

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT  
FOR SUFFOLK COUNTY  
NO. SJ-2000-0475

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LINDA L. RUTHARDT, as she is )  
 COMMISSIONER OF INSURANCE of the )  
 COMMONWEALTH OF MASSACHUSETTS, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 LUMBER MUTUAL INSURANCE COMPANY, )  
 SEACO INSURANCE COMPANY, and )  
 NORTH AMERICAN LUMBER INSURANCE )  
 COMPANY, )  
 )  
 Defendants. )

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**VERIFIED COMPLAINT AND REQUEST FOR APPOINTMENT  
OF RECEIVER**

INTRODUCTORY STATEMENT

1. Linda L. Ruthardt, as she is the Commissioner of Insurance of the Commonwealth of Massachusetts (the "Commissioner"), by and through Thomas F. Reilly, Attorney General, brings this proceeding pursuant to G.L. c. 175, § 180B, seeking her appointment as receiver for the purposes of conservation and rehabilitation of Lumber Mutual Insurance Company, SEACO Insurance Company and North American Lumber Insurance Company (collectively, "Defendants"), an injunction restraining the Defendants from further proceeding with their business, except at her direction, an injunction barring actions by third parties that may interfere with the conservation and rehabilitation of the Defendants, and authorization to cancel the

Defendants' policies of insurance and a reinsurance contract as of December 31, 2000.

SUBJECT MATTER JURISDICTION

2. The Supreme Judicial Court has exclusive and original jurisdiction of this action pursuant to G.L. c. 175, § 180B.

PARTIES AND RELATED ENTITIES

3. Pursuant to G.L. c. 175, § 3A, the plaintiff Commissioner is charged with the administration and enforcement of the insurance laws of the Commonwealth.

4. The defendant Lumber Mutual Insurance Company ("Lumber Mutual") is a domestic mutual insurance company organized under the laws of the Commonwealth. Lumber Mutual has its principal place of business in Framingham, Massachusetts.

5. The defendant SEACO Insurance Company ("SEACO") is a domestic stock insurance company organized under the laws of the Commonwealth. SEACO has its principal place of business in Framingham, Massachusetts, and it is a wholly owned subsidiary of Lumber Mutual.

6. The defendant North American Lumber Insurance Company ("North American") is a domestic stock insurance company organized under the laws of the Commonwealth. North American has its principal place of business in Framingham, Massachusetts, and it is a wholly owned subsidiary of Lumber Mutual.

STATEMENT OF FACTS

7. Lumber Mutual is authorized to issue insurance policies pursuant to, among others, clauses 1, 2, 4, 5, 6, 7, 8, 9, 10,

12, 13 and 17 of G.L. c. 175, § 47. Generally, these clauses refer to property and casualty lines of insurance. Lumber Mutual is licensed in Massachusetts and all other states of the United States, including the District of Columbia, except Alaska, Hawaii and Oklahoma, and primarily underwrites commercial property and casualty lines of insurance (commercial multi peril, workers compensation and liability insurance). The aforementioned states are "reciprocal states" as defined in G.L. c. 175, § 180A.

8. SEACO is authorized to issue insurance policies pursuant to, among others, clauses 1, 2, 4, 5, 6, 7, 8, 12, 13 and 17 of G.L. c. 175, § 47. SEACO is licensed in Massachusetts, Connecticut, Maine, New Hampshire, New York, Rhode Island and Vermont and underwrites commercial property and casualty lines of insurance (commercial multi peril, workers compensation and liability insurance). The aforementioned states are "reciprocal states" as defined in G.L. c. 175, § 180A.

9. North American is authorized to issue insurance policies pursuant to, among others, clauses 1, 2, 4, 6, 7, 8, 12 and 17 of G.L. c. 175, § 47. North American is licensed in Massachusetts, Alabama, Arkansas, Connecticut, Delaware, Georgia, Kentucky, Louisiana, Maine, Maryland, Michigan, Mississippi, New Jersey, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia and Wisconsin and underwrites commercial property and casualty lines of insurance (commercial multi peril, workers compensation and

liability insurance). The aforementioned states are "reciprocal states" as defined in G.L. c. 175, § 180A.

10. The Defendants have the same officers and directors.

11. The consolidated financial statements filed by the Defendants for the period ending August 31, 2000 reported total surplus (net worth) of \$39,243,860, which represents a reduction in total surplus of over \$17.7 million (31%) since December 31, 1999. The Defendants reported a reduction in surplus during 1999 of approximately \$32 million (36%). For the month of August, the Defendants reported a net loss of \$884,859. It is estimated that the Defendants will continue to incur operating losses throughout the remainder of 2000.

12. The Commissioner has been conducting an examination of the Defendants, pursuant to G.L. c. 175, § 4, since mid-year and has been assisted in that examination by the actuarial consulting firm of Tillinghast, a Towers Perrin Company. The Commissioner has concluded that adjustments should be made to the Defendants' surplus, reported as of December 31, 1999, which, in the aggregate, will reduce the Defendants' surplus to a level which she deems inadequate to support their continued operation outside of a rehabilitation proceeding.

13. The Defendants' basic reinsurance program has been terminated as to policies renewing after December 31, 2000 and they have been unable to renew their reinsurance for losses for catastrophic events occurring after that date.

14. The Defendants have been advised that A.M. Best, a national insurance rating organization, will downgrade its rating of the Defendants' financial condition to "C" (Weak)-- "Assigned to companies that have, on balance, weak balance sheet strength and operating performance." Such a downgrade will make it extremely difficult for the Defendants to retain desirable business and obtain reinsurance at rates which will permit them to operate profitably. As such, operation beyond December 31, 2000 poses significant risk to the Defendants' remaining capital and surplus.

15. The Defendants earlier this year engaged an investment banker and have sought to identify investor or merger options. While due diligence was conducted by several interested persons, no offers were made.

16. The Commissioner has concluded that in view of all the foregoing facts, the Defendants' financial condition renders their further transaction of business hazardous to the public and to their policyholders and creditors within the meaning of G.L. c. 175, § 6.

17. It is in the best interest of the public and the policyholders and creditors of Defendants for the Court to appoint the Commissioner as Receiver of the Defendants for the purposes of conservation and rehabilitation, and to issue an injunction pursuant to G.L. c. 175, § 180B enjoining the Defendants, their directors, officers, employees and agents from further conducting or operating their business, except upon the

order of the Receiver. The condition of the Defendants as described above requires the appointment of a Receiver to further monitor their condition and management, take control of their property and assets, oversee their continued operation for the purpose of conserving their assets and rehabilitating them, and to take such measures as may be proper to eliminate the causes and conditions noted herein. The Defendants assent to the relief requested by the Commissioner.

18. Due to the financial condition of the Defendants, including the termination of the reinsurance programs and the consequent risk presented to their policyholders, the Commissioner has concluded that their policies of insurance should be canceled and therefore requests the Court to enter an order authorizing the cancellation of the Defendants' policies of insurance as of 12:01 a.m., January 1, 2001. A form for such cancellation notice is submitted herewith. The Defendants also afford, through a reinsurance contract, coverage for losses under policies of insurance issued by a Minnesota reciprocal insurance exchange, Forest Products Insurance Exchange. For the same reasons described above, the Commissioner requests the Court to enter an order terminating that reinsurance agreement as of 12:01 a.m., January 1, 2001.

19. Pursuant to G. L. c. 175 § 180D, the Commissioner will be required to give notice of her appointment to the Defendants' policyholders, in a form prescribed by the Court.

20. The Commissioner would propose to report to the Court within sixty days of her appointment with recommendations for further action concerning the Defendants. It is the Commissioner's intention to explore the feasibility of transaction(s) for the affiliation or sale of the Defendants or their material business assets.

21. The Commissioner further requests, pursuant to G.L. c. 175, § 179 and § 180B, that she be authorized to continue to employ special counsel. In accordance with G.L. c. 175, § 179 and § 180B, the Commissioner seeks authorization to fix the compensation of said special counsel, and to continue to pay said compensation and all other necessary expenses of taking possession of Defendants and of conducting this proceeding, out of the funds or assets of Defendants.

22. Upon entry of the Order Appointing Receiver herein requested, litigation against Defendants, their directors, officers, employees and agents, or the Commissioner, as Receiver, in courts other than this Court is likely. The continuation, commencement or prosecution of such litigation or other proceedings in other courts or forums, and the time and expense involved in defending such litigation or proceedings, could interfere with the receivership proceeding in this Court and the orderly resolution of Defendants' difficulties. Litigation against Defendants, their directors, officers, employees and agents, or the Commissioner, as Receiver, conducted outside of a

receivership proceeding in this Court, could materially hinder the discharge of the Receiver's responsibilities under G.L. c. 175, and frustrate the purpose and policies of the Commonwealth as expressed in G.L. c. 175, § 180B. Since such actions or proceedings, other than the prosecution of claims by persons for unpaid benefits under policies of insurance, would interfere with a receivership proceeding, they should be enjoined, to the full extent of the Court's jurisdiction.

23. The Commissioner, as Receiver, may find it necessary or desirable to institute or defend litigation or other proceedings in jurisdictions outside Massachusetts, or to take other action requiring legal attention in jurisdictions outside Massachusetts, to protect Defendants and their interests or otherwise to discharge the Receiver's responsibilities under G.L. c. 175. Accordingly, the Commissioner may need to employ attorneys or to continue the employment of attorneys previously employed by the Defendants or the Commissioner, as special or local counsel to represent the interests of the Defendants or the Commissioner, as Receiver, in the proper defense, prosecution or other disposition of litigation, other proceedings and other legal matters, all upon such terms and conditions as the Commissioner, as Receiver, considers necessary in accordance with G.L. c. 175, and to pay for said services out of the funds or assets of the Defendants.

24. Pending submission to the Court of any further proposed plans or requests for appointment, and pursuant to G.L. c. 175,



§ 180B, the Commissioner, in order to perform her duties as Receiver, may require authorization to delegate such authority to and to pay such appropriate personnel as the Commissioner, as Receiver, deems reasonably necessary to carry out the operations of Defendants in conservation and rehabilitation, subject to compliance with the provisions of G.L. c. 175, the supervision of the Commissioner, as Receiver, and subject to further orders of the Court.

STATEMENT OF CLAIM

25. The allegations contained in Paragraph 1 through 24 of this Verified Complaint and Request for Appointment of Receiver are reasserted as if set forth herein.

25. The foregoing allegations demonstrate that the Defendants' condition renders their further transaction of business hazardous within the meaning of G.L. c. 175, § 6. Therefore, grounds exist under G.L. c. 175, § 180B, for the granting of the injunctive relief requested, and for the appointment of the Commissioner as Receiver for the purposes of conservation and rehabilitation of Defendants.

RELIEF REQUESTED

WHEREFORE, the Commissioner prays that this Court:

- (1) Enter an Injunction and Order Appointing Receiver:
  - (a) Appointing the Commissioner and her successors in office as the Receiver of Defendants for the purposes of conservation and rehabilitation;
  - (b) Directing the Commissioner, as Receiver, to take immediate control of the property and assets of the Defendants and to administer them under the general

supervision of this Court and to report to the Court within sixty days as to proposed further action;

- (c) Enjoining the Defendants, and their respective directors, officers, employees and agents from further proceeding with their business, except upon the order or direction of the Receiver;
- (d) Pursuant to G.L. c. 175, § 179 and § 180B, authorizing the Commissioner, as Receiver, to employ or to continue to employ such special counsel, including counsel in other jurisdictions, and consultants as she deems necessary, and to fix and pay or to continue to fix and pay the compensation of such special counsel and consultants and all other necessary expenses of taking possession of the Defendants and of conducting this proceeding out of their respective funds or assets as appropriate;
- (e) To the full extent of the jurisdiction of the Court and the comity to which the orders of the Court are entitled, enjoining and restraining all persons, other than persons prosecuting claims for unpaid benefits under policies of insurance, from instituting or continuing to prosecute any suit, action or other proceeding against Defendants, their directors, officers, employees or agents, or against the Commissioner as Receiver of Defendants; or from executing or issuing or causing the execution or issuance of any writ, process, summons, attachment, subpoena, replevin, execution or other proceeding for the purpose of impounding or taking possession of or interfering with any property owned by or in the possession of Defendants, or owned by any Defendant and in the possession of any of their directors, officers, employees or agents, or owned by any Defendant and in the possession of the Commissioner as Receiver;
- (f) Authorizing the termination of all of the Defendants' policies of insurance and approving forms of notice to policyholders of (i) the termination of their policies as of 12:01 a.m., January 1, 2001, and, (ii) the appointment of the Receiver;
- (g) Authorizing the termination of the reinsurance agreement between the Defendants and the Forest Products Insurance Exchange as of 12:01 a.m., January 1, 2001;

- (h) Authorizing the Commissioner, as Receiver, to take such other action, as she deems appropriate to effectuate the purposes of such order; and
- (2) Grant such other relief as may be appropriate.

LINDA L. RUTHARDT  
COMMISSIONER OF INSURANCE

By her attorney,  
THOMAS F. REILLY  
Attorney General

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J. David Leslie BBO # 294820  
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One Financial Center  
Boston, Massachusetts 02111  
(617) 542-2300

Date: November \_\_, 2000

ASSENTED TO:

Lumber Mutual Insurance Company  
SEACO Insurance Company  
North American Lumber Insurance Company

By: \_\_\_\_\_  
Title:

Date: November \_\_, 2000

VERIFICATION

I, Linda L. Ruthardt, state that I am the duly qualified Commissioner of Insurance of the Commonwealth of Massachusetts, and that I have read the allegations set forth in the Verified Complaint and Request for Appointment of Receiver, and that they are true to the best of my knowledge, information and belief.

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Linda L. Ruthardt  
Commissioner of Insurance

Date: November \_\_, 2000