

MASCO CORP /DE/  
Form 8-K  
September 19, 2002

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549

-----  
FORM 8-K  
CURRENT REPORT  
PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934

Date of report (Date of earliest event reported) September 18, 2002

-----  
Masco Corporation  
(Exact name of Registrant as Specified in Charter)

Delaware ----- (State or Other Jurisdiction of Incorporation)	1-5794 ----- (Commission File Number)	38-1794485 ----- (IRS Employer Identification No.)
------------------------------------------------------------------------	---------------------------------------------	-------------------------------------------------------------

21001 Van Born Road, Taylor, Michigan ----- (Address of Principal Executive Offices)	48180 ----- (Zip Code)
--------------------------------------------------------------------------------------------	------------------------------

(313) 274-7400  
-----  
Registrant's telephone number, including area code

Item 5. Other Events

The Company is filing this Current Report on Form 8-K for the purpose of reporting a new development concerning the previously disclosed civil suit filed in May 1998 in the Grays Harbor County, Washington State Superior trial court against the Company's Behr Process Corporation subsidiary.

This Washington case involves four exterior wood coating products, representing a relatively small part of Behr's total sales, brought on behalf of purchasers of these products in nineteen counties in western Washington State, an area with a particularly humid climate. The plaintiffs allege, among other things, that after applying these products to their homes and ancillary structures such as fences and decks, the wood surfaces suffered excessive mildew. Behr denies the allegations. In January, 1999 the trial court certified the case as a class action, including all purchasers of the products who reside in the nineteen counties.

As previously disclosed, in May, 2000, the trial court entered a default against Behr as a discovery sanction. The default prevented Behr from presenting evidence to challenge damages. Thereafter, the jury returned a

## Edgar Filing: MASCO CORP /DE/ - Form 8-K

verdict awarding damages to the named plaintiffs. The damages awarded in respect of the homes of the eight homeowner plaintiff claims (excluding one award to the owners of a vacation resort) ranged individually from \$14,500 to \$38,000. The awards were calculated using a formula based on the product used, the type and square footage of wood surface the product was applied to and certain other allowances. The formula would result in lesser awards for product applied to ancillary structures such as fences and decks. Under the verdict, the same formula will be used for calculating awards on claims that may be submitted by the subject purchasers of these products. In July 2000, the court awarded additional damages of \$10,000 per claim to the eight homeowner claims, under the Washington Consumer Protection Act. This increased the total damages awarded on the homeowner claims to approximately \$263,000. The court denied the plaintiffs' request for an award of additional damages under the Consumer Protection Act on claims that may be submitted by unnamed class members on the basis that it lacked statutory authority to award such additional damages. In addition, the court granted the plaintiffs' motion for attorneys' fees.

Behr appealed the trial court judgment to the Court of Appeals of Washington. On September 13, 2002, the Court of Appeals issued its opinion, ruling in favor of the plaintiffs on substantially all issues, including the authority of the trial court to award additional damages under the Washington Consumer Protection Act (up to a maximum of \$10,000 to each class member). Behr intends to petition the Washington State Supreme Court for discretionary review of the decision of the Court of Appeals. Although Behr believes that rulings by the trial court constitute reversible error and that there are valid defenses to the lawsuit, there can be no assurance that the Supreme Court will accept the appeal or that it will reverse the judgment of the trial court.

After publication of the trial court's 1999 order certifying the case as a class action, plaintiffs' counsel stated that they have been contacted by more than 2000 persons regarding the case. It is uncertain whether the persons who have already contacted plaintiffs' counsel have claims they intend

to submit in the class action, whether they will successfully complete the claims documentation and process, or the extent to which any such claims relate to homes or ancillary structures. Unless the decision of the Washington trial court is reversed on appeal, the claim notification process will begin. Following such notice, persons certifying that they purchased and applied the relevant products on property that they own and that they experienced mildew on the property will be entitled to damages according to the formula established by the trial court as discussed above. The Company anticipates that the number of claims may then increase significantly over the number of persons who have already contacted plaintiffs' counsel.

In light of the circumstances, unless the decision of the Washington trial court is reversed on appeal, the Company has determined that it is probable that a loss has been incurred with respect to this class action and that the loss incurred may be material to its financial position and results of operations. Although Behr believes that the subject products have been purchased by thousands of consumers in western Washington, consumer complaints in the past have been relatively small compared to the total volume of products sold. Virtually all of the products were sold through independent hardware, building products and home improvement retailers. Behr generally does not know the identity of its end customers or the mix of structures on which customers apply Behr's products. As a result, at this time Behr is not in a position to estimate reliably the number of class members, the number of claims that may be filed, the type of structure or the square footage on which the product was applied or the awards that class members may seek. Because the Company is unable to reasonably estimate the amount or range of the potential loss, no liability, other than the original judgment of the trial court for the named

## Edgar Filing: MASCO CORP /DE/ - Form 8-K

plaintiffs, has been accrued in its financial statements.

Behr and the Company continue to defend the other similar class actions previously reported. Unless the decision of the Washington trial court is reversed on appeal, the developments described above may also adversely affect certain aspects of the Company's and Behr's defenses in such other actions. In view of the fact that the Washington trial court judgment was the result of a default entered as a discovery sanction, the Company and Behr continue to believe that they have valid defenses in these other actions.

Two of Behr's liability insurers continue to participate in Behr's defense of the class actions subject to a reservation of rights. One insurer has filed a declaratory judgment action in the Orange County, California Superior Court seeking a declaration that the claims asserted in the class action complaints are not covered by Behr's insurance policies. The other insurer was named as a defendant in the suit and has filed cross-claims against Behr seeking a similar declaration.

### SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

MASCO CORPORATION

By: /s/ Timothy Wadhams

-----  
Name: Timothy Wadhams  
Title: Vice President and Chief  
Financial Officer

September 18, 2002