

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss:

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY NO.
95-0278

LINDA L. RUTHARDT, as the
Commissioner of Insurance of the
Commonwealth of Massachusetts

v. Plaintiff,

AFFIDAVIT OF
LINDA L. RUTHARDT

ABINGTON MUTUAL
INSURANCE COMPANY,

Defendant.

I, Linda L. Ruthardt, Commissioner of Insurance of the
Commonwealth of Massachusetts and Receiver of Abington Mutual
Insurance Company ("Abington") pursuant to G.L.c. 175, § 180B,
being duly sworn, state the following.

Abington's financial condition

1. As noted in my First Report dated August 7, 1995,
Abington's financial condition is grave. I, my staff,
consultants and counsel have continued to review Abington's
assets and liabilities. Based upon our analysis, I have
concluded that although some of Abington's reported assets may
have been slightly undervalued, others were overstated. In

addition, a material portion of Abington's total assets are illiquid. These include Abington's substantial investments in two Rhode Island insurance company affiliates, its investment in certain large life insurance policies issued by an insolvent Canadian life insurer, and its "equity" interest in an unaffiliated Delaware insurance company which is in the process of demutualizing. The process of converting these assets to cash, and marshalling other assets, is not likely to be completed within the next twenty-four months. Thus, a material portion of Abington's total assets are so illiquid as to most likely be unavailable to meet the Company's anticipated cash needs during that period of time.

2. Abington began 1995 with reported policyholders' surplus of \$1,070,964. Its operating loss for the first six months of 1995 exceeded \$1,500,000, and operating losses continued (at a reduced level) in July, August and September. In addition, my actuarial consultant, Tillinghast, a Towers Perrin Company, has recently advised that Abington's loss reserves were understated by approximately \$450,000 at December 31, 1994 (a copy of Tillinghast's report is attached hereto as Exhibit "A"). Therefore, in addition to the liquidity problem discussed above, Abington's liabilities are now estimated to exceed its admitted assets by over \$1,800,000 (a copy of Abington's June 30, 1995 balance sheet is attached hereto as Exhibit "B").

Abington should be liquidated

3. For the foregoing reasons, I have concluded it is most likely that Abington does not have adequate resources to permit it to meet its obligations in the normal course of business, that it is therefore insolvent within the meaning of G.L. c. 175, § 180C, and that it should be liquidated.

Process for the disposition of assets

4. As noted in my First Report, upon my appointment as Receiver, I implemented a process for disposing of the material business assets of Abington. Since Abington's primary business is the sale of homeowners' policies, my representatives contacted the 25 largest issuers of homeowners insurance in Massachusetts, who were thought to be the most likely potential candidates to acquire Abington's outstanding policies. In addition, we were contacted by a number of other parties who expressed potential interest in obtaining control of Abington or acquiring its material business assets. Interested parties were asked to execute confidentiality agreements with the Receiver, following which they were provided with a standardized package of financial and operational information concerning Abington. As part of this process, some interested parties conducted due diligence reviews of the operations of Abington at its corporate headquarters.

5. Three proposals were received from potential acquirers of Abington's business or its charter and licenses. With the assistance of my professional advisers, I have determined that the combination of two of these proposed transactions will yield the greatest benefit for the policyholders of Abington and other creditors of the Abington estate. The two proposed transactions, if approved by this Court, will yield substantial consideration for the Abington estate.

Proposed assumption of Massachusetts Personal Policies

6. The first proposed transaction is with Trust Insurance Company ("Trust "). Pursuant to the terms of an assumption reinsurance agreement to be effective November 1, 1995, Trust would assume Abington's obligations under its personal lines insurance policies issued to residents of Massachusetts which are in effect as of November 1, 1995 ("Massachusetts Personal Policies"). As of October 6, 1995, approximately 74% of Abington's total in force policies were Massachusetts Personal Policies. By entering into the assumption reinsurance agreement (as contemplated by G.L. c. 175, § 180C) Trust would replace Abington by novation as the insurer of the Massachusetts Personal Policies. Abington would have no further liability under such policies, except for obligations arising prior to the November 1, 1995 assumption date. Trust would pay \$100,000 to the Abington estate as a ceding commission for the Massachusetts Personal Policies.

7. The unearned portion of the premiums for the Massachusetts Personal Policies must be paid to Trust, in consideration for Trust's assumption of the liabilities for the remaining term of each such policy on and after November 1, 1995. Pursuant to G. L. Chapter 175D § 1, the unearned portion of the premiums for all Massachusetts Personal Policies will constitute a "covered claim" payable by the Massachusetts Insurers Insolvency Fund ("MIIF") by reason of the entry of an order of liquidation against Abington and the termination of the obligations of Abington under the Massachusetts Personal Policies as of October 31, 1995.

8. In order to facilitate the proposed assumption reinsurance transaction for the Massachusetts Personal Policies, the Receiver would advance to MIIF from the assets of the Abington estate an amount (estimated to be approximately \$3,000,000) equal to the total unearned premium for the Massachusetts Personal Policies (as of November 1, 1995) estimated to be payable by MIIF, as an advance against MIIF's eventual share of the assets of the Abington estate that will ultimately be disbursed to MIIF pursuant to the "early access" provisions contained in § 180C.

9. Trust would also enter into agreements with the Abington agents who produced Massachusetts Personal Policies, and

has agreed to pay those agents commissions at Trust's existing rates.

10. Attached is the proposed Assumption Reinsurance Agreement with respect to the Massachusetts Personal Policies (Exhibit "C"), which will become effective if approved by this Court. In my opinion, this Agreement, and the advance to MIIF from the Abington estate, is in the best interests of Abington's policyholders and other creditors.

Proposed indemnity reinsurance transaction with Trust

11. As of November 1, 1995, Trust would also reinsure all of Abington's exposures under its personal lines insurance policies issued to residents of Connecticut, New Hampshire and Rhode Island ("Connecticut, New Hampshire and Rhode Island Personal Policies"), on an indemnity reinsurance basis until December 31, 1995. As of October 6, 1995, approximately 18% of Abington's total in force policies were Connecticut, New Hampshire and Rhode Island Personal Policies. Trust is not licensed in Connecticut, New Hampshire or Rhode Island (the states with Abington's second, fourth and third largest numbers of policies respectively), so it cannot presently assume the Connecticut, New Hampshire and Rhode Island Personal Policies. Trust hopes to become licensed in all three of those states by January 1, 1996, and to then replace the Abington policies.

In the interim, the indemnity reinsurance of the Connecticut, New Hampshire and Rhode Island Personal Policies promptly removes the exposure presented by these policies and will avoid market disruption in those states by extending the period in which policyholders can replace their Abington policies. Pursuant to an indemnity reinsurance agreement, Trust would provide all necessary policy administration services (including claim handling) for the Connecticut, New Hampshire and Rhode Island Personal Policies at its sole expense. In consideration for the indemnity reinsurance to be provided by Trust with respect to the Connecticut, New Hampshire and Rhode Island Personal Policies, the Receiver would transfer from the Abington estate to Trust the unearned premium reserve attributable to such policies for the term of the proposed indemnity reinsurance period (estimated to be approximately \$144,000).

12. Attached is the proposed Quota Share Reinsurance Agreement with respect to the Connecticut, New Hampshire and Rhode Island Personal Policies (Exhibit "D"), which will become effective if approved by this Court. In my opinion, this Agreement is in the best interests of Abington's policyholders and other creditors.

Proposed transfer of Abington's charter and licenses

13. Another significant proposed transaction would be with Medical Professional Mutual Insurance Company ("ProMutual"). ProMutual would acquire control of the Abington charter (without acquiring its assets and liabilities) as of January 1, 1996, and would contribute sufficient funds to re-capitalize Abington to at least the minimum level established by law. ProMutual would also pay to the Abington estate varying amounts for each Abington state insurance license which is re-activated with authority to write medical malpractice insurance. ProMutual will also pay the Abington estate 50% of any tax benefit realized by ProMutual, which is attributable to Abington's net operating loss carryforwards.

14. In order to facilitate the proposed transaction with ProMutual as of January 1, 1996, Abington's assets and liabilities must be transferred to a liquidating trust as of such date. I propose to establish and operate such a liquidating trust in the same manner as the liquidating trust which was implemented in the receivership of Attleboro Mutual Insurance Company, pursuant to Justice Abrams' order which was entered on July 14, 1995, a copy, of which is attached hereto as Exhibit "E".

15. Although I have executed an agreement in principle with ProMutual, a definitive agreement is still in the process of being negotiated. I hope to complete negotiations with ProMutual within the next few weeks. It is my intention to seek the Court's approval of the transaction at that time.

Cancellation of Abington's policies

16. I have concluded that under the circumstances outlined herein, it is inappropriate for Abington to continue to retain insurance exposures. Therefore, its policies (other than those which would be assumed on November 1, 1995 under the proposed transaction with Trust) should be canceled.

17. Approximately 28,500 Abington insurance policies presently remain in force. Of that total, approximately 21,100 are Massachusetts Personal Policies. Approximately 5,000 are Connecticut, New Hampshire and Rhode Island Personal Policies, which would be indemnity reinsured by Trust under the proposed transaction through December 31, 1995. For that reason, the Connecticut, New Hampshire and Rhode Island Personal Policies should be canceled as of 11:59 p.m. on December 31, 1995. The other Abington policies, including all policies in Maine, New Jersey, New York and Vermont, and all of Abington's commercial lines business, should be canceled as soon as possible. The Court's approval is sought to cancel those other Abington

policies as of 12:01 a.m. on the date which is 30 days after the Court enters an order to liquidate Abington.

18. A proposed form of cancellation notice which would be sent by first class mail, postage prepaid (with proof of mailing) to all Abington policyholders other than those to be assumed by Trust, is attached hereto as Exhibit "F".

Termination of Abington's agency contracts

19. Effective immediately after the commencement of this proceeding, I directed that Abington cease the issuance of new business policies of insurance. For the reasons noted above, I have concluded that Abington should now cease the issuance of renewal policies of insurance as well. In light thereof, I seek the Court's approval to immediately terminate all of Abington's agency appointments and agreements. I will give notice of such termination to all Abington agents by certified mail, return receipt requested.

SIGNED under the pains and penalties of perjury this
13th day of October, 1995.

Linda L. Ruthardt,
Commissioner of Insurance of the
Commonwealth of Massachusetts and
Receiver of Abington Mutual Insurance
Company