

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

In the Matter of the Release of the)	
Retaliatory Deposit of)	
LUMBER MUTUAL INSURANCE)	Docket No. 3593-I
COMPANY)	

ORDER

Now on this 14th day of November 2006, the above matter comes before the Commissioner of Insurance of the State of Kansas upon the request of the Commissioner of Insurance of the Commonwealth of Massachusetts Julianne M. Bowler, in her capacity as Receiver for Lumber Mutual Insurance Company, for release of the retaliatory deposit of Lumber Mutual Insurance Company held in trust by the Kansas Insurance Department pursuant to K.S.A. 40-229a.

FINDINGS OF FACT

1. The Commissioner of Insurance has jurisdiction over this matter pursuant to K.S.A. 40-229a and 40-253.
2. Lumber Mutual Insurance Company ("Lumber Mutual" or the "Company") is located at 205 Newbury Street, Framingham, MA 01701.
3. Lumber Mutual was incorporated as the Lumber Mutual Fire Insurance Company of Boston, Massachusetts on February 13, 1895 under the laws of Massachusetts and commenced business on March 28, 1895. The present name was adopted on January 17, 1978.
4. Lumber Mutual primarily wrote allied lines of insurance business until 1930 when general fire coverage was added. On August 17, 1947 charter powers were amended to authorize

the writing of all types and classes of insurance except life and endowments. The Company began to issue casualty coverage on July 1, 1951.

5. Lumber Mutual was admitted and authorized to do business in the state of Kansas on December 30, 1991.

6. Pursuant to K.S.A. 40-253, and prior to the issuance of a certificate of authority to do business in Kansas, Lumber Mutual made a retaliatory deposit of securities with the Kansas Insurance Department ("KID") in the amount of \$300,000 for the use and benefit of the Company's Kansas policyholders.

7. Under K.S.A. 40-253 Lumber Mutual was also required to make a retaliatory deposit with KID to guarantee payment of its workers' compensation claims to Kansas policyholders. The amount of such deposit was computed in accordance with the calculation set forth in the State of Massachusetts C-1 Form and the minimum deposit was required to have a par value of at least \$50,000.

8. The retaliatory deposit described in paragraphs 6 and 7 above presently consists of the following described security:

Description: **U.S. Treasury Note**

CUSIP NO. **9128275G3**

Custodian: **Commerce Bank and Trust, Topeka KS**

Maturity: **May 15, 2009**

Interest Rate: **5.50%**

Par Value: **\$350,000**

Market Value: **\$357,219 (as of 10/31/2006)**

9. On November 1, 2000, the Massachusetts Supreme Judicial Court for Suffolk County ("Massachusetts Court") placed Lumber Mutual and its subsidiaries, SEACO Insurance

Company ("SEACO") and North American Lumber Insurance Company ("NALIC"), into rehabilitation and appointed the Commissioner of Insurance of the Commonwealth of Massachusetts ("Massachusetts Commissioner" or "Receiver") to act as receiver for the company for purposes of its rehabilitation.

10. The Massachusetts Court also approved the cancellation of all policies of insurance issued by Lumber Mutual, SEACO and NALIC as of 12:01 a.m. on January 1, 2001, thereby placing all three companies in "run-off" mode.

11. As of June 30, 2006 Lumber Mutual's statutory capital and surplus was \$5,049,658.

12. Since all three companies have continued to meet all financial obligations to their policyholders and other creditors in the normal course of business, no determination of insolvency has been made by the Massachusetts Court, and therefore the guaranty fund system has not been triggered. The inventory of pending claims for the companies has been reduced from approximately 7,200 on November 1, 2000 to 456 as of March 31, 2006. Based on information provided by the Receiver it appears there are no outstanding claims pending for Kansas policyholders.

13. On May 2, 2006 the Massachusetts Commissioner, in her capacity as Receiver for Lumber Mutual and its subsidiaries, requested that KID release the retaliatory deposit held in trust on behalf of the Company's Kansas policyholders to assist in a successful run-off of the Company's insurance business.

14. On October 12, 2006 a representative of the Kansas Guaranty Association advised KID that since no determination of insolvency has been made by the Massachusetts Court and the provisions of the Kansas Insurance Guaranty Association Act, K.S.A. 40-2901, *et seq.*, have

not been triggered, the Association has no objection to the release of the retaliatory deposit held by KID to the Receiver.

CONCLUSIONS OF LAW

15. K.S.A. 40-253 states, in part, as follows:

Whenever the existing or future laws of any other state or country shall require from insurance companies . . . organized under the laws of this state, applying to do business in such other state . . . any deposit of securities in such state . . . for the protection of policyholders therein . . . greater than the amount required for such purpose from insurance companies . . . of other states by the then existing laws of this state, then, and in every case, all companies . . . of any such state . . . doing business in this state shall make the same deposit, for a like purpose, with the commissioner of insurance of this state, and pay to the commissioner of insurance . . . an amount equal to the amount of such charges and payments imposed by the laws of such other state . . .

16. K.S.A. 40-229a states, in part, as follows:

(a) All cash, securities . . . or other assets deposited with the commissioner of insurance pursuant to the provisions of the insurance code of the state of Kansas shall be deposited with any Kansas financial institution acceptable to the commissioner through which a custodial or controlled account, a joint custody receipt arrangement or any combination of these or other measures that are acceptable to the commissioner is used. All such deposits shall be held by such financial institution on behalf of the commissioner in trust for the use and benefit of such company and such company's policyholders and creditors. *Such assets shall be released from such deposits only upon written approval of the commissioner. . . . (Emphasis added).*

17. Based on the Findings of Fact enumerated in paragraphs 1 through 14 above, the retaliatory deposit held by KID in trust for the benefit of the policyholders of Lumber Mutual should be released to the Commissioner of Insurance of the Commonwealth of Massachusetts, in her capacity as Receiver, for the use and benefit of all of the Company's policyholders and/or creditors.

**IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE
THAT:**

1. As of the date of this Order, Lumber Mutual Insurance Company is prohibited from writing any policies of insurance in Kansas.

2. Pursuant to the authority granted to the Commissioner in K.S.A. 40-229a, the retaliatory deposit held by the Kansas Insurance Department, in trust and for the benefit of the policyholders of Lumber Mutual Insurance Company, shall be released to the Commissioner of Insurance of the Commonwealth of Massachusetts, in her capacity as Receiver for Lumber Mutual and its subsidiaries, within fifteen (15) days from the date of this Order.

3. The Receiver shall maintain custody and control over the retaliatory deposit and use it in furtherance of the rehabilitation of Lumber Mutual consistent with the law of Massachusetts and any and all orders issued by the Massachusetts Supreme Judicial Court for Suffolk County.

4. The Commissioner of Insurance retains jurisdiction over this matter to issue any and all further Orders deemed appropriate or to take such further action as necessary to dispose of this matter.

**IT IS SO ORDERED THIS 14th DAY OF NOVEMBER 2006, IN THE CITY OF
TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.**



/s/ Sandy Praeger
Sandy Praeger
Commissioner of Insurance

BY: /s/ John W. Campbell
John W. Campbell
General Counsel

Certificate of Service

I hereby certify that a true and correct copy of the foregoing Order was forwarded via first class mail, postage prepaid, on the 14th day of November 2006 to:

Julianne M. Bowler, Commissioner of Insurance
Office of Consumer Affairs and Business Regulation
Division of Insurance
On South Station
Boston, MA 02110-2208
Receiver for Lumber Mutual Insurance Company

/s/ Linda J. Sheppard
Linda J. Sheppard
Assistant General Counsel