

**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

**RESPONSE TO DECLARATION OF KIRK J. WOLDEN IN OPPOSITION  
TO MOTION TO MODIFY REHABILITATION ORDER**

NOW COME Joy Ann Gardner, Robert Blangeres and the Certified Class of homeowners they represent in seven Western states (collectively the "Gardner Class"), by and through their attorneys, and, responding to the declaration of Kirk J. Wolden in Opposition to Motion to Modify Rehabilitation Order dated May 16, 2003 ("Wolden Declaration"), state as follows:

1. Notably, nothing in the Wolden Declaration speaks to the merits of the Gardner Class' argument that the Rehabilitation Order and Proposed Liquidation Order exceed the Court's statutory authority as to out-of-state actions against insureds of the Home. Rather, the Declaration seeks to attack the credibility of the Gardner Plaintiffs' counsel on points related to the posture of the Gardner Class litigation. The Gardner Class disputes each of these points, but does not respond to them individually here because that dispute is not germane to the New Hampshire statutory issues now before the Court.

2. The Supplemental Affidavit of Michael D. Sandler in Support of Motion of Joy Ann Gardner, et al. to Modify Rehabilitation Order, filed herewith, provides a detailed response to other allegations in the Wolden Declaration. In summary:

A. If the Gardner Class prevails on the merits of their claim and if coverage is found to exist, any primary insurance will be many times exceeded and The Home's share of the risk in the Gardner litigation will be well below five percent of the Gardner

Class's claim. This is also illustrated by the coverage chart (attached in Exhibit 4 to the previous Affidavit of Michael D. Sandler) that was submitted by the insurers in the Oregon coverage litigation.

B. Pleadings filed by The Home in the Oregon coverage litigation clearly state that "they have no duty to defend and/or indemnify Stimson with respect to Certain Siding Claims" which are defined to include the claims in the Gardner Class action (*see* paragraph 5 and Exhibits 2 and 3 to the previous Affidavit of Michael D. Sandler).

C. The Wolden Declaration does not state or even imply that the Home is, in fact, controlling the defense in the Gardner Class action litigation, even though Mr. Wolden would be in the position to so state.

3. The Wolden Declaration should not divert this Court's attention from the primary issue now before it: whether the Court has statutory authority to impose a stay as to out-of-court litigation which does not involve a "covered claim" under the New Hampshire Guaranty Association statute – the statute relied on in the proposed liquidation order.

Respectfully submitted,

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

By Their Attorneys,

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

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Dated: June 5, 2003

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

**CERTIFICATE OF SERVICE**

I, Sherilyn Burnett Young, hereby certify that on this 5<sup>th</sup> day of June, 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, J. David Leslie, Esquire and Eric A. Smith, Esquire.

By: Sherry Young  
Sherilyn Burnett Young, Esquire