

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF COMMERCE

In the Matter of Lumber Mutual
Insurance Company

**FINDINGS OF FACT
CONCLUSIONS, AND
RECOMMENDATION**

The above-entitled matter came on for prehearing conference before Administrative Law Judge Steve M. Mihalchick on May 10, 2001, at 3:00 p.m. at the Office of Administrative Hearings in Minneapolis, Minnesota. Sarah Walter, Assistant Attorney General, NCL Tower, Suite 1200, 445 Minnesota Street, St. Paul, Minnesota 55101-2130, appeared on behalf of the Department of Commerce ("the Department"). There was no appearance by or on behalf of the Respondent, Lumber Mutual Insurance Company, One Speen Street, P.O. Box 9165, Framingham, Massachusetts 01701-9165. A letter was received from J. David Leslie, Special Assistant Attorney General, Rackemann, Sawyer & Brewster, One Financial Center, Boston, Massachusetts, 0211-2659, on behalf of the Massachusetts Commissioner of Insurance. The record closed on May 10, 2001, at the conclusion of the prehearing conference.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Jim Bernstein, Commissioner, Suite 500, 85 Seventh Place East, St. Paul, MN 55101, to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUE

The issue in this case is whether the Respondent has demonstrated itself to be in an unsound or unsafe condition warranting action under Minn. Stat. § 60A.052, subd. 1(3)(2000) or due to Respondent being under formal supervision by the Massachusetts Commissioner of Insurance warranting action under Minn. Stat. § 60A.052, subd. 1(9)(2000).

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Notice of and Order to Show Cause, Notice of Prehearing Conference and Statement of Charges in this matter was served upon the Respondent by certified first class U.S. mail on March 29, 2001, addressed to Neil F. Finnegan, President, Lumber Mutual Insurance Company, One Speen Street, Post Office Box 9165, Framingham, Massachusetts 01701-9165. The Notice was also served upon the Massachusetts Commissioner of Insurance by mailing it by certified first class U.S. mail on March 29, 2001, addressed to J. David Leslie, Special Assistant Attorney General, Rackemann, Sawyer & Brewster, One Financial Center, Boston, Massachusetts, 0211-2659.

2. The Notice of and Order to Show Cause, Notice of Prehearing Conference and Statement of Charges served on the Respondent contained the following informational notice:

If Respondent fails to attend or otherwise appear at any prehearing conference, settlement conference, or the hearing in this matter without the prior consent of the judge, or fails to comply with any interlocutory order of the judge after having been served with a copy of this Order, Respondent shall be deemed in default and the allegations or issues set forth herein may be deemed proved and Respondent's certificate of authority may be suspended, Respondent may be censured and/or a civil penalty may be imposed against Respondent without further proceedings.

(Emphasis in original.)

3. The Respondent did not file any Notice of Appearance with the Administrative Law Judge or make any request for a continuance or any other relief. The Respondent did not appear at the prehearing conference on May 10, 2001, or have an appearance made on his behalf. Respondent also did not contact the Administrative Law Judge between May 10, 2001, and the date on which this Report was issued.

4. J. David Leslie, Special Assistant Attorney General acting on behalf of the Massachusetts Commissioner of Insurance, sent a letter to the Department. Mr. Leslie indicated that the Massachusetts Commissioner of Insurance had no objection to the matter going forward and waived the right to a hearing, provided that Respondent's certificate of authority was merely suspended, not revoked.

5. As stated in the Notice of and Order to Show Cause, this action has been brought to suspend Respondent's certificate of authority to transact business in Minnesota. No more serious action is proposed at this time.

6. Because the Respondent failed to appear at the hearing in this matter, it is in default. Pursuant to Minn. Stat. § 60A.052, subd. 2, and Minn. R. 1400.6000 (1999), the allegations contained in the Notice of and Order to Show Cause, Notice of

Prehearing Conference and Statement of Charges are hereby taken as true and incorporated into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Minnesota Department of Commerce and the Administrative Law Judge have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50, 45.027, and 60A.052, subd. 2.

2. The Department has given proper notice of the hearing in this matter and has fulfilled all relevant substantive and procedural requirements of law and rule.

3. The Respondent, having made no appearance at the hearing, and not requesting any continuance or relief, is in default. Pursuant to Minn. Stat. § 60A.052, subd. 2, and Minn. R. 1400.6000, the allegations contained in the Notice of and Order to Show Cause, Notice of Prehearing Conference and Statement of Charges are hereby taken as true.

4. The Respondent has violated Minn. Stat. § 60A.052, subs. 1(3) and 9. The Respondent is subject to discipline and/or civil penalties pursuant to Minn. Stat. § 60A.052, subd. 2.

5. This action is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RESPECTFULLY RECOMMENDED that the Commissioner of Commerce suspend the Respondent's certificate of authority to transact the business of insurance in Minneosta.

Dated this 31st day of May, 2001

Steve M. _s/
Mihalchick

STEVE M. MIHALCHICK
Administrative Law Judge

Reported: Default.

NOTICE OF AGENCY DECISION

Under Minn. Stat. § 14.62, subd. 1, the Agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.