

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
MOTION TO CLARIFY
REHABILITATION ORDER OR, IN THE ALTERNATIVE, MOTION
FOR LIMITED RELIEF FROM STAY**

NOW COME International Paper Company ("International Paper"), and Masonite Corporation ("Masonite"), by and through their attorneys, and move that this Court clarify its Rehabilitation Order regarding The Home Insurance Company ("The Home") dated March 5, 2003 or, in the alternative, grant limited relief from the stay provisions of that Order relative to a suit pending since 1995 in the Superior Court in the State of California for the City and County of San Francisco, entitled International Paper Company, et al. v. Affiliated FM Insurance Company, et al., Docket No. 974350. The grounds for this Motion are more fully set forth in a Memorandum of Law filed herewith.

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

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“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 20 insurers that are Defendants in said action, in which Plaintiffs seek a determination of CGL coverage for property damage liability in connection with an underlying products liability settlement that exceeds \$500 million. 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 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 in the California Litigation 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. The purpose of this Motion is to clarify the scope of this Court’s Rehabilitation Order in light of the statute under which it was issued, RSA 402-C. Specifically, International Paper and Masonite Corporation request clarification that, in light of RSA 402-C:18, the ninety-day stay set forth in the Rehabilitation Order applies to New Hampshire litigation only, and that if the Rehabilitator believes that a stay is appropriate in any other jurisdiction, then the Rehabilitator must separately petition the court in which such litigation is pending for such a

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stay. See Proposed Order, attached hereto. The grounds for this request are more fully set forth in the Memorandum of Law filed herewith.

6. Alternatively, if this Court concludes that it has authority pursuant to RSA 402-C:18, to enter a stay which applies to out-of-state litigation, International Paper and Masonite Corporation request limited relief from that stay to allow the California Litigation to go forward as scheduled. The stay provision of the Rehabilitation Order specifically contemplated the availability of such relief.

7. The California Litigation has been pending for more than seven years. Trial, which is estimated to last for several months, is scheduled to begin April 7, 2003. Plaintiffs and Defendants have conducted enormous amounts of discovery, and have deposed scores of witness, including more than forty experts. Numerous motions have been brought, and numerous legal briefs have been filed. Trial schedules of countless individuals have been carefully organized. The Court has already called the jury pool and extensive efforts to prepare sufficient courtroom space are well underway. More than twenty parties and twenty different law firms are involved, as well as numerous witnesses whose schedules all must be coordinated for trial. In the event of a stay, significant additional costs would undoubtedly be incurred to restructure trial arrangements. The grounds for this relief are more fully set forth in the Memorandum of Law filed herewith.

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

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

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A. Clarify its Rehabilitation Order of March 5, 2003 by entering the Proposed Order attached hereto; or, alternatively,

B. Grant a limited relief from the ninety-day stay set forth in the Rehabilitation Order to allow the California Litigation to go forward as scheduled by entering the Proposed Order attached hereto; and,

C. Grant such further relief as may be just and proper.

Respectfully submitted,

**INTERNATIONAL PAPER COMPANY and
MASONITE CORPORATION**

By Their Attorneys,

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

One Capital Plaza
Post Office Box 1500
Concord, New Hampshire 03302-1500
(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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PROPOSED ORDER

Upon Motion by International Paper Company and its former subsidiary Masonite Corporation, as insureds or beneficiaries of proceeds under policies sold by The Home Insurance Company, this Court modifies its Order Appointing Rehabilitator, dated March 5, 2003 ("the Rehabilitation Order") as follows:

Paragraph (g)(1) of the Rehabilitation Order reads as follows:

Any of the following actions are stayed: . . . The commencement or continuation of a judicial, administrative, or other action or proceeding against The Home or any insured of The Home that was or could have been commenced before the commencement of this case, or to recover a claim against The Home that arose before the commencement of the Rehabilitation, for ninety (90) days, except as may be modified by further order of the Court.

In light of the provisions of RSA 402-C:18, governing stays of pending litigation by or against an insurer subject to a rehabilitation order, the Court clarifies that the aforementioned stay is limited to any action pending in the courts of this State. Should the Rehabilitator believe that a stay of any litigation pending outside this State is necessary to protect the estate of the insurer, then the Rehabilitator shall petition the court having jurisdiction over that litigation for such a stay. Nothing in the Rehabilitation Order of March 5, 2003 is intended to or should be read as implementing a stay of litigation pending outside this State.

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Date

Presiding Justice