

SUFFOLK, ss:

SUPREME JUDICIAL COURT  
FOR SUFFOLK COUNTY  
NO. 95-278

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

Plaintiff,

v.

ABINGTON MUTUAL  
INSURANCE COMPANY,

Defendant.

VERIFIED COMPLAINT,  
MOTION FOR PRELIMINARY  
INJUNCTION AND REQUEST  
FOR APPOINTMENT  
OF RECEIVER

#### INTRODUCTORY STATEMENT

1. Linda L. Ruthardt, the Commissioner of Insurance of the Commonwealth of Massachusetts (the "Commissioner") brings this civil action pursuant to G.L. c. 175, § 180B, seeking her appointment as receiver for the purposes of conserving the assets of Abington Mutual Insurance Company ("Abington"), and seeking a preliminary injunction restraining Abington from further proceeding with its business, except at her direction.

#### SUBJECT MATTER JURISDICTION

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

## PARTIES

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

4. The Defendant Abington is a domestic mutual insurance company organized under the laws of the Commonwealth. Abington has its principal place of business at 120 Liberty Street, Brockton, Massachusetts.

## STATEMENT OF FACTS

5. Abington is authorized to issue various forms of property and casualty insurance policies pursuant to, among others, clauses 1, 2B, 6E, 6F, 6G, 7, 8, and 12, of G.L. c. 175, § 47 as well as §§ 54E and 54F. Abington is licensed to transact insurance business in Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont. The aforementioned states include "reciprocal states" as defined in G.L. c. 175, § 180A. Abington presently has approximately 37,000 policyholders, the vast majority of which reside in Massachusetts.

6. On May 1, 1995, Abington filed its financial statement for the period ending December 31, 1994 which reflects surplus below the minimum level contained in G.L. c. 175, § 48. Its recently filed March 31, 1995 quarterly statement reflects further deterioration in surplus. The Commissioner has therefore concluded that Abington's financial condition is

such as to render its further transaction of business hazardous to the public, including its policyholders and other creditors, within the meaning of G.L. c. 175, § 6.

7. The Commissioner has determined that in order to monitor, control and conserve the assets of Abington for the benefit of its policyholders and other creditors, the Commissioner should be appointed Receiver of Abington. For that reason, the Commissioner seeks appointment as Receiver for purposes of taking possession of and conserving the assets of Abington. The Commissioner would report to the Court within sixty days of her appointment with recommendations for further action concerning the conservation and rehabilitation of Abington, including her opinion as to the propriety of implementing a rehabilitation plan, or instead converting this proceeding to one under G.L. c. 175, § 180C for the liquidation of Abington.

8. Upon entry of the Order of Receivership for the purposes of conservation and rehabilitation herein requested, litigation is likely against Abington, its directors, officers, employees and agents, or the Commissioner, as Receiver, in courts other than this Court, given the number and character of the transactions in which Abington is involved. The 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 Abington's financial difficulties. Such litigation against Abington, its 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 public purposes and policies 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, as set forth in the preliminary injunction and order of receiver herein requested.

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

WHEREFORE, the Commissioner prays that the Court enter a Preliminary Injunction and Order:

(1) Appointing the Commissioner as Receiver of Abington, and directing the Receiver to take immediate control of the property and assets of Abington.

(2) Enjoining Abington, its officers, employees and agents from further proceeding with the business of Abington, except upon the order and direction of the Receiver.

(3) To the full extent of the jurisdiction of the Court, enjoining and restraining all persons, other than persons prosecuting claims for unpaid benefits under Abington policies of

insurance, from instituting or continuing to prosecute any suit, action or other proceeding against Abington, its directors, officers, employees or agents, or against the Commissioner as Receiver of Abington; 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 Abington, or owned by Abington and in the possession of any of its directors, officers, agents or employees, or owned by Abington and in the possession of the Commissioner as Receiver:

(4) Approving the Receiver's delegation of authority to and payment, pursuant to G.L. c. 175, § 179, of such appropriate personnel as the Commissioner, as Receiver, deems reasonably necessary to carry out the purposes of this proceeding, subject to compliance with the provisions of G.L. c. 175, the supervision of the Commissioner, as Receiver, and of the Court.

(5) Authorizing the Commissioner, as Receiver, to employ, or continue the employment of, appropriate special or local legal counsel in all jurisdictions to represent the interests of Abington and the Commissioner, as Receiver, all upon such terms and conditions as the Commissioner, as Receiver, considers necessary, and to pay for such counsel from the funds or assets of Abington.

(6) Authorizing the Commissioner, as Receiver, to take such further actions as she deems appropriate to effectuate the purposes of such order.

(7) Approving a form of notice to policyholders of the appointment of the Receiver.

(8) For such other relief as may be appropriate.

LINDA L. RUTHARDT  
COMMISSIONER OF INSURANCE  
By her attorneys,  
Scott Harshbarger  
Attorney General

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J. David Leslie, BBO 294820  
Rackemann, Sawyer & Brewster, P.C.  
One Financial Center  
Boston, Massachusetts 02111  
(617) 951-1131

Date: June 5 1995

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: June. 3, 1995