

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

**MOTION TO INTERVENE OF
JOY ANN GARDNER, ROBERT BLANGERES and
THE CERTIFIED 7-STATE CLASS THEY REPRESENT**

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 move that this Honorable Court permit them to intervene in the above-captioned action.

IN FURTHERANCE, Movants state as follows:

1. 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" or the "Washington 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 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.

GRANTED
K. M.
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2. The Home is a New Hampshire corporation with statutory offices in Manchester, New Hampshire. 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”). Intervenors were not served with the Petition and had no opportunity to respond to it before the issuance of the Rehabilitation Order.

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 Washington Class Action.

4. The Gardner Class seeks to intervene in this action for the limited purpose of seeking a modification of the stay in the Rehabilitation Order, and of any abatement of litigation in the event of a liquidation order, to permit the Washington Class Action to proceed to trial as may be scheduled by the Washington Superior Court. These matters are set forth in the accompanying Motion Of Joy Ann Gardner, Robert Blangeres And The Certified 7-State Class They Represent To Modify Rehabilitation Order And Scope Of The Abatement Of Cases In Any Future Liquidation Of The Home (“Motion to Modify”); in the memorandum of law in support of the Motion to Modify, and in the Affidavit of Michael D. Sandler in support of the Motion to Modify.

5. The stay provision of the Rehabilitation Order exceeds the statutory authority granted to the courts regarding the scope of such stays and should not be applied in the unique circumstances presented by the Washington class action. The statute, RSA 402-C:18, I, authorizes stays only of lawsuits against “an insurer,” *not* those against “any insured” of an insurer. Similarly, in the event a liquidation order is sought and issued against The Home, the relevant statutory authority, RSA 402-C:28, would authorize an abatement of lawsuits solely against the insurer, *not* those against any insured.

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. Absent the relief sought in the Motion to Modify, the Gardner Class will be prejudiced for reasons stated in detail in their memorandum of law in support of the Motion to Modify. Therefore, the Gardner Class has a “direct and apparent” interest in seeking modification of this Court’s Rehabilitation Order and of any abatement of cases from a potential liquidation order, to obtain relief from the stay and from any future abatement.

8. No current party in this rehabilitation proceeding represents the interests of the Gardner Class. If intervention were denied, the Gardner Class would lose its ability to be heard with respect to the application and effect on Movants of this Court’s Rehabilitation Order and potential liquidation order.

9. Superior Court Rule 57-A Certification: Legal counsel for Paula T. Rogers, Rehabilitator, concurs in this Motion to Intervene for purposes of seeking limited relief from the Stay in the Rehabilitation Order.

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

- A. Grant their Motion to Intervene; 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***
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Dated: May 8, 2003

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

CERTIFICATE OF SERVICE

I, Sherilyn Burnett Young, hereby certify that on this 8th 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