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10 THE HOME INSURANCE COMPANY

11 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

13 INTERNATIONAL PAPER COMPANY and
14 MASONITE CORPORATION,

15 Plaintiffs,

16 vs.

17 AFFILIATED FM INSURANCE COMPANY,
18 et al.,

19 Defendants.

No. 974350

**THE HOME INSURANCE COMPANY'S
MOTION TO IMPLEMENT A NINETY-
DAY STAY OF THE ENTIRE ACTION**

Date: TBD
Time: TBD
Dept. 318

Hon. Alex Saldamando
Trial Date: April 7, 2003

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1 By this motion, Defendant The Home Insurance Company in Rehabilitation (“The Home”)
2 seeks an order staying this Action for a period of ninety days. The Home seeks this relief in order to
3 implement the stay provision in Home’s order of rehabilitation of The Home Insurance Company,
4 which was issued on March 5, 2003 by the Superior Court for the State of New Hampshire, County of
5 Merrimack.

6 **I. INTRODUCTION**

7 Home is a New Hampshire corporation with statutory offices at 286 Commercial Street,
8 Manchester, New Hampshire. It is a New Hampshire domiciled insurance company authorized by,
9 licensed by, and subject to regulation by the New Hampshire Insurance Department. On March 5,
10 2003, the New Hampshire Commissioner of Insurance petitioned the Superior Court of New
11 Hampshire for an order placing Home into voluntary rehabilitation. The petition is styled “In the
12 Matter of the Rehabilitation of The Home Insurance Company” and seeks, among other matters, the
13 appointment of a rehabilitator and a ninety-day stay of actions against Home and its insureds. A copy
14 of the verified petition for rehabilitation is attached as Exhibit A to the accompanying Declaration of
15 James R. Forbes (“Forbes Declaration”).

16 On March 5, 2003, the New Hampshire Superior Court granted the Commissioner’s petition
17 for rehabilitation. An executed copy of the order (hereinafter the “Rehabilitation Order”) is attached
18 as Exhibit B to the Forbes Declaration.¹ The Rehabilitation Order appoints the New Hampshire
19 Commissioner of Insurance as Home’s Rehabilitator. The order specifically provides that it “shall
20 not be deemed a finding or declaration of insolvency such as would activate the provisions of the
21 New Hampshire Guaranty Association.” *Id.* at para. (l).

22 The Rehabilitation Order was entered pursuant to New Hampshire’s Insurers Rehabilitation
23 and Liquidation Act, RSA 402-C:1, *et seq.* The Act empowers the rehabilitator to take all necessary
24 actions to reform and revitalize an insurer. RSA 402-C:17.

25 Paragraph (g)(1) of the Rehabilitation Order stays:

26 _____

27 ¹ The Home gave notice of entry of the Rehabilitation Order to all parties in this action on March 6,
28 2003. A copy of the Notice is attached as Exhibit C to the Forbes Declaration.

1 [t]he commencement or continuation of a judicial, administrative, or
2 other action or proceeding against The Home or any insured of The
3 Home that was or could have been commenced before the
4 commencement of this case, or to recover a claim against The Home
5 that arose before the commencement of the Rehabilitation, for ninety
6 (90) days, except as may be modified.

7 Section 18 of New Hampshire's Insurers Rehabilitation and Liquidation Act (RSA 402-C:18)
8 requires that the rehabilitator "immediately consider all litigation pending outside this state and shall
9 petition the courts having jurisdiction over that litigation for stays whenever necessary to protect the
10 estate of the insurer." RSA 402-C:18(I). Pursuant to Section 18 of the Act and to paragraph (g)(1) of
11 the Rehabilitation Order, Home's Rehabilitator has determined that a ninety-day stay of the
12 proceedings against Home and its insureds is necessary to provide it with an opportunity to assess
13 fully Home's condition, develop and implement a plan or rehabilitation and protect Home's estate in
14 the interim.

15 II. ARGUMENT

16 There is nothing novel about enforcing a stay in a rehabilitation order that is issued by a court
17 of a sister state pursuant to that state's statutory scheme for rehabilitating insurance companies. With
18 respect to Home specifically, there are multiple legal principles that require this Court to implement
19 the temporary stay in Home's Rehabilitation Order. Each by itself is sufficient to require this Court
20 to stay this Action for a period of ninety days.

21 A. The Rehabilitation Order is Entitled to Full Faith and Credit

22 The United States Constitution requires that each state give full faith and credit to the public
23 acts, records and judicial proceedings of every other state. U.S. Constitution, Article IV, Section 1.
24 By enacting the Full Faith and Credit Act (28 U.S.C. §1738), Congress extended the reach of the
25 doctrine to all courts within the United States, including federal courts. Accordingly, the "judgment
26 of a state court should have the same credit, validity, and effect, in every other court of the United
27 States, which it had in the state where it was pronounced." Hampton v. M'Connel, 3 Wheat. 234,
28 235, 4 L. Ed. 378 (1818), *quoted in* Underwriters Nat. Assur. Co. v. North Carolina Life & Acc. &
Health Ins. Guar. Assoc., 455 U.S. 691, 704 (1982).

An order of rehabilitation is entitled to full faith and credit. See, Bard v. Charles R. Myers
Ins. Agency, Inc., 839 S.W.2d 791 (Tex. 1992) (giving full faith and credit to a Vermont liquidation

1 order which included a stay of proceedings); Herstam v. Silvercreek Water & Sanitation Dist., 895
2 P.2d 1131 (Colo. Ct. App. 1995) (giving full faith and credit to a rehabilitation order containing a
3 stay); Janak v. Allstate Ins. Co., 319 F. Supp. 215 (W.D. Wis. 1970) (holding that an injunction
4 barring all actions against an insolvent insurer is entitled to full faith and credit to ensure that the
5 assets of the insolvent insurer are divided fairly).

6 Courts regularly enforce out-of-state court orders that enjoin proceedings against an insurer in
7 rehabilitation or liquidation. See, e.g., Brown v. Link Belt Div. of FMC Corp., 666 F.2d 110 (5th
8 Cir. 1982) (enforcing an Illinois court's stay of proceedings); Integrity Ins. Co. v. Martin, 105 Nev.
9 16, 769 P.2d 69 (Nev. 1989) (enforcing a New Jersey court's stay of proceedings); Nasef v. U & I
10 Invest., Inc., 91 Ore. App. 344, 755 P.2d 136 (Or. Ct. App. 1988) (enforcing an Indiana court's stay of
11 proceedings); State ex rel. Low v. Imperial Ins. Co., 140 Ariz. 426, 682 P.2d 431 (Ariz. Ct. App.
12 1984) (enforcing stay of proceedings by a California court); State ex rel. Guste v. Alic Corp., 595
13 So.2d 797 (La. App. 1992) (upholding an order enjoining suits against an insurer); Powell v. All City
14 Ins. Co., 74 A.D.2d 942, 426 N.Y.S. 2d 135 (NY App. Div. 1980) (enforcing a rehabilitation order
15 that enjoined proceedings against an insurer); Maryland Casualty Co. v. Marquette Casualty Co., 173
16 So.2d 868 (La. App. 1965) (enforcing a stay of proceedings pursuant to a rehabilitation order).

17 Here, The Home seeks an order that is far narrower than many of those that were enforced in
18 the cases cited above. While many of those cases enforced injunctions that effectively terminated
19 actions, The Home is only seeking enforcement of a temporary stay. Nothing in the Rehabilitation
20 Order purports to affect this Court's jurisdiction over the parties to this action or this Court's right to
21 hear it.

22 In Underwriters Nat. Assur. Co. v. North Carolina Life & Acc. & Health Ins. Guar.
23 Association, 455 U.S. 691 (1982), the United States Supreme Court held that full faith and credit
24 must be extended to an order issued by an Indiana court that placed an insurance company into
25 receivership and that enjoined actions brought against it. In so holding, the Supreme Court
26 specifically rejected the contention of the North Carolina insurance guarantee association that
27 extending full faith and credit to the order of the Indiana court was inequitable and would negate
28 North Carolina's comprehensive statutory scheme to ensure the protection of its policyowners. Id. at

1 715. If a court cannot properly deny full faith and credit to an out-of-state order to protect the
2 comprehensive statutory insurance scheme of its own state, then it cannot deny full faith and credit to
3 an out-of-state order in an effort to protect individual out-of-state policyholders or claimants that
4 chose to sue within its state.

5 No one can seriously dispute that Home's Rehabilitation Order is valid and properly entered
6 pursuant to New Hampshire's Insurers Rehabilitation and Liquidation Act. As previously quoted,
7 that Act specifically authorizes a stay of out-of-state actions. As a result, the ninety-day stay
8 contained in the Rehabilitation Order is entitled to full faith and credit and should be implemented
9 through a temporary stay of this Action.

10 **B. The Doctrine of Comity Mandates Enforcement of the Rehabilitation Order**

11 Comity is the decision of one state to defer to the policy of another state in order to promote
12 the uniformity of laws and harmony in their application. Simmons v. Superior Court, 96 Cal. App.
13 2d 119, 130 (1950) ("[c]omity between states is daily growing and should be encouraged"). It is
14 appropriate for courts to apply the doctrine of comity when another court has exercised jurisdiction
15 over the same matter and the two states agree on the public policy at issue. Twin City Bank v.
16 Mutual Fire Marine & Inland Ins. Co., 646 F. Supp. 1139 (S.D.N.Y. 1986), *aff'd* 812 F.2d 713 (2d
17 Cir. 1987).

18 Here, the Rehabilitation Order was issued pursuant to New Hampshire Insurance Code
19 Section 402-C (the "Insurers Rehabilitation and Liquidation Act"), which was enacted for purposes
20 that include (1) protection of the interests of the insureds and the public at large, (2) permitting the
21 equitable apportionment of unavoidable loss, and (3) lessening the problems of interstate
22 rehabilitation by facilitating cooperation between states. RSA 402-C:1(IV). The purpose of the
23 temporary stay in a New Hampshire rehabilitation order is to permit the rehabilitator time to protect
24 the estate of the insurer and to take other, further action as necessary for the interests of justice or for
25 the protection of creditors, policyholders and the public RSA 402-C:18(I).

26 Like New Hampshire, California has adopted a statutory scheme that has the goal of
27 facilitating an orderly and effective rehabilitation of insurance companies in a manner that is fair to
28 all interested parties. Like New Hampshire, California, through its enactment of the Uniform

1 Insurance Liquidation Act ("UILA"), also recognizes a compelling public policy interest in
2 permitting the insurers' domiciliary state to direct and control an insurer rehabilitation without
3 interference. See Cal. Ins. Code § 1064.1 *et seq.*; and see also Cal. Ins. Code § 1010 *et seq.* New
4 Hampshire permits a rehabilitator to seek a stay of proceedings to protect an insurer in rehabilitation;
5 under California law a trial court is allowed to issue an injunction to prevent "[t]he institution or
6 prosecution of any actions or proceedings" when an insurer is in conservatorship or liquidation
7 proceedings. See Cal. Ins. Code §1020(c). A temporary stay of proceedings in this situation "gives
8 the receiver a breathing spell to organize the relevant assets and to determine how to preserve any
9 existing value in those assets." Herstam v. Board of Directors of the Silvercreek Water and
10 Sanitation Dist., 895 P.2d 1131, 1137 (Colo. Ct. App. 1995).

11 Both New Hampshire and California provide stays as part of their insurer regulatory schemes
12 that are effective throughout the United States. RSA 402-C:5 and RSA 402-C:18; and Cal. Ins. Code
13 §1020(c). Courts throughout the country commonly enforce out-of-state injunctions that are issued to
14 protect insurers that are the subject of regulatory proceedings. See, e.g., Joplin Corp. v. State, 1977
15 OK 198, 570 P.2d 1161 (Okla. 1977); Emons Industries, Inc. v. Liberty Mut. Fire Ins. Co., 545 F.
16 Supp. 185 (S.D.N.Y. 1982).

17 California's public policy favoring the rehabilitation of insurance companies dates back to the
18 1930s. As the California Supreme Court acknowledged in 1937 in Carpenter v. Pacific Mutual Life
19 Insurance Company:

20 **It is no longer open to question that the business of insurance is**
21 **affected with a public interest. The state has an important and**
22 **vital interest in the liquidation or reorganization of such a business.**
23 [Citations omitted.] Neither the company nor a policyholder has the
24 inviolate rights that characterize private contracts. The contract of the
25 policyholder is subject to the reasonable exercise of the state's police
26 power. The only restriction on the exercise of this power is that the
27 state's action shall be reasonably related to the public interest and shall
28 not be arbitrary or improperly discriminatory. Sections 1010 *et seq.* of
the Insurance Code deal with rehabilitation and liquidation of insurance
companies in financial difficulties

.....
Obviously, if an insurance company gets into financial difficulties,
something must be done to remedy the situation. Either the
company must be liquidated, and its assets distributed to its creditors,

1 thus immeasurably injuring many of its policyholders who are thus
2 deprived of insurance protection, or the business must, if possible, be
3 rehabilitated. The public has a grave and important interest in
4 preserving the business if that is possible. Liquidation is the last
5 resort. [Citations omitted.] The provisions of the California
6 Insurance Code recognize the public interest involved and provide
7 for rehabilitation of such companies, if possible.

8 Carpenter, 10 Cal. 2d 307, 329-330 (emphasis added) (*quoted in Garamendi v. Executive Life Ins.*
9 *Co.*, 17 Cal. App. 4th 504, 515-516 (1993) and Commercial Nat'l Bank In Shreveport v. Superior
10 Court, 14 Cal. App. 4th 393, 398 & 403-404 (1993)).

11 Given the doctrine of comity coupled with California's long-standing public policy of
12 supporting the rehabilitation of insurance companies, this Court should honor the New Hampshire
13 Court's Order of Rehabilitation and grant a ninety day stay of this action. Failure to do so may
14 induce the courts of other states to refuse to honor the stay orders of California courts.

15 **C. The Home Will Be Severely Prejudiced Unless A 90-Day Stay of the Entire**
16 **Action Is Imposed**

17 The Home is seeking a 90-day stay of this action in its entirety from the date of the
18 Rehabilitation Order entered on March 5, 2003, *i.e.*, up to and including June 2, 2003. Trial in this
19 action is scheduled to commence on April 7, 2003. The parties estimate trial will take approximately
20 4 months to complete. Under the current trial schedule, the stay imposed by the Rehabilitation Order
21 will lift approximately 8 weeks into the 16 week trial in this action. The lifting of the Rehabilitation
22 Order's stay in the middle of trial will create undue and insurmountable hardship for The Home and
23 prejudice The Home in its ability to participate at trial and prepare its defenses, unless this action is
24 stayed in its entirety. If the trial is allowed to proceed without The Home, when the stay is lifted,
25 many issues regarding The Home's defenses will have been determined without The Home's ability
26 to participate in those determinations in any meaningful manner, or at all. Essentially, The Home
27 will have faced trial "in absentia," thereby depriving The Home of its right to due process.

28 A 90-day stay of this action will not prejudice the other parties. With a stay of the entire
action, the proceedings are halted as to all parties: no party obtains an undue advantage over the
other, and no party can be harmed by a simple 90-day pause in the proceedings. Even with a 90-day
stay of the entire action, trial could commence as early as June 2003 with no prejudice to any of the

1 parties.

2 At the end of the 90-day stay imposed by the Rehabilitation Order, the Rehabilitator will have
3 had an opportunity to assess The Home's condition and to formulate and implement a plan of
4 rehabilitation. At that time, The Home, through its counsel, hopes to be able to advise this Court of
5 The Home's prospects on a go-forward basis so that litigation in this action can proceed in an orderly
6 fashion.


7 **III. CONCLUSION**

8 Enforcing the Rehabilitation Order's stay of ninety days promotes the efficient rehabilitation
9 of The Home and will permit the Rehabilitator time to protect the estate of Home and to take other,
10 further action as necessary for the interests of justice and for the protection of creditors, policyholders
11 (including Masonite) and the public. Enforcement of this stay is also compelled by fundamental
12 principles of full faith and credit, comity and by public policy. Moreover, not entering a stay of the
13 entire action will allow The Home to defend itself and not forfeit its due process right. The Home,
14 therefore, requests that this Court enforce the Order of Rehabilitation and grant a ninety day stay of
15 this action in its entirety.

16
17 DATED: March 24, 2003

NIXON PEABODY LLP

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By: 
JAMES R. FORBES
MARCIE A. KEENAN
HELEN S. FORRESTER
Attorneys for Defendant
THE HOME INSURANCE COMPANY

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12 IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

13 INTERNATIONAL PAPER COMPANY and
14 MASONITE CORPORATION,

15 Plaintiffs,

16 vs.

17 AFFILIATED FM INSURANCE COMPANY,
18 et al.,

19 Defendants.

No. 974350

**DECLARATION OF JAMES R. FORBES IN
SUPPORT OF THE HOME INSURANCE
COMPANY'S MOTION TO IMPLEMENT
A NINETY-DAY STAY OF THE ENTIRE
ACTION**

Date: TBA
Time: TBA
Dept. 318

Hon. Alex Saldamando
Trial Date: April 7, 2003

20 I, James R. Forbes, declare as follows: :

21 1. I am an attorney at law duly admitted to practice before all the courts of the State of
22 California and am a partner at Nixon Peabody LLP, attorneys of record for Defendant The Home
23 Insurance Company (hereinafter "The Home"). I have personal knowledge of the facts set forth
24 herein and if called as a witness could and would testify competently to those facts under oath.

25 2. Attached hereto as Exhibit A is a true and correct copy of the Verified Petition for
26 Rehabilitation In the Matter of the Rehabilitation of The Home Insurance Company, dated March 4,
27 2003.
28

1 3. Attached hereto as Exhibit B is a true and correct copy of the Proposed Order
2 Appointing Rehabilitator In the Matter of the Rehabilitation of The Home Insurance Company, dated
3 March 5, 2003.

4 4. Attached hereto as Exhibit C is a true and correct copy of the Notice of Entry of Order
5 of the Merrimack County Superior Court of New Hampshire In the Matter of the Rehabilitation of
6 The Home Insurance Company, and the Rehabilitation Order attached thereto, provided to all parties
7 in this action on March 6, 2003.

8 I declare under penalty of perjury, under the laws of the State of California, that the foregoing
9 is true and correct. Executed this 19th day of March, 2003 at San Francisco, California.

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JAMES R. FORBES



THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

**In the Matter of the Rehabilitation of
The Home Insurance Company**

VERIFIED PETITION FOR REHABILITATION

1. This action is instituted to appoint Paula T. Rogers, Commissioner of Insurance for the State of New Hampshire (the "Commissioner"), as Rehabilitator of The Home Insurance Company (hereinafter referred to as "The Home") and to obtain appropriate relief to protect its policyholders, contract holders, and the public. This Court has jurisdiction of this matter pursuant to RSA 402-C:15.

2. The Commissioner states that she is the duly appointed and qualified Commissioner of Insurance of the State of New Hampshire.

3. The Home is a New Hampshire corporation with its statutory offices at 286 Commercial Street, Manchester, New Hampshire 03101-1138. The Home is a New Hampshire domiciled insurance company authorized by, licensed by, and subject to regulation by the New Hampshire Insurance Department ("Department").

4. The Home has been under an Order of Supervision issued by the New Hampshire Insurance Department in March 3, 1997.

5. The Commissioner states that circumstances are such that the Order of Supervision is inadequate to protect the interests of policyholders, creditors and members of the public.

6. The Commissioner further states that she believes an order of rehabilitation of The Home pursuant to RSA 402-C is appropriate at this time.

7. The Commissioner states that there exists a present necessity for the immediate entry of an order of rehabilitation and requests that this Court appoint the Commissioner as Rehabilitator of The Home, without delay, in order to protect the interests of policyholders, creditors and the public.

8. The Commissioner states that this matter has been fully discussed and reviewed with The Home, and that The Home has assented to expedited relief as set forth in the proposed order without a formal hearing, all in connection with the appointment of such Rehabilitator; and that at least two-thirds of the directors of The Home have consented to this Petition and Order, in accordance with RSA 402-C:15, XIV. (See Attachment A).

9. The Commissioner states that in order to preserve the aforementioned interests, a stay of all actions and proceedings against The Home is required.

10. A proposed order appointing the Rehabilitator (the "Order") accompanies this Petition and is consistent with the authority set forth in RSA 402-C.

WHEREFORE, The Commissioner, pursuant to the provisions of RSA 402-C:15 and RSA 402-C:16, prays that this Court:

1. Grant an order of rehabilitation containing the following relief:

(a) A Finding that sufficient cause exists for an order of rehabilitation of The Home and appointment of the Commissioner as Rehabilitator;

(b) An Order appointing Paula T. Rogers, Commissioner of Insurance for the State of New Hampshire, and her successors in office, as Rehabilitator of The Home;

(c) An Order directing that the Rehabilitator may consult with and obtain the assistance and advice of insurance experts, including, without limitation, actuaries, accountants, attorneys and consultants, and authorizing the Rehabilitator to continue at her sole discretion to retain the services of Risk Enterprise Management Limited, and providing that the Rehabilitator shall have all the powers of the officers and managers of The Home, whose authority shall be suspended, except as they are specifically re-delegated by the Rehabilitator;

(d) An Order directing the Rehabilitator to secure all of the assets, property, books, records, accounts and other documents of The Home (including, without limitation, all data processing information and records comprised of all types of electronically stored information, master tapes, or any other recorded information relating to The Home);

(e) An Order prohibiting the officers, directors, agents, employees, and representatives of The Home, any persons acting in concert with The Home, from disposing, using, transferring, removing or concealing any property of The Home, without the express written authority of the Rehabilitator, or in any way (i) interfering with the conduct of the Rehabilitation or (ii) interfering with the Rehabilitator's possession and rights to the assets and property of The Home;

(f) An Order prohibiting any bank, savings and loan association or other financial institution or other legal entity from disposing of, allowing to be withdrawn or concealing in any manner property or assets of The Home, except under the express authorization of the Rehabilitator or by the further order of this Court;

(g) An Order staying any of the following actions:

(1) 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;

(2) The enforcement, against The Home or its property, of a judgment obtained before the commencement of the Rehabilitation;

(3) Any act to obtain possession of property of The Home or to exercise control over property of The Home;

(4) Any act to create, perfect, or enforce any lien against property of The Home;

(5) Any act to create, perfect or enforce against property of The Home any lien to the extent that such lien secures a claim that arose before the commencement of the Rehabilitation;

(6) Any act to collect, assess, or recover a claim against The Home that arose before the commencement of the Rehabilitation; and

(7) The setoff of any debt owing to The Home that arose before the commencement of this case against any claim against The Home;

(h) An Order authorizing the Rehabilitator, in her discretion, to pay any and all claims for losses, in whole or in part, under policies and contracts of insurance and associated loss adjustment expenses including, but not limited to, claims for losses which, as of the date of the Order, have been previously settled and approved for payment in the normal course of business;

(i) An Order authorizing the Rehabilitator, in her discretion, to pay expenses incurred in the ordinary course of The Home's business in rehabilitation, including the actual, reasonable, and necessary costs of preserving or recovering the assets of The Home and the costs of goods and services provided to The Home's estate. Such costs shall include, but not be limited to: (i) reasonable professional fees for accountants, actuaries, attorneys and consultants with other expertise retained by the Department, the Commissioner or the Rehabilitator to perform services relating to the Rehabilitation of The Home or the feasibility, preparation, implementation, or operation of a rehabilitation plan; (ii) compensation and other costs related to representatives and employees of The Home or its affiliates who perform services for The Home; and (iii) a reasonable allocation of costs and expenses associated with time spent by Department personnel in connection with the Rehabilitation of The Home;

(j) An Order that in the event that this Court issues an order appointing the Commissioner of the Department as liquidator of The Home, the actual, reasonable and necessary costs of preserving or recovering assets of The Home and the costs of goods or services provided to and approved by The Home, under paragraph (i) of this Order, during the period of Rehabilitation will be treated as "costs and expenses of administration," pursuant to RSA 402-C:44 I.;

(k) An Order stating that the amounts recoverable by the Rehabilitator from any reinsurer of The Home shall not be reduced as a result of this Rehabilitation proceeding or by reason of any partial payment or distribution on a reinsured policy, contract or claim, and each such reinsurer of The Home is, without first obtaining leave of this Court, hereby enjoined and restrained from terminating, canceling, failing to extend or renew, or reducing or changing coverage under any reinsurance policy or contract with The Home. The Rehabilitator may, in her discretion, commute any contract with a reinsurer or reinsurers;

(l) An Order that this Order shall not be deemed a finding or declaration of insolvency such as would activate the provisions of the New Hampshire Guaranty Association, RSA 404-B, or the provisions of similar acts of any other state or territory;

(m) An Order that the Rehabilitator shall have full powers and authority given the Rehabilitator under RSA 402-C of Title XXXVII, and under provisions of all other applicable laws, as are reasonable and necessary to fulfill the duties and responsibilities of the Rehabilitator under RSA 402-C of Title XXXVII, and under this Order.

2. Grant further and other relief as this Court may deem just and proper under the circumstances.

Respectfully submitted,
N.H. INSURANCE DEPARTMENT
PAULA T. ROGERS, COMMISSIONER

By her attorneys

PETER W. HEED, ATTORNEY GENERAL

SUZANNE M. GORMAN
Senior Assistant Attorney General
N.H. DEPARTMENT OF JUSTICE
33 Capitol Street, Concord, NH 03301
(603) 271-3650

Dated: March 4, 2003

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK

Paula T. Rogers, being duly sworn, says that she is the duly appointed and qualified Commissioner of Insurance of the State of New Hampshire and Plaintiff in this matter and that the facts and allegations made in this Petition are true and accurate to the best of her knowledge and belief.

//Paula T. Rogers//
Paula T. Rogers

Subscribed and sworn to, before me, this 4th day of March, 2003.

//Diane T. Beaudoin//
Notary Public/Justice of the Peace

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

In the Matter of the Rehabilitation of
The Home Insurance Company

PROPOSED ORDER APPOINTING REHABILITATOR

After having heard and considered the facts set forth in the Commissioner's Verified Petition for Rehabilitation, the Court finds that the law and facts are as the Commissioner of Insurance of the State of New Hampshire (the "Commissioner") has alleged in the Petition and that there exists a present necessity for the immediate entry of this order.

WHEREFORE, it is hereby ordered as follows:

- (a) Sufficient cause exists for an order of rehabilitation of The Home Insurance Company ("The Home") and appointment of the Commissioner as Rehabilitator;
- (b) Paula T. Rogers, Commissioner of Insurance for the State of New Hampshire, and her successors in office, is appointed Rehabilitator of The Home;
- (c) The Rehabilitator may consult with and obtain the assistance and advice of insurance experts, including, without limitation, actuaries, accountants, attorneys and consultants, and authorizing the Rehabilitator to continue at her sole discretion to retain the services of Risk Enterprise Management Limited, and providing that the Rehabilitator shall have all the powers of the officers and managers of The Home, whose authority shall be suspended, except as they are specifically re-delegated by the Rehabilitator;
- (d) The Rehabilitator is to secure all of the assets, property, books, records, accounts and other documents of The Home (including, without limitation, all data processing information and records comprised of all types of electronically stored information, master tapes, or any other recorded information relating to The Home);

(e) The officers, directors, agents, employees, and representatives of The Home, any persons acting in concert with The Home, are prohibited from disposing, using, transferring, removing or concealing any property of The Home, without the express written authority of the Rehabilitator, or in any way (i) interfering with the conduct of the Rehabilitation or (ii) interfering with the Rehabilitator's possession and rights to the assets and property of The Home;

(f) Any bank, savings and loan association or other financial institution or other legal entity are prohibited from disposing of, allowing to be withdrawn or concealing in any manner property or assets of The Home, except under the express authorization of the Rehabilitator or by the further order of this Court;

(g) Any of the following actions are stayed:

(1) 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;

(2) The enforcement, against The Home or its property, of a judgment obtained before the commencement of the Rehabilitation;

(3) Any act to obtain possession of property of The Home or to exercise control over property of The Home;

(4) Any act to create, perfect, or enforce any lien against property of The Home;

(5) Any act to create, perfect or enforce against property of The Home any lien to the extent that such lien secures a claim that arose before the commencement of the Rehabilitation;

(6) Any act to collect, assess, or recover a claim against The Home that arose before the commencement of the Rehabilitation; and

(7) The setoff of any debt owing to The Home that arose before the commencement of this case against any claim against The Home;

(h) The Rehabilitator is authorized, in her discretion, to pay any and all claims for losses, in whole or in part, under policies and contracts of insurance and associated loss adjustment expenses including, but not limited to, claims for losses which, as of the date of the Order, have been previously settled and approved for payment in the normal course of business;

(i) The Rehabilitator, in her discretion, is authorized to pay expenses incurred in the ordinary course of The Home's business in rehabilitation, including the actual, reasonable, and necessary costs of preserving or recovering the assets of The Home and the costs of goods and services provided to The Home's estate. Such costs shall include, but not be limited to: (i) reasonable professional fees for accountants, actuaries, attorneys and consultants with other expertise retained by the State of New Hampshire Insurance Department, the Commissioner or the Rehabilitator to perform services relating to the Rehabilitation of The Home or the feasibility, preparation, implementation, or operation of a rehabilitation plan; (ii) compensation and other costs related to representatives and employees of The Home or its affiliates who perform services for The Home; and (iii) a reasonable allocation of costs and expenses associated with time spent by Department personnel in connection with the Rehabilitation of The Home;

(j) The actual, reasonable and necessary costs of preserving or recovering assets of The Home and the costs of goods or services provided to and approved by The Home, under paragraph (i) of this Order, during the period of Rehabilitation will be treated as "costs and expenses of administration," pursuant to RSA 402-C:44 I.;

(k) The amounts recoverable by the Rehabilitator from any reinsurer of The Home shall not be reduced as a result of this Rehabilitation proceeding or by reason of any partial payment or distribution on a reinsured policy, contract or claim, and each such reinsurer of The Home is, without first obtaining leave of this Court, hereby enjoined and restrained from terminating, canceling, failing to extend or renew, or reducing or changing coverage under any reinsurance policy or contract with The Home. The Rehabilitator may, in her discretion, commute any contract with a reinsurer or reinsurers;

(l) This Order shall not be deemed a finding or declaration of insolvency such as would activate the provisions of the New Hampshire Guaranty Association, RSA 404-B, or the provisions of similar acts of any other state or territory;

(m) The Rehabilitator shall have full powers and authority given the Rehabilitator under RSA 402-C of Title XXXVII, and under provisions of all other applicable laws, as are reasonable and necessary to fulfill the duties and responsibilities of the Rehabilitator under RSA 402-C of Title XXXVII, and under this Order.

Date : 3/5/03
Time: 1:45 p.m.

By: //Katharine A. McGuire//
Presiding Justice

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

In the Matter of the Rehabilitation of
The Home Insurance Company

PROPOSED ORDER APPOINTING REHABILITATOR

After having heard and considered the facts set forth in the Commissioner's Verified Petition for Rehabilitation, the Court finds that the law and facts are as the Commissioner of Insurance of the State of New Hampshire (the "Commissioner") has alleged in the Petition and that there exists a present necessity for the immediate entry of this order.

WHEREFORE, it is hereby ordered as follows:

- (a) Sufficient cause exists for an order of rehabilitation of The Home Insurance Company ("The Home") and appointment of the Commissioner as Rehabilitator;
- (b) Paula T. Rogers, Commissioner of Insurance for the State of New Hampshire, and her successors in office, is appointed Rehabilitator of The Home;
- (c) The Rehabilitator may consult with and obtain the assistance and advice of insurance experts, including, without limitation, actuaries, accountants, attorneys and consultants, and authorizing the Rehabilitator to continue at her sole discretion to retain the services of Risk Enterprise Management Limited, and providing that the Rehabilitator shall have all the powers of the officers and managers of The Home, whose authority shall be suspended, except as they are specifically re-delegated by the Rehabilitator;
- (d) The Rehabilitator is to secure all of the assets, property, books, records, accounts and other documents of The Home (including, without limitation, all data processing information and records comprised of all types of electronically stored information, master tapes, or any other recorded information relating to The Home);

(c) The officers, directors, agents, employees, and representatives of The Home, any persons acting in concert with The Home, are prohibited from disposing, using, transferring, removing or concealing any property of The Home, without the express written authority of the Rehabilitator, or in any way (i) interfering with the conduct of the Rehabilitation or (ii) interfering with the Rehabilitator's possession and rights to the assets and property of The Home;

(f) Any bank, savings and loan association or other financial institution or other legal entity are prohibited from disposing of, allowing to be withdrawn or concealing in any manner property or assets of The Home, except under the express authorization of the Rehabilitator or by the further order of this Court;

(g) Any of the following actions are stayed:

(1) 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;

(2) The enforcement, against The Home or its property, of a judgment obtained before the commencement of the Rehabilitation;

(3) Any act to obtain possession of property of The Home or to exercise control over property of The Home;

(4) Any act to create, perfect, or enforce any lien against property of The Home;

(5) Any act to create, perfect or enforce against property of The Home any lien to the extent that such lien secures a claim that arose before the commencement of the Rehabilitation;

(6) Any act to collect, assess, or recover a claim against The Home that arose before the commencement of the Rehabilitation; and

(7) The setoff of any debt owing to The Home that arose before the commencement of this case against any claim against The Home;

(h) The Rehabilitator is authorized, in her discretion, to pay any and all claims for losses, in whole or in part, under policies and contracts of insurance and associated loss adjustment expenses including, but not limited to, claims for losses which, as of the date of the Order, have been previously settled and approved for payment in the normal course of business;

(i) The Rehabilitator, in her discretion, is authorized to pay expenses incurred in the ordinary course of The Home's business in rehabilitation, including the actual, reasonable, and necessary costs of preserving or recovering the assets of The Home and the costs of goods and services provided to The Home's estate. Such costs shall include, but not be limited to: (i) reasonable professional fees for accountants, actuaries, attorneys and consultants with other expertise retained by the State of New Hampshire Insurance Department, the Commissioner or the Rehabilitator to perform services relating to the Rehabilitation of The Home or the feasibility, preparation, implementation, or operation of a rehabilitation plan; (ii) compensation and other costs related to representatives and employees of The Home or its affiliates who perform services for The Home; and (iii) a reasonable allocation of costs and expenses associated with time spent by Department personnel in connection with the Rehabilitation of The Home;

(j) The actual, reasonable and necessary costs of preserving or recovering assets of The Home and the costs of goods or services provided to and approved by The Home, under paragraph (i) of this Order, during the period of Rehabilitation will be treated as "costs and expenses of administration," pursuant to RSA 402-C:44 I.;

(k) The amounts recoverable by the Rehabilitator from any reinsurer of The Home shall not be reduced as a result of this Rehabilitation proceeding or by reason of any partial payment or distribution on a reinsured policy, contract or claim, and each such reinsurer of The Home is, without first obtaining leave of this Court, hereby enjoined and restrained from terminating, canceling, failing to extend or renew, or reducing or changing coverage under any reinsurance policy or contract with The Home. The Rehabilitator may, in her discretion, commute any contract with a reinsurer or reinsurers;

(l) This Order shall not be deemed a finding or declaration of insolvency such as would activate the provisions of the New Hampshire Guaranty Association, RSA 404-B, or the provisions of similar acts of any other state or territory;

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(m) The Rehabilitator shall have full powers and authority given the Rehabilitator under RSA 402-C of Title XXXVII, and under provisions of all other applicable laws, as are reasonable and necessary to fulfill the duties and responsibilities of the Rehabilitator under RSA 402-C of Title XXXVII, and under this Order.

Date: 3/5/03
Time: 1:45 p.m.

By: *William A. McGuire*
Presiding Justice

COPY

1 James R. Forbes (State Bar No. 114863)
2 Marcie A. Keenan (State Bar Number: 177939)
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8 Attorneys for Defendant
9 THE HOME INSURANCE COMPANY

10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

12 INTERNATIONAL PAPER COMPANY and
13 MASONITE CORPORATION,

14 Plaintiffs,

15 vs.

16 AFFILIATED FM INSURANCE COMPANY,
17 et al.,

18 Defendants.

No. 974350

NOTICE OF ENTRY OF ORDER OF THE
MERRIMACK COUNTY SUPERIOR
COURT OF NEW HAMPSHIRE IN THE
MATTER OF THE REHABILITATION OF
THE HOME INSURANCE COMPANY


Hon. Alex Saldamando
Trial Date: April 7, 2003

19 TO THE COURT AND ALL PARTIES AND COUNSEL OF RECORD:

20 PLEASE TAKE NOTICE that on March 5, 2003, the Merrimack County Superior Court of
21 New Hampshire issued the attached Order *In the Matter of the Rehabilitation of The Home Insurance
22 Company.*

23 DATED: March 6, 2003

NIXON PEABODY LLP

24 By: 
25 JAMES R. FORBES
26 Attorneys for Defendant
27 THE HOME INSURANCE COMPANY
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PROOF OF SERVICE

Case Name: *International Paper Co., et al. v. Affiliated FM Ins. Co., et al.*
Court: San Francisco Superior Court
Case No.: 974350
NP Ref: 311293.960067

I, the undersigned, certify that I am employed in the City and County of San Francisco, California; that I am over the age of eighteen years and not a party to the within action; and that my business address is Two Embarcadero Center, Suite 2700, San Francisco, CA 94111-3996. On this date, I served the following documents:

NOTICE OF ENTRY OF ORDER OF THE MERRIMACK COUNTY SUPERIOR COURT OF NEW HAMPSHIRE IN THE MATTER OF THE REHABILITATION OF THE HOME INSURANCE COMPANY

on the parties listed on the attached service list, through their attorneys of record, by placing true copies thereof in sealed envelopes addressed as shown below by the following means of service:

____: By Personal Service. — I caused each such envelope to be given to a courier messenger to personally deliver to the office of the addressee.

____: By Overnight Courier. — I caused each such envelope to be given to an overnight mail service at San Francisco, California, to be hand delivered to the office of the addressee on the next business day.

____: By First-Class Mail. — I am readily familiar with the firm's practice for collection and processing of correspondence for mailing. Under that practice, the correspondence is deposited with the United States Postal Service on the same day as collected, with first-class postage thereon fully prepaid, in San Francisco, California, for mailing to the office of the addressee following ordinary business practices.

____: By Facsimile. — I caused each such document to be transmitted by facsimile machine, pursuant to Rule 2008. The facsimile machine I used complied with Rule 2003(3) and no error was reported by the machine. Pursuant to Rule 2008(e)(4), I caused the machine to print a transmission record of the transmission, a copy of which is attached to the original of this declaration.

PLEASE SEE ATTACHED SERVICE LIST

I declare under penalty of perjury that the foregoing is true and correct. Executed March 6, 2003 at San Francisco, California.


CAROL C. DOWLING

1 **PROOF OF SERVICE w/ SERVICE LIST**
 2 *International Paper v. Affiliated FM, et al.*
 3 *Our Ref. 11293.960067*

4 **MASTER SERVICE LIST**
 5 (Rev'd 10/02/02)

6 **PLAINTIFFS**
VIA FACSIMILE

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20 **DEFENDANTS**
VIA FACSIMILE

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18 19 20 21	Dan Cunningham, Esq. TRESSLER SODERSTROM MALONEY & PRIESS 233 South Wacker Drive Chicago, IL 60606 Tel: (312) 627-4000 Fax: (312) 627-1717	Attorneys for American Motorists Insurance Co.
22 23 24 25	Fulton Smith III./Steven Meier April Fisher/John Farrell/Julia Mezhinsky Kyle Kickhaefer LARSON * KING, LLP 101 California St., Suite 1850 San Francisco, CA 94111 Tel: (415) 273-2930 Fax: (415) 273-2940	Attorneys for Employers Insurance of Wausau

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<p>1 Dale Larson/Doug Skor/Daniel Trudeau 2 David Schooler 3 LARSON * KING, LLP 4 Suite 2800, Minnesota World Trade Center 5 30 East 7th Street 6 St. Paul, MN 55101 7 Tel: (651) 312-6500 8 Fax: (651) 312-6618</p>	
<p>6 Dale J. Giali, Esq. 7 HOWREY SIMON ARNOLD & WHITE 8 550 South Hope Street, Suite 1400 9 Los Angeles, CA 90071 10 Tel: (213) 892-1800 11 Fax: (213) 892-2300</p>	
<p>10 Howard M. Garfield 11 Karen L. Uno, Esq. 12 LONG & LEVIT 13 601 Montgomery St., Suite 900 14 San Francisco, CA 94111 15 Tel: (415) 397-2222 16 Fax: (415) 397-6392</p>	<p>Attorneys for TIG Insurance Company as successor by merger to International Insurance Company</p>
<p>14 Jeffrey N. Haney, Esq. 15 BISHOP BARRY HOWE HANEY & RYDER 16 2000 Powell St., Suite 1425 17 Emeryville, CA 94608 18 Tel: (510) 596-0888 19 Fax: (510) 596-0899</p>	<p>Attorneys for Royal Insurance Co. and Agricultural Excess & Surplus Insurance Co.</p>
<p>17 William C. Morison-Knox, Esq. 18 Michael Melendez, Esq. 19 Wendy Woolpert, Esq. 20 MORISON-KNOX, HOLDEN, MELENDEZ & 21 PROGH 22 500 Ygnacio Valley Rd., Suite 450 23 Walnut Creek, CA 94596 24 Tel: (925) 937-9990 25 Fax: (925) 937-3272</p>	<p>Attorneys for Travelers Insurance Group (Constitution State Insurance Company)</p>
<p>22 Ann M. Elston, Esq. 23 LOSSING & ELSTON 24 100 First Street 25 San Francisco, CA 94105 26 Tel: (415) 882-4200 27 Fax: (415) 882-4050</p>	<p>Attorneys for St. Paul Insurance Company of Illinois</p>

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19 20 21 22	Brent Graber, Esq BATES MECKLER BULGER & TILSON 8300 Sears Tower 233 South Wacker Drive Chicago, IL 60606 Tel: (312) 474-7900 Fax: (312) 474-7898	Attorneys for American Zurich Insurance Co.
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