

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

**LIMITED OBJECTION OF  
JOY ANN GARDNER, ROBERT BLANGERES and  
THE CERTIFIED 7-STATE CLASS THEY REPRESENT  
TO THE REHABILITATOR'S MOTION TO EXTEND STAY**

NOW COME Joy Ann Gardner, Robert Blangeres and the Certified Class of homeowners they represent in seven Western states (collectively the "Gardner Class" or "Intervenors"), by and through their attorneys, and object to the Rehabilitator's Motion to Extend Stay to the extent it would apply to the Gardner Class.

IN FURTHERANCE, Intervenors state as follows:

1. The Home is currently under an Order of Rehabilitation entered by this Court on March 5, 2003 (the "Rehabilitation Order"). The Rehabilitation Order includes a stay against "the commencement or continuation of a judicial, administrative, or other action or proceeding against The Home *or any insured of The Home ...*" See Rehabilitation Order, para. (g)(1). The Stay expires on June 3, 2003.

2. The Gardner Class has a consumer protection class action pending in Seattle, Washington, *not* against The Home Insurance Company ("The Home"), but rather against an unrelated Oregon forest products manufacturer, Stimson Lumber Company ("Stimson"). The case is entitled *Gardner et al. v. Stimson Lumber Company*, Superior Court of Washington in and for King County, Case No. 00-2-17633-3SEA (the "Gardner Class Action"). It was filed three years ago, the class was certified in June 2001 and the case is set for trial on August 11, 2003. Stimson has contended that at least 10 insurers (of which The Home is but one) owe it coverage

RECEIVED  
MERRIMACK COUNTY  
SUPERIOR COURT  
MAY 15 2003

for liability in this class action. The Home has denied coverage and has not intervened in the Gardner Class Action. The Home is one of three primary insurers paying Stimson's defense costs in the Gardner Class Action under a reservation of rights, but it is not controlling its defense.

3. Paragraph (g)(1) of the Rehabilitation Order purports to stay not only all lawsuits against The Home, but also all lawsuits against "*any insured* of The Home" (emphasis added). Relying upon this broad stay language in the Rehabilitation Order, the Washington Superior Court in the Gardner Class Action granted a motion filed by Stimson to stay that lawsuit. Neither The Home nor its Rehabilitator moved for this stay. Nor have they otherwise intervened or appeared in the Gardner Class Action.

4. Early on May 8, 2003 the Gardner Class filed a motion to intervene in this action for the limited purpose of seeking modification of the stay in the Rehabilitation Order, and of any abatement of litigation in the event of a liquidation order, to permit the Gardner Class Action to proceed to trial as may be scheduled by the Washington Superior Court. The Gardner Class simultaneously filed their Motion to Modify together with a supporting memorandum of law and Affidavit of Michael D. Sandler. The Motion to Modify has yet to be acted upon. The Gardner Class is filing herewith a Motion for Expedited Hearing regarding its Motion to Modify.

5. On May 8, 2003, the Rehabilitator filed a Petition for Liquidation in this action, seeking a further six-month stay that would purportedly apply to the Gardner Class Action. That petition is scheduled for hearing on June 9, 2003. On May 9, 2003, the Rehabilitator filed its Motion to Extend Stay "for an additional 30 days, to July 3, 2003, or such earlier date that the Court enters an order imposing a stay sought by the Liquidation Petition."

6. The Gardner Class objects to the Motion to Extend Stay to the extent it applies to the Gardner Class Action because the current stay is inconsistent with the statutory authority

under RSA 402-C:18. In addition, allowing the Gardner case to proceed is in the interests of justice and would have no effect on the estate of The Home.

7. Paragraph (g)(1) of the Rehabilitation Order broadly ordered a stay of any “judicial, administrative, or other action or proceeding against The Home *or any insured of The Home...* for ninety (90) days” (emphasis added). However, the authorizing statute does not provide for any stay of lawsuits against “insureds”; it is expressly limited to lawsuits “against the insurer.” See RSA 402-C:18, I. Accordingly, the current stay, which was adopted without opportunity for comment and which the Rehabilitator now seeks to extend, is much broader than the statutory authority granted. It is also unreasonable and unfair as applied to the plaintiff homeowners in the Gardner Class Action.

8. The limitation on stays of RSA 402-C:18 (to proceedings “against the insurer”) parallels a limitation on the abatement of litigation under RSA 402-C:28 (which is also limited to proceedings “against the insurer”). Significantly, in her Verified Petition for Order of Liquidation, the Rehabilitator does not seek to apply RSA 402-C:28 to stay the actions against “*any insured of The Home*”, apparently conceding that the plain language of the statute applies only to “actions and all proceedings against the insurer”. Id. Nevertheless, that is the sole statutory authority that the Rehabilitator relied upon in obtaining the original stay and that she now relies on in seeking to extend that stay to July 3, 2003.

9. As applied to the Gardner Class Action, the Rehabilitation Order’s stay of pending litigation is uniquely unfair. It has resulted in the stay of a case in which The Home is not a party, has never appeared, has denied coverage, is one of at least ten insurers of the defendant, and is but one of three insurers paying defense costs under a reservation of rights. Moreover, the Rehabilitator already has other authority, under paragraph (h) of the Rehabilitation Order, to reject paying “any and all claims for losses, in whole or in part,” including claims to

RECEIVED  
JUL 14 10 55 AM '03  
CLERK OF SUPERIOR COURT  
DORCHESTER COUNTY

pay defense costs; and the other insurers involved have undertaken to pay all defense costs if The Home ceases to contribute to them. In these circumstances, there is no basis to claim that the Washington Class Action is an "action or proceeding by or against [the] insurer" within the meaning of RSA 402-C:18.

10. These and other grounds for this Objection to the Motion to Extend Stay are stated in greater detail in the Memorandum Of Law in support of the Motion to Modify Rehabilitation Order filed with this Court on May 8, 2003.

WHEREFORE, the Gardner Class respectfully requests that this Honorable Court:

- A. Deny the Rehabilitator's Motion to Extend Stay as applied to the Gardner Class Action; and,
- B. Grant such further relief as may be just and proper.

Respectfully submitted,

**JOY ANN GARDNER, ROBERT BLANGERES  
AND THE CERTIFIED CLASS THEY  
REPRESENT**

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: May 14, 2003

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

**CERTIFICATE OF SERVICE**

I, Sherilyn Burnett Young, hereby certify that on this 14<sup>th</sup> day of May, 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.

By: Sherry Young  
Sherilyn Burnett Young, Esquire

RECEIVED  
MAY 14 2003  
OFFICE OF THE  
ATTORNEY GENERAL  
CONCORD, NH