.

32. On December 20, 2000, the Colorado Department of Insurance notified the Kansas Insurance Department and KaMMCO's Colorado counsel that the initial Form A filing seeking approval of the merger of CIPA with and into KaMMCO will likely be denied.

33. Upon consummation of the mergers, as proposed in the Joint Application, KaMMCO shall remain as the surviving corporation, shall continue to exist as a Kansas domestic mutual insurer organized and operated under K.S.A. 40-12a01 *et seq.*, and shall inure to all rights and obligations as are provided by the Merger Agreements and Kansas law.

34. Upon consummation of the mergers, as proposed in the Joint Application, (i) the Articles of Incorporation of KaMMCO shall become and continue to be the Articles of Incorporation of the surviving company without amendment (until the same shall be further amended and changed as provided by law); (ii) the Bylaws of KaMMCO shall become and continue to be the Bylaws of the surviving company without amendment (until the same shall be further amended and changed as provided by law); (iii) the directors of KaMMCO immediately prior to the effective time of the mergers shall be the directors of the surviving company (until their respective successors are duly elected and qualified); and (iv) the officers of KaMMCO immediately prior to the effective time of the mergers shall be the officers of the surviving company (until their respective successors are duly elected and qualified).

35. No evidence has been introduced to establish that consummation of the mergers of Farmers and McPherson with and into KaMMCO, as proposed in the Joint Application, will jeopardize the financial stability of KaMMCO or be injurious to the interests of the policyholders or creditors of the Applicants.

36. Review of evidence establishes that, after the consummation of the mergers of Farmers and McPherson with and into KaMMCO, as proposed in the Joint Application, KaMMCO will be able to satisfy the requirements necessary for maintaining the business of KaMMCO to the satisfaction of its policyholders.

37. Evidence has been introduced that, after the consummation of the mergers of Farmers and McPherson with and into KaMMCO, as proposed in the Joint Application, KaMMCO will be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed.

38. Evidence has been introduced to establish that the mergers of Farmers and McPherson with and into KaMMCO, as proposed in the Joint Application, will not be hazardous or prejudicial to the insurance-buying public.

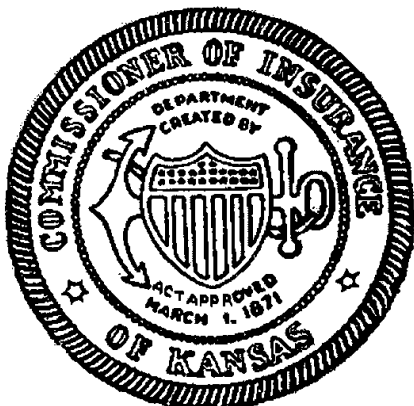
39. The evidence submitted supports approval of the proposed mergers of Farmers and McPherson with and into KaMMCO.

**IT IS THEREFORE, BY THE COMMISSIONER OF INSURANCE, ORDERED THAT:**

1. The mergers of Farmers and McPherson with and into KaMMCO in the manner set forth in the Joint Application and Exhibits attached thereto are hereby approved pursuant to K.S.A. 40-1221, and shall be deemed effective as of 12:01 a.m., CST, on December 31, 2000.

2. The merger of CIPA with and into KaMMCO in the manner set forth in the Joint Application and Exhibits attached thereto is hereby denied subject to further review by the Kansas Insurance Department and Colorado Department of Insurance.

**IT IS SO ORDERED THIS 27<sup>th</sup> DAY OF DECEMBER, 2000, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.**



/s/ Kathleen Sebelius

Kathleen Sebelius

Commissioner of Insurance