

IN THE CIRCUIT COURT OF BARTON COUNTY, MISSOURI

FILED

DEC 14 2011

CIRCUIT COURT OF
BARTON COUNTY, MISSOURI

JOHN M. HUFF, Director,)
Department of Insurance, Financial Institutions)
and Professional Registration of the State of Missouri,)

Plaintiff,)

v.)

BARTON MUTUAL INSURANCE COMPANY)
and)
CAPE MUTUAL INSURANCE COMPANY,)
and)
GATEWAY MUTUAL INSURANCE COMPANY)

Defendants.)

Case No. 11B4-CV00453

Order Approving Plan of Rehabilitation

On this 14th day of December, 2011, Plaintiff John M. Huff, Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration (the "Director") and Rehabilitator of Defendants Barton Mutual Insurance Company ("Barton"), Cape Mutual Insurance Company ("Cape"), and Gateway Mutual Insurance Company ("Gateway"), appears by counsel, Mark W. Stahlhuth upon this Court's order setting a hearing on Plaintiff's plan of rehabilitation. Defendants do not appear, except as witnesses, having previously waived process and consenting to the rehabilitation. On the evidence presented, the Court finds:

1. Barton and Cape are insolvent, meaning that their assets are less than their liabilities. The amount of the insolvency as of December 31, 2011, is not yet known, but it was reasonably estimated on December 1, 2011, that should Barton and Cape be liquidated on that date, the liabilities of Barton and Cape would exceed their assets by about \$14,300,000 (the "estimated deficit"). Although not insolvent because its assets are estimated to exceed its

liabilities by about \$1,300,000 as of December 31, 2011, Gateway is not in compliance with section 380.271, RSMo, because it will have no reinsurance effective January 1, 2012.

2. The rehabilitation plan (“the plan”) submitted by the Rehabilitator, provides that effective January 1, 2012:

a. The Rehabilitator will merge Barton, Cape and Gateway. Under the plan as originally submitted, Gateway was to be the surviving extended Missouri mutual insurance company. The Rehabilitator requests this Court approve the plan as modified by allowing Barton to become the surviving company, as indicated by Exhibit 1, which consists of the plan and articles of merger. The Rehabilitator seeks approval for this modification because he has discovered since submitting the plan on December 1st that Barton will have approximately \$21,000,000 worth of federal income tax loss carryforwards (valuable to the extent future operations of the company are sufficiently profitable to offset the future deduction of such carryforwards) and that the certified public accounting firm advising Missouri Farm Bureau Services, Inc. or an affiliate thereof ("MFB") has indicated a substantial possibility that the viability of such carryforwards are dependent upon Barton surviving any merger of the three companies. Due to the advice given regarding the tax loss carryforwards, modifying the plan to provide for Barton to be the surviving company is reasonable.

b. MFB has reached an agreement in principle with the Rehabilitator to provide sufficient reinsurance to the surviving company, as shown by Exhibit 3, which consists of the outline of a reinsurance proposal along with an explanation. The reinsurance would consist of a total quota share treaty (namely an agreement reinsuring all losses in exchange for all premium less an expense reimbursement) with MFB in order to protect the surviving company from all insurance risk, with one exception. Although protection from all insurance risk would

also preclude the surviving company from participating in any profit from the business of insurance, the protection, at least at the outset of the surviving company's operations, is necessary given the initial financial condition of the surviving company. In addition, the reinsurance treaty will provide a reimbursement to the surviving company for expenses associated with underwriting the direct insurance policies that will exceed the expenses incurred by three percent (3%) of the direct written premiums. This three percent additional expense allowance will have the effect of effectively guaranteeing the surviving company some measure of additional surplus infusion as well as further shifting risk of loss to MFB. The exception to the quota share treaty would occur with regard to earthquake insurance coverage currently provided by the companies, which coverage would extend into 2012 under the one-year policies issued by the companies during 2011. As to the reinsurance of the earthquake coverage, MFB will reinsure such coverage only to the extent that the surviving company's insurance premium earned with respect to the earthquake coverage will purchase further reinsurance for MFB of a catastrophic earthquake event causing up to \$50,000,000 of insured damages to the companies' policyholders. MFB is unwilling to provide total reinsurance coverage for the surviving company's earthquake coverage because of the extreme risk involved with earthquake coverage and its belief that the companies likely underpriced the earthquake coverage. In the event a catastrophic earthquake occurs that would exceed the reinsurance protection afforded by MFB, liquidation of the surviving company would almost certainly occur. However, the alternative to running the risk of an excessive catastrophic insured event is the certainty of a present liquidation, an outcome favored by no one.

c. MFB will provide an infusion of surplus in the amount of the estimated deficit. In exchange for this additional surplus, the surviving company will issue a surplus note

in the principal amount of the estimated deficit with interest at a rate of one percent over the prime rate, as shown by Exhibit 4, which is an unexecuted copy of the surplus note. The amount of the surplus note will not exceed Barton's and Cape's covered claims under sections 375.771 to 375.779, RSMo (the property and casualty insurance guaranty association law), as of December 31, 2011, had they been placed into liquidation, with the final amount to be agreed upon (using the most current information then available) by MPCIGA, MFB and the Director prior to MFB's infusion of capital, and approved by this Court. The infusion of capital will occur between January 1, 2012, and March 31, 2012. Repayment of the principal and payment of interest will be contingent upon the surviving company generating sufficient profit and upon the approval of the Director. Because of these contingencies, such a note may be accounted on the books of the surviving company as surplus rather than as a liability.

d. In the event that a court of competent jurisdiction finds the surviving company to be insolvent and enters a final order of liquidation within ten (10) years after the execution of the surplus note, but no later than March 31, 2022, the MPCIGA will pay any remaining unpaid balance on such note to MFB and treat any such remaining unpaid balance as a covered claim under the MPCIGA Act, as shown by Exhibits 5a (an unexecuted copy of the MPCIGA's proposed Agreement with MFB) and 5b (a copy of the resolution of the MPCIGA's board of directors approving the conditions and requirements for MPCIGA to make such payment). Such unpaid balance would include both unpaid principal and that portion of any unpaid interest on the surplus note that will approximate to the extent reasonably practical the investment rate of return obtained by the MPCIGA on its investments. The MPCIGA's obligation will be limited to the unpaid balance that would include, at most, the same amount of "covered claims" that the MPCIGA would have been obligated to pay in the event of the

liquidation of Barton and Cape as of December 31, 2011, plus the interest that MPCIGA would have charged Missouri mutual and extended Missouri mutual companies for borrowing the funds to pay such covered claims, had Barton and Cape been liquidated. Accordingly, the Court finds that any future payment to MFB by the MPCIGA pursuant to its Agreement (Exhibit 5a) will constitute at that time the payment of a "covered claim" of Barton within the meaning of section 375.772, RSMo, properly payable under the MPCIGA Act, and will be entitled to class 2 payment priority in the liquidation distributions of Barton.

e. Management of the surviving company will be conducted by MFB effective January 1, 2012. The management will occur substantially pursuant to exhibit 2, which is an unexecuted copy of the written management agreement between MFB and the surviving company. MFB has the necessary experience, expertise, and integrity to successfully manage the insurance business of the surviving company.

f. Other than as expressly found otherwise in this order, no rights, duties, privileges or obligations of Barton, Cape and Gateway will be abrogated or amended by or as a result of the implementation of the plan.

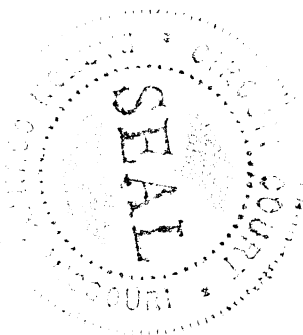
3. The plan, as modified by substituting Barton for Gateway as the surviving company of the merger of Barton, Cape and Gateway, is fair and equitable to all parties concerned within the meaning of section 375.1168, RSMo. The plan better protects the interests of Barton's, Cape's and Gateway's policyholders than a liquidation, would because while both would provide resources to pay policyholders' claims (including those for both insured losses and unearned premiums), the plan would also provide for continuity of the policyholders' insurance coverage while a liquidation would require those policyholders to take their unearned premium refund and shop for new insurance coverage upon as little as five days' notice. In

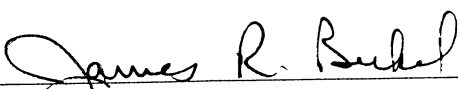
addition, the plan would at worst delay and at best reduce or eliminate the assessment upon all other Missouri and extended Missouri mutual insurance companies (and the subsequent reduction in state revenue from the tax credit for payment of such assessment) that would occur should Barton and Cape be liquidated. Specifically, and without limiting the general nature of the foregoing, this Court finds that each of the following aspects of the plan as modified is fair and equitable to all parties concerned:

- a. the merger of Barton, Cape and Gateway with Barton as the survivor, as described in paragraph 2a;
- b. the quota share reinsurance treaty between Barton and MFB, even with the partial exclusion of earthquake coverage as set forth in paragraph 2b;
- c. the surplus note issued by Barton to MFB and the related Agreement by MPCIGA, as described in paragraphs 2c and 2d; and
- d. the management of Barton by MFB as described in paragraph 2e.

NOW, THEREFORE, based on the foregoing findings and pursuant to section 375.1168, RSMo, this Court APPROVES AS MODIFIED, the plan of rehabilitation as submitted and as described in the foregoing findings, with the modification that Barton Mutual Insurance Company be the surviving company of the merger of Barton Mutual Insurance Company, Cape Mutual Insurance Company and Gateway Mutual Insurance Company.

So ordered this 14th day of December, 2011.




James R. Bickel
Circuit Judge

