

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

In the Matter of the Merger of)	
FIRST CHOICE CASUALTY INS. CO.)	
NAIC # 15214)	
with and into)	Docket No. 77650
BENCHMARK INSURANCE CO.)	
NAIC # 41394)	

ORDER OF MERGER

NOW on this 16th day of July 2019, the above matter comes before the Commissioner of Insurance of the State of Kansas ("Commissioner").

Benchmark Insurance Company ("Benchmark"), a Kansas corporation, has applied pursuant to K.S.A. 40-309 to merge with subsidiary First Choice Casualty Insurance Company. ("FCCIC") a Nevada-domiciled property and casualty insurance company.

FINDINGS OF PUBLIC INTEREST AND POLICY

Pursuant to the authority granted to the Commissioner under K.S.A. 40-309, 40-3301, and 40-3304(d)(1) and (e) and in accordance with the Kansas Administrative Procedures Act, K.S.A. 77- 501, *et seq.*, the Commissioner hereby asserts the following findings of fact, conclusions of law, and orders as follows:

Benchmark submitted application materials in the merger filing, including, but not limited to, an Agreement and Plan of Merger, minutes from the Benchmark and FCCIC boards of directors approving the merger, actuarial schedules, and financial statements. The terms and conditions of the proposed merger are fully set forth in the Agreement and Plan of Merger.

The staff of the Department inspected and reviewed the contents of the documents and found that the documents comply with K.S.A. 40-309 and that the related documents have provided all of the information required under Kansas law to enable the Commissioner to render a

decision on the proposed merger of FCCIC into Benchmark.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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. Pursuant to K.S.A. 40-309, an insurance company of this state may merge with any other company of any other state engaged in like business and having similar corporate powers.
3. Benchmark is a stock insurance holding company and has been operating in the State of Kansas, with its principal office located in Topeka, Kansas and with its administrative office in Wayzata, Minnesota. Benchmark has been a Kansas corporation since May 5, 1964.
4. FCCIC is a stock insurance holding company formed under the laws of Nevada with its principal office located in Las Vegas, Nevada and with its administrative office in Wayzata, Minnesota.
5. On February 12, 2019, the State of Nevada approved a Form A filing by Benchmark regarding the acquisition of stock of FCCIC, wherein Benchmark acquired 100% of the stock of FCCIC.
6. Pursuant to K.S.A. 40-309, on April 23, 2019, a resolution was adopted by the Board of Directors of Benchmark to effect the merger of FCCIC and Benchmark. On April 23, 2019, the shareholders of FCCIC also approved a resolution of the proposed merger.
7. FCCIC and Benchmark filed a proposed copy of the Agreement of Merger with the Kansas Insurance Department, to be effective June 1, 2019.
8. Contained in the Merger Application were all the necessary submitted materials to the Kansas Insurance Department in connection with the proposed merger.

9. The merger application material provides evidence that FCCIC and Benchmark are engaged in like business and have similar corporate powers.
10. Benchmark provided evidence that the merger has been approved at a meeting of the stockholders of both FCCIC and Benchmark called for that purpose, and that such approval was by a vote of stockholders owning not less than two-thirds of the shares of stock of these two companies, pursuant to K.S.A. 40-309.
11. The Articles of Incorporation and Bylaws for Benchmark in effect immediately prior to the Merger shall be the same as after the Merger is effective.
12. The merger application materials establish that Benchmark is exempt from filing a Form A, as required under K.S.A. 40-3304, because the merger of FCCIC with and into Benchmark does not have the purpose, or effect, of changing or influencing control of Benchmark inasmuch as FCCIC is wholly owned by Benchmark. See, K.S.A. 40-3304(e).
13. The Agreement is in compliance with the provisions of K.S.A. 40-309.
14. On the effective date of the merger, FCCIC and Benchmark shall become and be a single corporation with Benchmark as the surviving corporation and the separate corporate existence of FCCIC shall cease.
15. Benchmark shall succeed to and possess all rights, privileges, powers and immunities of each corporation and all property of each corporation shall be vested in the surviving corporation, Benchmark.
16. On the effective date of the merger, Benchmark will assume and be responsible for all debts, obligations, claims and liabilities for which FCCIC is legally responsible and all assets of FCCIC will be assumed by Benchmark.

17. No evidence has been introduced to establish that the proposed merger of FCCIC with and into Benchmark would be injurious to or prejudice the interests of the policyholders and creditors.

18. No evidence has been introduced to establish that the proposed merger of FCCIC with and into Benchmark will be hazardous or prejudicial to the insurance-buying public.

IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE THAT:

1. The merger between FCCIC with and into Benchmark is hereby approved, effective June 1, 2019 pursuant to K.S.A. 40-309 provided that within thirty days of the date of this Order, the Agreement and Plan of Merger is effected and all appropriate closing documents are executed and filed with the Kansas Insurance Department.
2. Benchmark shall be exempt from the application of the formal filing and approval requirements of K.S.A. 40-3304(a), including the Form A requirements of K.A.R. 40-1-28.
3. In conjunction with this Order, the Kansas Certificate of Authority of Benchmark shall remain unchanged subsequent to the merger.
4. The Commissioner of Insurance retains jurisdiction over the subject matter of this proceeding and over the parties for the purpose of entering such Orders as may be deemed necessary and appropriate.

NOTICE OF RIGHTS

Pursuant to K.S.A. 77-537 of the Kansas Administrative Procedure Act, if Benchmark desires a hearing, the company must file a written request for a hearing with:

Justin L. McFarland
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 Order of Merger. If Benchmark requests a hearing, the Department will notify Benchmark of the time and place of the hearing and information on the procedures, right of representation, and other rights of the parties relating to the conduct of the hearing, before commencement of the same.

If a hearing is not requested in the time and manner stated above, the Order of Merger 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 Benchmark files a petition for judicial review, pursuant to K.S.A. 77-613(e), the agency officer to be served on behalf of the Department is the same as above.

**IT IS SO ORDERED THIS 16th DAY OF JULY, 2019 IN THE CITY OF TOPEKA,
COUNTY OF SHAWNEE, STATE OF KANSAS.**




VICKI SCHMIDT
COMMISSIONER OF INSURANCE

BY: Barbara W. Rankin
Barbara W. Rankin
Assistant Commissioner
Presiding Officer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that above and foregoing Order of Merger was served via the United States Postal Service, first-class postage prepaid, and facsimile, on this 17th day of July, 2019, addressed to the following:

Jill K. Johnson, Esq.
General Counsel
Benchmark Ins. Company
150 Lake Street West
Wayzata, Minnesota 55391



Toni Garrard
Senior Administrative Assistant