

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

In the Matter of)
)
FARMERS INSURANCE COMPANY, INC.) Docket No. 4613-MC
NAIC #21628)

SUMMARY ORDER

Pursuant to the authority conferred upon the Commissioner of Insurance in K.S.A. 40-222, Sandy Praeger, the duly elected, qualified and serving Commissioner of Insurance hereby adopts the Kansas Insurance Department’s Report of Market Conduct Examination of Farmers Insurance Company, Inc. (“Farmers”), as of June 30, 2012 (attached herein as Attachment A) by incorporating the same in its entirety with specific findings stated as follows. This Summary Order shall become effective as a Final Order, without further notice, upon the expiration of the 15 day period if no request for a hearing is made, pursuant to K.S.A. 77-542.

Findings of Fact

1. The Commissioner of Insurance has jurisdiction over this matter pursuant to K.S.A. 40-222.
2. The Kansas Insurance Department (“Department”) completed a targeted market conduct examination of Farmers. The period of examination was July 1, 2010 through June 30, 2012.
3. On or about August 30, 2013, the Examiner-in-Charge provided Farmers a draft of the Market Conduct Examination report (“Report”) with a request for Farmers’ response in the form of written comments, additions, or acceptance.
4. Farmers responded to the Report with written comments.

5. The Kansas Commissioner of Insurance has since fully reviewed the Report, which is attached herein as Attachment A.
6. Complaint Handling Standards.
 - a. Standard 3 of the Complaint Handling Standards reviews to ensure the regulated entity takes adequate steps to finalize and dispose of the complaint in accordance with applicable statutes, rules and regulations, and contract language.
 - i. There were 23 claim-related complaint files from the Department and one consumer complaint that had incoming correspondence without date stamps required under K.A.R. 40-1-34, Section 4.
7. Claim Handling Standards.
 - a. Standard 6 of the Claim Handling Standards reviews to ensure claims are handled in accordance with policy provisions and applicable statutes (including HIPAA), rules and regulations.
 - i. There were eight claim files in which Farmers failed to pay the vehicle registration fee on total loss settlements required under K.A.R. 40-1-34, Section 9(a)(2). One of those files also had a third party total loss claim that failed to pay the applicable fee as required under K.A.R. 40-1-34, Section 9(h). This issue had been discovered by Farmers during an internal review which began in April 2012 (during our exam period), and reimbursements were made to affected consumers. Per Farmers, 8,135 reimbursements were completed in September 2012 for a total amount of \$44,680.

8. Underwriting and Rating Standards.

a. Standard 1 of the Underwriting and Rating Standards reviews to ensure the rates charged for the policy coverage are in accordance with filed rates (if applicable) or the regulated entity's rating plan.

i. There were inconsistencies during the exam period between how policies were rated and the filed rating rules with regards to policies with multiple vehicles that had been converted from the Legacy system to the FA2 system. The Legacy filings prior to the end of 2009 allowed for only one vehicle per policy, thus when converted into the FA2 system they were converted into multiple policies as previously written. New business written into FA2 allowed for up to four vehicles on a policy. The FA2 filing indicated multi-car discounts would be applied if there were more than one vehicle on a policy. Farmers provided the discount to the households with multiple policies, even if those had only one vehicle on each policy. The UM/UIM rate order of calculation in the approved FA2 rating manual indicated the UM factors were determined by average factors of each vehicle on the policy, when actually this was being averaged at the household level with those that had multiple policies rather than multiple vehicles on one policy (from the conversion mentioned above). Since Farmers was not following their approved rating rules, many policies during the exam period were not issued in accordance with approved rates and rules required under K.S.A. 40-955(g).

- ii. When converting from the Legacy system to FA2, Farmers did not include a complete PIP symbol filing. On the vehicle symbol pages, there were five columns (BI, PD, UM/MED, CM, CL), while the auto symbol rating factors contained six categories (BI, PD, PIP, UM, COMP, COLL). The rates being used were not completely filed as required under K.S.A. 40-955(a). The policies written or renewed on the FA2 system during the exam period were rated not in accordance to the rates on file as required under K.S.A. 40-955(g).
- iii. Two auto policies were issued with work loss coverage that was not in accordance with the rates on file as required under K.S.A. 40-955(g). The work loss had been in Farmers' Legacy filing, but they failed to insert it into the FA2 filings when they converted in late 2010. This was not discovered until the exam team's review. Farmers indicates since the launch of FA2 there have been 6,704 policies with this work loss coverage, most of which originally had the coverage through a Legacy policy.
- iv. Four policies were rated with a rate filing that had been filed, but not yet approved, as required under K.S.A. 40-955(g). Farmers had disclosed to the Department in fall 2012 that they had discovered the early implementation of a rate filing on the initial proposed effective date of 4/9/2012 (new business) and 5/22/2012 (renewals), though the filing was not approved until 7/16/2012 (new business) and 8/14/2012 (renewals). Farmers indicated to the examiners in May 2012 that 31,984 customers

had received refunds in the amount of \$764,052 and there were still approximately 5,000 policies still being processed. As the exam period ended June 30, 2012, there were many policies during the exam period that were affected by this error and there were many policies written and renewed outside of our exam period that were also impacted.

- v. One policy was written with customization coverage indicated on the Declarations page that did not meet the criteria for the coverage. The policy did not have the required comprehensive or collision coverage as required by K.S.A. 40-955(g). The policy was not charged for the coverage, and a claim was not filed against the coverage, though Farmers indicates they would have honored the claim if presented. Farmers identified 125 policies that also showed as having the coverage though not rated with this coverage.
 - vi. One Homeowner Renewal policy included a Condominium Product Type Factor that did not match the information in the filed and approved rates as required under K.S.A. 40-955(g). Farmers had decreased the factor they were using, but failed to file the decrease with the rate filing. Farmers estimates approximately 950 Condo customers were impacted by the undercharge due to this factor.
- b. Standard 5 of the Underwriting and Rating Standards reviews to ensure all forms, including contracts, riders, endorsement forms and certificates are filed with the insurance department, if applicable.

- i. Both the private passenger auto and homeowner lines had binding applications being used during the exam period that were not filed with the Department as required under K.A.R. 40-3-23. Both lines have had had new applications filed after the end of the exam period.
- c. Standard 8 of the Underwriting and Rating Standards reviews to ensure cancellation/nonrenewal, discontinuance and declination notices comply with policy provisions, state laws, and the regulated entity's guidelines.
 - i. Forty-one (41) policies were non-renewed for reasons contrary to those allowed in K.S.A. 40-276a. Of those, forty (40) were for similar reasons, lack of information on a possible driver in the household without a full investigation being conducted by Farmers. Farmers had changed their procedures after the exam period, but prior to the exam review of the files. One policy contained a cancellation notice that was sent one day after the actual cancellation date contrary to K.S.A. 40-3118(b), which requires a 30 day notice prior to cancellation.

Applicable Law

K.S.A. 40-222 states, in pertinent part:

(a) Whenever the commissioner of insurance deems it necessary but at least once every five years, the commissioner may make, or direct to be made, a financial examination of any insurance company in the process of organization, or applying for admission or doing business in this state. In addition, at the commissioner's discretion the commissioner may make, or direct to be made, a market regulation examination of any insurance company doing business in this state.

K.S.A. 40-276a states, in pertinent part:

(a) Any insurance company that denies renewal of an automobile liability insurance policy in this state shall give at least 30 days written notice to the named insured, at his last known address, or cause such notice to be given by a

licensed agent of its intention not to renew such policy. No insurance company shall deny the renewal of an automobile liability insurance policy except in one or more of the following circumstances or as permitted in subsection (b):

(1) When such insurance company is required or has been permitted by the commissioner of insurance, in writing, to reduce its premium volume in order to preserve the financial integrity of such insurer;

(2) when such insurance company ceases to transact such business in this state;

(3) when such insurance company is able to show competent medical evidence that the insured has a physical or mental disablement that impairs his ability to drive in a safe and reasonable manner;

(4) when unfavorable underwriting factors, pertinent to the risk, are existent, and of a substantial nature, which could not have reasonably been ascertained by the company at the initial issuance of the policy or the last renewal thereof;

(5) when the policy has been continuously in effect for a period of five years. Such five-year period shall begin at the first policy anniversary date following the effective date of the policy, except that if such policy is renewed or continued in force after the expiration of such period or any subsequent five-year period, the provisions of this subsection shall apply in any such subsequent period; or

(6) when any of the reasons specified as reasons for cancellation in K.S.A. 40-277 are existent, except that (A) when failure to renew is based upon termination of agency contract, obligation to renew will be satisfied if the insurer has manifested its willingness to renew, and (B) obligation to renew is terminated on the effective date of any other automobile liability insurance procured by the named insured with respect to any automobile designated in both policies.

K.S.A. 40-3118 states, in pertinent part:

(b) Except as otherwise provided in K.S.A. 40-276, 40-276a and 40-277, and amendments thereto, and except for termination of insurance resulting from nonpayment of premium or upon the request for cancellation by the insured, no motor vehicle liability insurance policy, or any renewal thereof, shall be terminated by cancellation or failure to renew by the insurer until at least 30 days after mailing a notice of termination, by certified or registered mail or United States post office certificate of mailing, to the named insured at the latest address filed with the insurer by or on behalf of the insured. Time of the effective date and hour of termination stated in the notice shall become the end of the policy period. Every

such notice of termination sent to the insured for any cause whatsoever shall include on the face of the notice a statement that financial security for every motor vehicle covered by the policy is required to be maintained continuously throughout the registration period, that the operation of any such motor vehicle without maintaining continuous financial security therefor is a class B misdemeanor and shall be subject to a fine of not less than \$300 and not more than \$1,000 and that the registration for any such motor vehicle for which continuous financial security is not provided is subject to suspension and the driver's license of the owner thereof is subject to suspension.

K.S.A. 40-955 states, in pertinent part:

(a) Every insurer shall file with the commissioner, except as to inland marine risks where general custom of the industry is not to use manual rates or rating plans, every manual of classifications, rules and rates, every rating plan, policy form and every modification of any of the foregoing which it proposes to use. Every such filing shall indicate the proposed effective date and the character and extent of the coverage contemplated and shall be accompanied by the information upon which the insurer supports the filings. A filing and any supporting information shall be open to public inspection after it is filed with the commissioner. An insurer may satisfy its obligations to make such filings by authorizing the commissioner to accept on its behalf the filings made by a licensed rating organization or another insurer. Nothing contained in this act shall be construed to require any insurer to become a member or subscriber of any rating organization.

(g) No insurer shall make or issue a contract or policy except in accordance with filings which have been filed or approved for such insurer as provided in this act.”

K.S.A. 40-2,125 states, in pertinent part:

(a) If the commissioner determines after notice and opportunity for a hearing that any person has engaged or is engaging in any act or practice constituting a violation of any provision of Kansas insurance statutes or any rule and regulation or order thereunder, the commissioner may in the exercise of discretion, order any one or more of the following:

(1) Payment of a monetary penalty of not more than \$1,000 for each and every act or violation, unless the person knew or reasonably should have known such person was in violation of the Kansas insurance statutes or any rule and regulation or order thereunder, in which case the penalty shall be not more than \$2,000 for each and every act or violation;

(3) that such person cease and desist from the unlawful act or practice and take such affirmative action as in the judgment of the commissioner will carry out the purposes of the violated or potentially violated provision.

K.A.R. 40-1-34 adopts the unfair claims settlement practices model regulation, January 1981 edition, by reference. Section 4 of the model regulation states, “(t)he insurer’s claim files shall be subject to examination by the (Commissioner) or by his duly appointed designees. Such files shall contain all notes and work papers pertaining to the claim in such detail that pertinent events and the dates of such events can be reconstructed.”

K.A.R. 40-1-34 does not adopt Section 9(a)(2) of the model regulation by reference.

Instead, K.A.R. 40-1-34(m) provides:

The insurer may elect to pay a cash settlement, based upon the actual cost, less any deductible provided in the policy, to purchase a comparable automobile including all applicable taxes, license fees and other fees incident to transfer of evidence of ownership of a comparable automobile. Such cost shall be determined by any source or method for determining statistically valid fair market value that meets both of the following criteria:

(A) The source or method’s database, including nationally recognized automobile evaluation publications, shall provide values for at least eighty-five percent (85%) of all makes and models of private passenger vehicles for the last fifteen (15) model years taking into account the values for all major options for such vehicles; and

(B) the source, method, or publication shall provide fair market values for a comparable automobile based on current data available for the local market area as defined in subsection (j)(2).

K.A.R. 40-1-34 does not adopt Section 9(h) of the model regulation by reference.

Instead, K.A.R. 40-1-34(o) provides”

Insurers shall include consideration of applicable taxes, license fees, and other fees incident to transfer of evidence of ownership in third party automobile total losses and shall have sufficient documentation relative to how the settlement was obtained in the claim file. A measure of damages shall be applied which will compensate third party claimants for the reasonable loss sustained as the proximate result of the insured’s negligence.

K.A.R. 40-3-23 states, “(b)inders or other temporary contracts of insurance are subject to K.S.A. 40- 216. These forms shall be filed with and approved by the commissioner in accordance with applicable statutory provisions.”

Conclusions of Law

Based upon the Findings of Fact enumerated in Paragraphs #1 through #8 and the Applicable Law cited above, **IT IS, THEREFORE, ORDERED BY THE COMMISSIONER OF INSURANCE:**

1. The Commissioner of Insurance has jurisdiction over this matter pursuant to K.S.A. 40-222.
2. The Kansas Insurance Department’s (“KID”) Report of Market Conduct Examination of Farmers as of June 30, 2012 is herein adopted in its entirety.
3. As set forth in Finding of Fact #6, Farmers violated K.A.R. 40-1-34 in at least 24 instances.
4. As set forth in Finding of Fact #7, Farmers violated K.A.R. 40-1-34 in at least 9 instances.
5. As set forth in Finding of Fact #8, subsection (a)(i), Farmers violated K.S.A. 40-955(g).
6. As set forth in Finding of Fact #8, subsection (a)(ii), Farmers violated K.S.A. 40-955(a) and K.S.A. 40-955(g).
7. As set forth in Finding of Fact #8, subsection (a)(iii), Farmers violated K.S.A. 40-955(g) in more than two instances.
8. As set forth in Finding of Fact #8, subsection (a)(iv), Farmers violated K.S.A. 40-955(g) in more than four instances.

9. As set forth in Finding of Fact #8, subsection (a)(v), Farmers violated K.S.A. 40-955(g) in more than one instance.
10. As set forth in Finding of Fact #8, subsection (a)(vi), Farmers violated K.S.A. 40-955(g) in more than one instance.
11. As set forth in Finding of Fact #8, subsection (b)(i), Farmers violated K.A.R. 40-3-23 in more than two instances.
12. As set forth in Finding of Fact #8, subsection (c)(i), Farmers violated K.S.A. 40-276a in at least 41 instances and K.S.A. 40-3118(b) in at least one instance.
13. Pursuant to K.S.A. 40-2,125(a)(1), Farmers shall pay a monetary penalty of \$50,000.00 for the above-stated violations of K.A.R. 40-1-34, K.S.A. 40-955(a) and (g), K.A.R. 40-3-23, K.S.A. 40-276a, and K.S.A. 40-3118b.
14. Pursuant to K.S.A. 40-2,125(a)(3),
Farmers shall comply with K.A.R. 40-1-34 by ensuring all incoming correspondence regarding claim files is date stamped in order to ensure proper documentation of the files and by putting procedures in place to ensure the dates received on the complaint log are accurate.
15. Pursuant to K.S.A. 40-2,125(a)(3), Farmers shall do a thorough review of their rating practices to ensure they coincide with the rules and rates filed and approved with the Department prior to and during implementation of each new rate and rule filing.
16. Pursuant to K.S.A. 40-2,125(a)(3), Farmers shall ensure procedures are in place to file all required forms with the Department.

17. Pursuant to K.S.A. 40-2,125(a)(3), Farmers shall review the allowable reasons to cancel and nonrenew policies as indicated by Kansas statutes and ensure their procedures comply.

IT IS SO ORDERED THIS 30 DAY OF OCTOBER 2013, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.



/s/ Sandy Praeger
Sandy Praeger
Commissioner of Insurance

BY:

/s/ John Wine
John Wine
General Counsel

NOTICE OF RIGHTS

Farmers is entitled to a hearing pursuant to K.S.A. 77-537, the Kansas Administrative Procedure Act. If Farmers desires a hearing, Farmers must file a written request for a hearing with:

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

This request must be filed within fifteen (15) days from the date of service of this Summary Order. If Farmers requests a hearing, the Kansas Insurance Department will notify Farmers of the time and place of the hearing and information on the procedures, right of representation, and other rights of parties relating to the conduct of the hearing before the commencement of the same.

If a hearing is not requested in the time and manner stated above, this Summary Order shall become effective as a Final Order upon the expiration of time for requesting a hearing, pursuant to K.S.A. 77-613. In the event that Farmers files a petition for judicial review, pursuant to K.S.A. 77-613(e), the agency officer to be served on behalf of the Kansas Insurance Department is:

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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served the above and foregoing Order and Notice of Rights on this __30th__ day of October, 2013, by causing the same to be deposited in the United States Mail, registered mail with return-receipt requested postage prepaid, addressed to the following:

Paul Attilio Crosetti, President
Farmers Insurance Company, Inc.
17000 W. 119th Street
Olathe, KS 66061

/s/ Kristopher M. Kellim
Kristopher M. Kellim
Staff Attorney