

FINAL ORDER

EFFECTIVE: 12-17-12

BEFORE THE COMMISSIONER OF INSURANCE OF THE STATE OF KANSAS

In the Matter of the Proposed Exemption of)
National Indemnity Company) Docket No. 4537-EX

ORDER

Now comes on this 17th day of December, 2012 before the Commissioner of Insurance for disposition the request of National Indemnity Company (“Applicant”), dated November 14, 2012, for an Order, pursuant to K.S.A. 40-3304(e)(1), exempting Applicant from the filing and approval requirements of K.S.A. 40-3304(a), as said statute may be construed to apply to the restructuring of the insurance holding company system of The Kansas Bankers Surety Company (“KBS”), a Kansas domiciled insurer.

Pursuant to the authority granted to the Commissioner pursuant to K.S.A. 40-3301 and K.S.A. 40-3304(d)(1) and in accordance with the Kansas Administrative Procedures Act, K.S.A. 77-501, et seq., the Commissioner hereby asserts the following declarations of public interest and policy, findings of fact, conclusions of law and orders:

FINDINGS OF FACT

1. The Commissioner of Insurance has jurisdiction over this matter pursuant to K.S.A. 40-103 and K.S.A. 40-3301, *et seq.*
2. Applicant has requested an exemption pursuant to K.S.A. 40-3304(e) from the acquisition and approval requirements of the Kansas Insurance Holding Companies Act, specifically those requirements stated in K.S.A. 40-3304(a).
3. Applicant is a Nebraska domestic insurance company that is a directly owned subsidiary of Berkshire Hathaway Inc. (“Berkshire”), a Delaware publicly traded corporation.

Mr. Warren E. Buffett (a Nebraska resident) directly owns more than 10% of the Berkshire stock. Berkshire is considered the ultimate controlling person of the Applicant, as well as KBS.

4. KBS is currently directly owned by Wesco-Financial Insurance Company (“Wesco”), a Nebraska domiciled insurance company that is also a Berkshire subsidiary.

5. Applicant is proposing to merge with Wesco. Applicant would be the surviving entity post the merger, thus becoming the direct owner of KBS.

6. Below is the abbreviated organizational chart reflecting the current direct and indirect ownership of KBS.

Berkshire Hathaway Inc.
Wesco-Financial Insurance Company (**direct**)
The Kansas Bankers Surety Company
National Indemnity Company (Applicant)

7. Subsequent to the aforementioned proposed Merger, the abbreviated organizational chart for KBS will appear as follows:

Berkshire Hathaway Inc.
National Indemnity Company (**direct**)
The Kansas Bankers Surety Company

8. The proposed restructuring will have no operational effect on KBS as the ultimate controlling person (Berkshire Hathaway Inc.), will remain unchanged. Also, the directors and executive officers of the Applicant are significantly the same as Wesco. Additionally, the officers and directors of KBS will remain unchanged.

APPLICABLE LAW

K.S.A. 40-3304(a) provides, in part, as follows:

(a) No person other than the issuer shall...enter into any agreement to exchange securities or, seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if,... at the time... any such agreement is entered into, ... such person has filed with the commissioner of insurance and has sent to such insurer, a statement containing the information required by this

section and such... agreement... has been approved by the commissioner of insurance in the manner hereinafter prescribed.

K.S.A. 40-3304(e) provides:

(e) The provisions of this section shall not apply to:

Any offer, request, invitation, agreement or acquisition which the commissioner of insurance by order shall exempt therefrom as: (1) Not having been made or entered into for the purpose and not having the *effect of changing or influencing the control of a domestic insurer*;...

CONCLUSIONS OF LAW

Based upon the information enumerated in the Findings of Fact contained in paragraphs #1 through #8 above, and the representations made on behalf of Berkshire Hathaway Inc. and the Applicant, the restructuring of the holding company system is not made for the purpose of, and will not have the effect of, changing or influencing the control of Kansas Bankers Surety Company, a Kansas domestic insurer.

IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE:

1. National Indemnity Company shall be exempt from the application of the formal filing and approval requirements of K.S.A 40-3304(a) as it may be deemed to apply to the change of the ownership of Kansas Bankers Surety Company provided the reorganization is effected by or before January 1, 2013.

2. National Indemnity Company shall comply with all of the provisions and requirements of K.S.A. 40-3301, *et seq.*, in the future.

3. The Commissioner of Insurance retains jurisdiction over this matter to issue any and all further Orders deemed appropriate or to take such further action as necessary to dispose of this matter.

NOTICE OF RIGHTS

This is a Final Order. This Final Order is effective upon service. Pursuant to K.S.A. 77-529, Applicant may petition the Commissioner for reconsideration of this Final Order within fifteen (15) days after service of the Final Order. A petition for reconsideration must state the specific grounds upon which relief is requested. Additionally, a party to this agency proceeding may seek judicial review of this Final Order by filing a petition in the District Court, pursuant to K.S.A. 77-601, et seq. Reconsideration of this Final Order is not a prerequisite for judicial review. A petition for judicial review is not timely unless filed within 30 days following the service of this Final Order, unless the Applicant petitions the Commissioner for reconsideration, in which case a petition for judicial review is not timely unless filed within 30 days following service of an order rendered upon reconsideration, or an order denying the request for reconsideration. In the event the Applicant files a petition for judicial review, the agency officer to be served on behalf of the KID is:

John Wine, General Counsel
Kansas Insurance Department
420 S.W. 9th Street
Topeka, Kansas 66612

**IT IS SO ORDERED THIS 17th DAY OF DECEMBER 2012, IN THE CITY OF
TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.**



/s/ Sandy Praeger
Sandy Praeger
Commissioner of Insurance

/s/ John Wine
John Wine
General Counsel

Certificate of Service

I hereby certify that a true and correct copy of the foregoing Order was forwarded via first class mail, postage prepaid on the 17th day of December, 2012 to:

Brennan Neville
Senior Legal Counsel
National Indemnity Company
3024 Harney Street
Omaha, NE 68131

/s/ Jennifer Sourk
Jennifer Sourk
Assistant General Counsel