

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

In the Matter of the Rehabilitation of
The Home Insurance Company

Docket No. 03-E-106

**INTERNATIONAL PAPER COMPANY and
MASONITE CORPORATION'S
PARTIALLY ASSENTED-TO MOTION TO INTERVENE**

NOW COME International Paper Company ("International Paper"), and Masonite Corporation, ("Masonite") by and through their attorneys, and move that this Honorable Court permit them to intervene in the above-captioned action.

IN FURTHERANCE, Movants state as follows:

1. The Home is a New Hampshire corporation with statutory offices in Manchester, New Hampshire.

2. International Paper, through its former subsidiary Masonite, is entitled to certain proceeds from certain of The Home's policies that were sold to Masonite. International Paper and Masonite are the Plaintiffs in an action pending in the Superior Court for the State of California, in and for the City and County of San Francisco, entitled International Paper Company, et al. v. Affiliated FM Insurance Company, et al., Docket No. 974350 (hereinafter the "California Litigation"). This is a declaratory judgment action seeking a determination of CGL coverage for Plaintiffs' property damage liability in connection with an underlying products liability settlement that exceeds \$500 million. The Home is one of approximately twenty insurers that are Defendants in said action. The Home's potential liability is a small portion (5%) of the Plaintiffs' claim that currently exceeds \$500 million.

3. On or about March 4, 2003, the Commissioner of Insurance for the State of New Hampshire filed in this Court a Verified Petition for Rehabilitation for The Home, seeking an

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Presiding Justice
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Order of Rehabilitation pursuant to RSA Chapter 402-C, appointing the Commissioner as Rehabilitator. This Court granted the Petition and entered a Rehabilitation Order dated March 5, 2003 (hereinafter “the Rehabilitation Order”).

4. On or about March 24, 2003, approximately two weeks before the scheduled trial in the California litigation, The Home filed a Motion to Implement Ninety-Day Stay of the Entire Action, relying upon this Court’s Rehabilitation Order. Specifically, The Home argued that this Court’s Rehabilitation Order was entitled to “full faith and credit” and that the California Court was bound by a ninety-day stay purportedly set forth in the Rehabilitation Order.

5. International Paper and Masonite seek to intervene in this action for the limited purpose of seeking clarification of this Court’s Rehabilitation Order or, in the alternative, for limited relief from the stay set forth in that Order to allow the California Litigation to go forward. See International Paper and Masonite’s Motion to Clarify Rehabilitation Order or, in the Alternative, Motion for Limited Relief from Stay, filed herewith.

6. A party may be permitted to intervene in a case where that party has “a right involved in the trial and its interest [is] ‘direct and apparent; such as would suffer if not indeed be sacrificed were the court to deny the privilege.’” Snyder v. New Hampshire Savings Bank, 134 N.H. 32, 35 (1991) (quoting R. Weibusch, 4 New Hampshire Practice: Civil Practice and Procedure §176 at pp. 129-30 (1984)). The right to intervene is a matter committed to the discretion of the trial court. Snyder, 134 N.H. at 34.

7. As set forth in the Motion to Clarify and Memorandum of Law filed in support thereof, The Home and the Rehabilitator are taking the position that this Court’s Rehabilitation Order acts as a stay with respect to both in-state and out-of-state litigation, including the California Litigation. This interpretation is contrary to RSA 402-C:18, the statute which governs stays issued in the context of rehabilitations.

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8. Absent clarification of this Court's Rehabilitation Order, International Paper and Masonite may be prejudiced as they strongly oppose a stay of the California Litigation as set forth in greater detail in their Motion to Clarify and Memorandum of Law filed in support thereof. As such, International Paper and Masonite have a "direct and apparent" interest in seeking clarification of this Court's Rehabilitation Order or, in the alternative, relief from the stay set forth in said order.

9. If intervention were denied, International Paper and Masonite would lose their ability to be heard with respect to the proper interpretation and scope of this Court's Rehabilitation Order.

10. Superior Court Rule 57-A Certification: Counsel for International Paper and Masonite have obtained the concurrence in this Motion of legal counsel for Paula T. Rogers, Rehabilitator, but have been unable to obtain concurrence from legal counsel for the officers and directors of The Home Insurance Company and Risk Enterprise Management, Inc.

WHEREFORE, International Paper and Masonite respectfully request that this Honorable Court:

- A. Grant their Motion to Intervene; and,
- B. Grant such further relief as may be just and proper.

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Respectfully submitted,

**INTERNATIONAL PAPER COMPANY and
MASONITE CORPORATION**

By Their Attorneys,

**RATH, YOUNG AND PIGNATELLI,
Professional Association**

One Capital Plaza
Post Office Box 1500
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(603) 226-2600

Dated: April 2, 2003

By: Sherry Young
Sherilyn Burnett Young, Esquire
Andrew W. Serell, Esquire

CERTIFICATE OF SERVICE

I, Andrew W. Serell, hereby certify that on this 2nd day of April, 2003 a true and correct copy of the foregoing document was served via first class mail, postage paid to Peter C. L. Roth, Senior Assistant Attorney General and Martin P. Honigberg, Esquire.

By: Sherry Young for
Andrew W. Serell, Esquire

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