

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

In the Matter of the Rehabilitation of
The Home Insurance Company

Docket No. 03-E-0106

**INSPIRATION CONSOLIDATED COPPER COMPANY,
PHELPS DODGE CORPORATION AND PHELPS DODGE
MIAMI, INCORPORATED'S PETITION TO INTERVENE**

NOW COME Inspiration Consolidated Copper Company ("Inspiration"), Phelps Dodge Corporation, and Phelps Dodge Miami, Incorporated (together, "Phelps Dodge") (collectively "Inspiration/Phelps Dodge"), creditors of The Home Insurance Company ("The Home"), by and through their attorneys, and respectfully petition the Court for leave to intervene as a Parties/Claimants in the above-captioned proceeding;

WHICH MOTION is based upon the following grounds:

1. Both Inspiration and Phelps Dodge have asserted property damage claims against The Home under four (4) Excess Umbrella Liability Insurance Policies (each in the amount of \$10 million per occurrence and together covering the period from January 1, 1965 through December 31, 1977) based on environmental contamination at the Pinal Creek Site in Globe, Arizona. These claims were the subject of a civil suit commenced in January, 1998, in Arizona state court entitled Inspiration Consolidated Copper Company et al. v. The American Ins. Co., et al. (Maricopa County, Arizona, No. CV 98-000530). That civil suit was tried to a jury for three (3) weeks in November,

2002. At the close of the evidence, but before closing arguments, Inspiration/Phelps Dodge, The Home and Risk Enterprise Management, Ltd. ("REM"), the third-party administrator that manages The Home's business on behalf of the New Hampshire Insurance Commissioner (the "Commissioner"), agreed to a settlement "subject to approval by the New Hampshire Department of Insurance," that, among other things, would release all parties and require the payment of \$2.5 million by The Home to Inspiration/Phelps Dodge.

2. All the substantive terms of the settlement were set forth in a three (3) page written "Settlement Termsheet" (Exhibit A), which was then signed on November 27 and 29, 2002, by The Home and Inspiration/Phelps Dodge and submitted to the presiding judge, Superior Court Judge Rebecca Albrecht, on December 2, 2002. After reviewing the signed "Settlement Termsheet", and being told by representatives of The Home and Inspiration/Phelps Dodge that the case was settled on the terms set forth therein, Judge Albrecht dismissed the jury and adjourned the trial.

3. The parties' agreement to settle followed several meetings between representatives of The Home, REM, and Inspiration/Phelps Dodge. Inspiration/Phelps Dodge suggested that the parties use a form of Settlement Agreement that had been used in settlements with other insurance company defendants in the same litigation, but REM and The Home insisted that the parties work out a different form of Settlement Agreement, after they had signed the "Settlement Termsheet", showed it to Judge Albrecht, and obtained an adjournment of the trial. Inspiration/Phelps Dodge agreed to work out a different form of Settlement Agreement, on the assumption that putting the agreed "Settlement Termsheet" into a more formal document should not be a difficult or

lengthy process. As it turned out, five (5) months passed before the parties could agree on a new form of Settlement Agreement.

4. The "Settlement Termsheet" dated November 27 and 29, 2002, was signed by authorized representatives of The Home and was repeatedly reaffirmed by those representatives and by representatives of REM over a period of five (5) months, both before and after the Commissioner was appointed Rehabilitator of The Home. While the final wording and detailed terms of the Settlement Agreement were not arrived at until late April 2003, the basic requirement that The Home pay Inspiration/Phelps Dodge \$2.5 million, the parties exchange releases, and the case be dismissed with prejudice have remained constant from the date the "Settlement Termsheet" was signed and the trial adjourned. When the wording and detailed terms of the Settlement Agreement were finally agreed to, the representatives of The Home, REM and Inspiration/Phelps Dodge orally agreed that it represented their agreement and that they would execute, or in the case of REM, recommend to the Commissioner that she execute, that written Settlement Agreement. At no time during the five (5) months between execution of the "Settlement Termsheet" and submission of the Settlement Agreement to the Insurance Commissioner for signature did the representatives of The Home or REM suggest that the New Hampshire Department of Insurance had not approved the settlement or that, once the final form of Settlement Agreement was arrived at, the Commissioner would refuse to sign it or to pay the \$2.5 million settlement debt.

5. During these five (5) months, neither The Home nor REM informed Inspiration/Phelps Dodge that The Home was in dire financial condition or that the Commissioner was considering placing The Home into Rehabilitation or Liquidation.

6. On March 5, 2003, the Commissioner was appointed Rehabilitator of The Home. The Order of Rehabilitation gave the Commissioner control over the payment of The Home's debts, including its \$2.5 million settlement debt to Inspiration/Phelps Dodge. Immediately following the Order of Rehabilitation, Inspiration/Phelps Dodge questioned whether the Order would have any effect on the completion of the Settlement Agreement and payment of the \$2.5 million settlement debt. See Exhibit B. On March 19, 2003, The Home and REM replied by reassuring Inspiration/Phelps Dodge that the Order of Rehabilitation would have no effect on the deal set forth in the "Settlement Termsheet" and the process of implementing those terms which the parties had been following for three (3) months. The Home's letter concluded, "[W]e understand your discomfort about the effect of the Rehabilitation Order, and the uncertainties for all of us that this development entails. However, please be advised that Home intends to recommend approval of this settlement." (emphasis added). See Exhibit C at page 3.

7. During March and April, 2003, The Home, REM and Inspiration/Phelps Dodge continued to exchange drafts of a Settlement Agreement. During this period, neither The Home nor REM informed Inspiration/Phelps Dodge that The Home's financial condition was worsening or that there was an increasing possibility that The Home would be placed into liquidation. Once the parties arrived at the final form of a Settlement Agreement, Inspiration/Phelps Dodge executed four (4) originals, and, on April 28, sent them by Federal Express to REM, for REM to pass along to the Commissioner for signature and payment. See Exhibit D.

8. Inspiration/Phelps Dodge heard nothing for a week. They then inquired about the status of the Settlement Agreement (See Exhibit E).

9. Two (2) days later, on May 8, 2003, Inspiration/Phelps Dodge learned that the Commissioner had filed the instant Petition seeking to liquidate The Home.

10. Inspiration/Phelps Dodge immediately contacted The Home and REM, asking for an explanation and inquiring about the Commissioner's intentions regarding payment of the \$2.5 million settlement debt.

11. The Home and REM initially responded that the Settlement Agreement, as executed by Inspiration/Phelps Dodge, along with REM's recommendation that the Commissioner sign it, had been sent to the Commissioner prior to the date the instant Petition was filed in Court, but that neither The Home nor REM knew whether the Commissioner had signed the Settlement Agreement or intended to pay the \$2.5 million settlement debt before liquidation. See Exhibit F.

12. The instant Petition states that the Commissioner is allowing payment in full of certain pre-existing debts, including worker's compensation, automobile personal injury and certain hardship claims, but has "directed that payments on all other kinds of claims cease." See Petition, 13. On June 3, 2003, Inspiration/Phelps Dodge was finally informed that the Commissioner does not intend to pay the \$2.5 million settlement debt along with these other claims before liquidation. An Order of Liquidation that did not provide for full payment of the settlement debt would substantially impair Inspiration/Phelps Dodge's rights under the signed "Settlement Termsheet" and the parties' oral agreement to the terms of the Settlement Agreement.

13. Superior Court Rule 139 provides, in part, that "[a]ny person shown to be interested may become a party to any proceeding in equity on his petition briefly setting forth his relation to the cause. . . ." The Supreme Court has repeatedly affirmed that

intervention is a matter within the discretion of the trial court but should be granted upon the petition of a person who can show a direct and apparent interest in the subject matter of the case. See, e.g., Scammon v. Sondheim, 97 NH 280 (1952) and Sklar Realty, Inc. v. Town of Merrimack, 125 NH 321 (1984). Inspiration/Phelps Dodge has such a direct and apparent interest in the Commissioner's petition to liquidate The Home and her decision regarding the debts she will pay before liquidation.

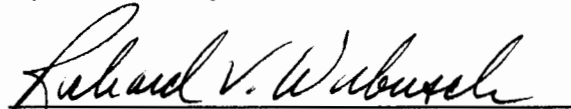
WHEREFORE, Petitioners Inspiration and Phelps Dodge respectfully pray that the Court will enter an Order:

- A. Allowing Inspiration and Phelps Dodge to intervene in this proceeding as Parties/Claimants;
- B. Permitting Inspiration and Phelps Dodge to be heard on the issues set forth in this Petition at the hearing presently scheduled for June 9;
- C. Requiring the Insurance Commissioner to pay the \$2.5 million settlement debt in full before any liquidation of The Home; and
- D. Awarding such other relief as may be just and proper.

Respectfully submitted,

INSPIRATION CONSOLIDATED
COPPER, COMPANY, PHELPS DODGE
CORPORATION AND PHELPS DODGE
MIAMI, INCORPORATED

By their attorneys,



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Date: June 4, 2003

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CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of June, 2003, a true and correct copy of the foregoing Petition to Intervene was hand-delivered to Peter C. L. Roth, Senior Assistant Attorney General, counsel for the Insurance Commissioner, and to Sherlyn A. B. Young, Esq., and Frank Spinelli, Esq., counsel for other interested persons.



Richard V. Wiebusch