

**EXHIBIT C**

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ASSIGNED TO THE HONORABLE MARY I. YU

SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR KING COUNTY

JOY ANN GARDNER, and ROBERT  
BLANGERES, individually and on behalf of  
a class of persons similarly situated,

Plaintiffs,

vs.

STIMSON LUMBER COMPANY, an  
Oregon corporation,

Defendant.

NO. 00-2-17633-3 SEA

DEFENDANT'S REPLY IN SUPPORT OF  
MOTION TO STAY

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## I. INTRODUCTION

This Court should recognize and give effect to the New Hampshire Order because: (1) the stay provision in the New Hampshire Superior Court's Order Appointing Rehabilitator ("New Hampshire Order") is applicable to this action; (2) the Washington UILA reciprocity requires a stay of proceedings pursuant to the New Hampshire Order; and (3) the full faith and credit clause of the U.S. Constitution and general principles of comity militate for compliance with the New Hampshire Order.

## II. ARGUMENT

### A. The Rehabilitator of The Home Supports Stimson's Motion.

The Rehabilitator of the Home Insurance Company expressly supports this motion. Attached as Exhibit A to the Second Declaration of Joan C. Foley is a proclamation from Paula T. Roger, Rehabilitator of the Home Insurance Company, stating:

**This will confirm that the Rehabilitator of the Home Insurance Company supports the seeking of the stay of actions against the insureds of the Home Insurance Company pursuant to the Order Appointing Rehabilitator issued by Justice Kathleen A. McGuire, State of New Hampshire Superior Court, Merrimack S.S. dated March 5, 2003. (emphasis added).**

The New Hampshire Insurance Department is aware of the instant motion in this case and expressly supports the seeking of stay<sup>1</sup>.

### B. The New Hampshire Order Applies to Insureds of The Home.

Plaintiffs concede that defendant Stimson Lumber Company is an insured of The Home Insurance Company ("The Home"). The stay issued by Justice Katharine A. McGuire

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<sup>1</sup> Second Foley Decl., Ex. A, p. 1, as well as ¶ 3 of Second Foley Decl.

1 of the State of New Hampshire Superior Court specifically applies to “insureds of The  
2 Home.”<sup>2</sup>

3 **C. The Washington UILA Mandates The Court to Honor the New Hampshire**  
4 **Rehabilitation Order Enjoining this Action Through June 3, 2003.**

5 The Washington UILA “applies to all insurance companies being liquidated in  
6 Washington and in all reciprocal states.” (emphasis added). *Allied Fidelity Inc. Co. v. Ruth*,  
7 57 Wn. App. 785, 786, 790 P.2d 206 (1990). Plaintiffs do no dispute that New Hampshire is  
8 a reciprocal state under Washington UILA. See RCW 48.99.010. The UILA provides for an  
9 automatic stay of execution against any delinquent insurer or its assets while delinquency  
10 proceedings, including rehabilitation are pending. RCW 48.99.070, RCW 48.99.010(2). The  
11 UILA further mandates that it shall be interpreted and construed to effectuate its general  
12 purpose to make uniform the laws of the states that enact it. RCW 48.99.080(2).  
13

14 Washington has additional statutes, beyond the UILA, to address the rehabilitation of  
15 insurers. RCW 48.31.030, RCW 48.31.040, and RCW 48.31.045 supplement the law created  
16 by the UILA. The provisions are consistent with the UILA scheme.

17 New Hampshire has an equivalent statute for virtually every provision of the  
18 Washington UILA. New Hampshire also has comparative law for each of Washington’s  
19 supplementary rehabilitation statutes. Both Washington and New Hampshire authorize a stay  
20 of all proceedings pending against the insurer or its insureds. RCW 48.31.045, RSA 402-  
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24 <sup>2</sup> The Order enjoins “[t]he commencement or continuation of a judicial, administrative, or other action or  
25 proceeding against The Home or **any insured of The Home** that was or could have been commenced before the  
26 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” (emphasis added).  
Order Appointing Rehabilitator dated March 5, 2003, attached as Exhibit A to First Foley Declaration.

1 C:5(I)/C:18. (Provisions attached as Exhibit B to Second Foley Declaration). Accordingly,  
2 UILA reciprocity requires a stay of proceedings.

3 Indeed, a Washington court has honored and given effect to the New Hampshire Order  
4 at issue in *Corrigan, et al., v. Catholic Bishop of Spokane*, Spokane County Superior Court,  
5 Cause No. 02-2-05956-7. On March 25, 2003, the Honorable Maryann C. Morena granted a  
6 defendant's, an insured of The Home, Motion for Stay of Proceedings.<sup>3</sup>  
7

8 Similarly, the New Hampshire Order was honored in the declaratory judgment action  
9 in federal district court in Oregon brought by The Home, and two other insurers of Stimson,  
10 to determine coverage concerning siding claims against Stimson. On March 25, 2003, the  
11 Honorable Dennis James granted The Home's Motion to Stay with conditions. (Order  
12 attached as Exhibit D to Second Foley Declaration).

13 Likewise, in *Allied*, 57 Wn. App. at 790, the court honored an Indiana order of  
14 liquidation, reasoning that the liquidation statutes of Indiana and Washington were  
15 sufficiently similar to make Indiana a reciprocal state under the Washington UILA. The court  
16 did not require the Rehabilitator from Indiana to file a motion in the Washington action. The  
17 court explained: "Once the order from Indiana was brought to the attention of the court it  
18 should have vacated the judgment." *Allied*, 57 Wn. App. at 790. Here, as in *Corrigan, The*  
19 *Home*, and *Allied*, the court should honor a reciprocal state's Rehabilitation Order.  
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22 **D. The New Hampshire Order Should Be Enforced Based Upon Full Faith and**  
23 **Credit Grounds and General Principles of Comity.**

24 Apart from Washington's UILA, the New Hampshire Order is entitled to full faith and  
25 credit by this Court in accordance with the full faith and credit clause of the United States  
26

1 Constitution. U.S. Constitution, Art. 4, § 1. Courts have repeatedly enforced other out-of-  
2 state insurance orders in their own state courts under the “full faith and credit clause.”<sup>4</sup>

3 **E. Neither Washington’s UILA or the Full Faith and Credit Clause Contain a**  
4 **“Balancing Test” for Honoring a Sister State’s Order.**

5 The question for this Court is: should it honor a sister state’s order? A stay has  
6 *already* been entered. Plaintiffs attempt to have this Court revisit the basis for the New  
7 Hampshire court’s Order is not supported by the Washington UILA nor the full faith and  
8 credit clause of the U.S. Constitution.

9 While plaintiffs seek to inject a “balancing test” into the determination of whether the  
10 New Hampshire Order should be honored, neither the Washington UILA nor the full faith and  
11 credit clause of the U.S. Constitution contain such a test.<sup>5</sup> All cases cited by plaintiffs in  
12 support of such a test rely upon the *Buford* abstention doctrine, the criteria for the abstention  
13 of federal jurisdiction by federal courts, which is not at issue here. First, as noted in  
14 defendant’s motion<sup>6</sup>, federal courts are not bound by the “full faith and credit” clause and the  
15 *Buford* abstention doctrine explicitly consists of several “balancing” criteria. *Grimes v.*  
16 *Crown Life Ins. Co.*, 857 F.2d 699 (10<sup>th</sup> Cir. 1988), *cert. denied*, 489 U.S. 1096, 103 L.Ed. 2d  
17 934, 109 S.Ct. 1568 (1989).<sup>7</sup> In sum, this Court should honor the New Hampshire Order.

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21 <sup>3</sup> Order attached as Exhibit C to Second Foley Declaration.

22 <sup>4</sup> *Beecher v. Lewis Press Company*, 661 N.Y.S.2d 116 (1997); *Bryant v. Shields, Britton & Fraser*, 930 S.W.2d  
23 836 (Tex. App. 1996); *Herstam v. Silvercreek Water & Sanitation Dist.*, 895 P.2d 1131, 1136 (Colo. Ct. App.  
24 1995); *Bard v. Charles R. Meyers Ins. Agency, Inc.*, 839 S.W.2d 791 (Tex. 1992); *Lawrence v. Illinois Life and*  
25 *Health Guar. Ass’n.*, 688 N.E.2d 675, 293 Ill.App.3d 489 (1997); *Low v. Imperial Co.*, 140 Ariz. 426, 682 P.2d  
26 431 (Ariz. Ct. App. 1984).

<sup>5</sup> While “balancing” is not appropriate, if this Court were inclined to engage in such an exercise, it would  
nonetheless weigh in favor of granting the stay. See Appendix A attached.

<sup>6</sup> Defendant’s Motion for Stay, p. 8

<sup>7</sup> Federal courts have abstained in the context of insurance liquidation. *Hartford Cas. Ins. Co. v. Borg-Warner*  
*Corp.*, 913 F.2d 419 (7<sup>th</sup> Cir. 1990); *Lac Diamante du Quebec v. American Home Assurance Co.*, 864 F.2d 1033  
(3d Cir. 1988); *Grimes*, 857 F.2d at 699; *Corcoran v. Ardra Ins. Co.*, 842 F.2d 31 (2<sup>nd</sup> Cir. 1988).

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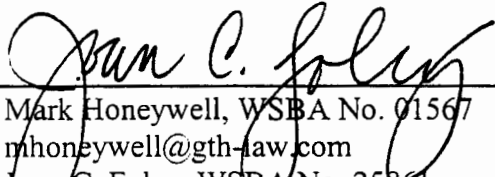
IV. CONCLUSION

For the foregoing reasons, this Court should recognize and give effect to the New Hampshire Order and grant Stimson's motion.

Dated this 14 day of March, 2003.

GORDON, THOMAS, HONEYWELL,  
MALANCA, PETERSON & DAHEIM LLP

STEVEN H. GURNEE & ASSOCIATES

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Lumber Company

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Lumber Company

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## APPENDIX A: "BALANCING"

Plaintiffs argue that the motion for stay should be denied because The Home's participation is insignificant. This argument lacks merit. The Home is one of only three insurance carriers which have unconditionally agreed to defend this class action and a dozen other lawsuits pending in other states despite their petition to the Federal District Court in Oregon to be relieved of that responsibility. An order has been entered confirming that representation. (See Honeywell Declaration, Ex. 1) The Home is continuing its obligation to pay literally hundreds of thousands of dollars in defense fees and costs for several on-going litigations. If the stay is not granted and these lawsuits continue, then The Home loses its ability to participate in the defense of these cases during a critical period despite their position on indemnity.

The requested stay through June 3, 2003 will not ultimately impact whether The Home is obligated to indemnify Stimson. It will clearly impact its current duty to defend, i.e., whether it pays defense costs if this litigation continues despite that stay. Plaintiffs argue that if the stay is denied here but The Home's assets are frozen in New Hampshire, the other two carriers will have to "pick up the slack." That may be the general rule where multiple carriers have a co-equal duty to defend, but not necessarily so when many of the claims are outside any particular insurer's "time on the risk: which is the case in this class action. Furthermore, the Oregon Federal Court Order does not confirm a joint and several duty to defend all actions. (Honeywell Decl., Ex. 1). Plaintiffs also argue that the majority of the risk is on the excess carrier. That contention is also not true. Most excess policies have a "following form" coverage definition, meaning if there is no duty to indemnify by the underlying carriers, there



1 is no corresponding responsibility to indemnify by the excess carriers.<sup>1</sup> Also, excess policies  
2 usually have no duty to defend until primary policies have been exhausted. Therefore the  
3 duty to defend by The Home is an extremely valuable one to Stimson in this matter, one they  
4 should not be forced to surrender for 90 days while this litigation moves forward at an  
5 expensive pace.

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7 Citing *Tank v. State Farm Fire & Casualty Company*, 105 Wn.2d 381, 389, Supp. 15  
8 P.2d 1133 (1986), plaintiffs argue that it will be up to Stimson, not the insurers, whether to  
9 settle “since it is a policyholder who may ultimately pay any settlement or judgment”  
10 (Opposition at p. 11). Such argument presumes that the three insurers (and likewise all of the  
11 excess carriers), will prevail on all coverage (indemnity) issues. Obviously Stimson is  
12 strenuously litigating that very issue and is hopeful that the insurers will be obligated to  
13 indemnify as well as defend. If Stimson were to negotiate the settlement without participation  
14 by the insurers, and without any proof of “bad faith” by the insurers, then Stimson would  
15 clearly jeopardize its ability to hold its insurers responsible for this substantial claim. Without  
16 the insurers participation, Stimson would face dire financial exposure to the claims in this  
17 case and others, regardless of the claims’ merit.

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19 Plaintiffs argue that to grant a continuance in this matter “would prejudice thousands  
20 of homeowners.” These are the same homeowners, if in fact there are thousands, who were  
21 not aware that this class action existed until the Fall of 2002, and had Forestex products  
22 installed on their homes between six and sixteen years ago. A less-than-90-day delay, given  
23 those circumstances, should be of no moment to them. The further argument that they need  
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<sup>1</sup> Plaintiffs have offered this Court no specific analysis of whether excess carriers would be liable for indemnity coverage if The Home is held not to be liable. As a practical matter, such analysis is very complex and probably not achievable in the short time for consideration of this motion.

1 the ability to “make a claim in this case in order to preserve proof that the previous siding was  
2 Stimson’s” is a *non sequitur*. A stay entered in this case will not prevent the plaintiffs’  
3 counsel from “preserving proof that the previous siding was Stimson’s.” In short, the stay  
4 requested does not prevent plaintiffs from continuing to prepare for trial, it simply prevents  
5 legal proceedings for a short period.  
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ASSIGNED TO THE HONORABLE MARY I. YU

SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR KING COUNTY

JOY ANN GARDNER, and ROBERT  
BLANGERES, individually and on behalf of a  
class of persons similarly situated,

Plaintiffs,

vs.

STIMSON LUMBER COMPANY, an Oregon  
corporation,

Defendant.

NO. 00-2-17633-3 SEA

SECOND DECLARATION OF JOAN C.  
FOLEY IN SUPPORT OF DEFENDANT'S  
MOTION FOR STAY

I, Joan C. Foley, hereby certify and declare as follows:

1. I am an attorney with the law firm of Gordon, Thomas, Honeywell, Malanca,  
Peterson & Daheim, LLP, and counsel for the defendant in this litigation.

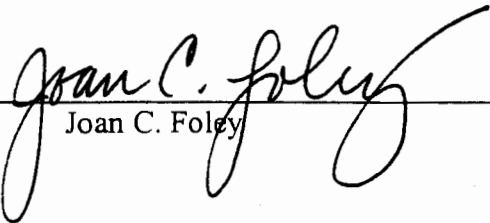
2. **Exhibit A** to this declaration is a true and correct copy of: a transmittal letter  
from Alex Feldvebel, Deputy Commissioner of the New Hampshire Insurance Department, to  
Joan Foley, dated March 12, 2003; and a letter from Paula T. Rogers, Rehabilitator, New  
Hampshire Insurance Department, to "To Whom It May Concern," dated March 12, 2003.

1           3.       On March 12, 2003, I spoke with Alex Feldvebel, Deputy Commissioner of the  
2 New Hampshire Insurance Department and contact person for The Home Rehabilitation. We  
3 discussed the instant action and I informed him of defendant Stimson's pending Motion for  
4 Stay pursuant to the New Hampshire Rehabilitation Order.

5           4.       **Exhibit B** to the declaration is a true and correct copy of the provisions of  
6 Washington and New Hampshire statutes.

7           5.       **Exhibit C** to this declaration is a true and correct copy of the Order Granting  
8 Defendant Catholic Bishop of Spokane's Motion for Stay of Proceedings dated March 25,  
9 2003, in *Corrigan, et. al., v. Catholic Bishop of Spokane*, Spokane County Superior Court,  
10 No. 02-2-05956-7.  
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12           Dated this 26 day of March, 2003 at Seattle, Washington

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16           Joan C. Foley  
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**EXHIBIT A**

**NEW HAMPSHIRE INSURANCE DEPARTMENT**  
**56 Old Suncook Road**  
**Tel. 603-271-2261**  
**Fax. 603-271-1406**

**TRANSMITTAL LETTER**

**DATE: March 12, 2003**

<b>TO:</b> Joan Foley Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim, LLP 600 Universtiy Street, Sutie 2100 Seattle, WA 98101	<b>FROM:</b> Alex Földvebel Deputy Commissioner New Hampshire Insurance Department 56 Old Suncook Road Concord, NH 03301-7317
<b>Fax Number: 206-676-7575</b>	<b>No. of pages: 2</b>

**MESSAGE:**

**RE: Home Ins Co**

The attached letter is being sent pursuant to your request.

If you have any questions, please do not hesitate to call.



**THE STATE OF NEW HAMPSHIRE  
INSURANCE DEPARTMENT**

56 OLD SUNCOOK ROAD  
CONCORD, NEW HAMPSHIRE 03301-5151

**Paula T. Rogers  
Commissioner**

March 12, 2003

To Whom It May Concern:

**RE: The Home Insurance Company in Rehabilitation**

This will confirm that the Rehabilitator of The Home Insurance Company supports the seeking of the stay of actions against the insureds of The Home Insurance Company pursuant to the Order Appointing Rehabilitator issued by Justice Katharine A. McQuire, State of New Hampshire Superior Court, Merrimack S.S., dated March 5, 2003. The Order enjoined "[t]he 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."

Sincerely,

A handwritten signature in black ink, appearing to read "P. Rogers", written over a horizontal line.

Paula T. Rogers, Rehabilitator

STOPPED

**EXHIBIT B**



purpose the commissioner is authorized to conduct and to enforce by all appropriate and available means any such examination under oath in any other state or territory of the United States, in which any such officer, director, or manager may then presently be, to the full extent permitted by the laws of any such other state or territory, this special authorization considered; or

(8) Has been the subject of an application for the appointment of a receiver, trustee, custodian, or sequestrator of the insurer or of its property, or if a receiver, trustee, custodian, or sequestrator is appointed by a federal court or if such appointment is imminent; or

(9) Has consented to such an order through a majority of its directors, stockholders, members, or subscribers; or

(10) Has failed to pay a final judgment rendered against it in any state upon any insurance contract issued or assumed by it, within thirty days after the judgment became final or within thirty days after time for taking an appeal has expired, or within thirty days after dismissal of an appeal before final determination, whichever date is the later; or

(11) There is reasonable cause to believe that there has been embezzlement from the insurer, wrongful sequestration or diversion of the insurer's assets, forgery or fraud affecting the insurer, or other illegal conduct in, by, or with respect to the insurer that, if established, would endanger assets in an amount threatening the solvency of the insurer; or

(12) The insurer has failed to remove a person who in fact has executive authority in the insurer, whether an officer, manager, general agent, employee, or other person, if the person has been found after notice and hearing by the commissioner to be dishonest or untrustworthy in a way affecting the insurer's business; or

(13) Control of the insurer, whether by stock ownership or ownership or otherwise, and whether direct or indirect, is in a person or persons found after notice and hearing to be untrustworthy; or

(14) The insurer has failed to file its annual report or other financial report required by statute within the time allowed by law and, after written demand by the commissioner, has failed to give an adequate explanation immediately; or

(15) The board of directors or the holders of a majority of the shares entitled to vote, request, or consent to rehabilitation under this chapter. [1993 c 462 § 75; 1949 c 190 § 28; 1947 c 79 § .31.03; Rem. Supp. 1949 § 45.31.03.]

**Severability—Implementation—1993 c 462:** See RCW 48.31B.901 and 48.31B.902.

#### **48.31.040 Rehabilitation—Order—Termination.** (1)

An order to rehabilitate a domestic insurer shall direct the commissioner forthwith to take possession of the property of the insurer and to conduct the business thereof, and to take such steps toward removal of the causes and conditions which have made rehabilitation necessary as the court may direct.

(2) If at any time the commissioner deems that further efforts to rehabilitate the insurer would be useless, he or she may apply to the court for an order of liquidation.

(3) The commissioner, or any interested person upon due notice to the commissioner, at any time may apply for an order terminating the rehabilitation proceeding and permitting the insurer to resume possession of its property

and the conduct of its business, but no such order shall be granted except when, after a full hearing, the court has determined that the purposes of the proceedings have been fully accomplished.

(4) An order to rehabilitate the business of a domestic insurer, or an alien insurer domiciled in this state, shall appoint the commissioner and his or her successors in office as the rehabilitator, and shall direct the rehabilitator to immediately take possession of the assets of the insurer, and to administer them under the general supervision of the court. The filing or recording of the order with the recorder of deeds of the county in this state in which the principal business of the company is conducted, or the county in this state in which the company's principal office or place of business is located, imparts the same notice as a deed or other evidence of title duly filed or recorded with that recorder of deeds would have imparted. The order to rehabilitate the insurer by operation of law vests title to all assets of the insurer in the rehabilitator.

(5) An order issued under this section requires accountings to the court by the rehabilitator. Accountings must be done at such intervals as the court specifies in its order, but no less frequently than semiannually.

(6) Entry of an order of rehabilitation does not constitute an anticipatory breach of contracts of the insurer nor may it be grounds for retroactive revocation or retroactive cancellation of contracts of the insurer, unless the revocation or cancellation is done by the rehabilitator. [1993 c 462 § 76; 1947 c 79 § .31.04; Rem. Supp. 1947 § 45.31.04.]

**Severability—Implementation—1993 c 462:** See RCW 48.31B.901 and 48.31B.902.

**\* 48.31.045 Rehabilitation order against insurer—Insurer is party to action or proceeding—Stay the action—Statute of limitations or defense of laches.** (1) A court in this state before which an action or proceeding in which the insurer is a party, or is obligated to defend a party, is pending when a rehabilitation order against the insurer is entered shall stay the action or proceeding for ninety days and such additional time as is necessary for the rehabilitator to obtain proper representation and prepare for further proceedings. The rehabilitator shall take such action respecting the pending litigation as he or she deems necessary in the interests of justice and for the protection of creditors, policyholders, and the public. The rehabilitator shall immediately consider all litigation pending outside this state and shall petition the courts having jurisdiction over that litigation for stays whenever necessary to protect the estate of the insurer.

(2) A statute of limitations or defense of laches does not run with respect to an action by or against an insurer between the filing of a petition for appointment of a rehabilitator for that insurer and the order granting or denying that petition. An action against the insurer that might have been commenced when the petition was filed may be commenced for at least sixty days after the order of rehabilitation is entered or the petition is denied. The rehabilitator may, upon an order for rehabilitation, within one year or such other longer time as applicable law may permit, institute an action or proceeding on behalf of the insurer upon a cause of action against which the period of limitation fixed by

applicable law has not expired at the time of the filing of the petition upon which the order is entered.

(3) A guaranty association or foreign guaranty association covering life or health insurance or annuities has standing to appear in a court proceeding concerning the rehabilitation of a life or health insurer if the association is or may become liable to act as a result of the rehabilitation. [1993 c 462 § 77.]

**Severability—Implementation—1993 c 462:** See RCW 48.31B.901 and 48.31B.902.

**48.31.050 Liquidation—Grounds.** The commissioner may apply for an order directing him to liquidate the business of a domestic insurer or of the United States branch of an alien insurer having trusteed assets in this state, regardless of whether or not there has been a prior order directing him to rehabilitate such insurer, upon any of the grounds specified in RCW 48.31.030 or upon any one or more of the following grounds: That the insurer

(1) Has ceased transacting business for a period of one year; or

(2) Is an insolvent insurer and has commenced voluntary liquidation or dissolution, or attempts to commence or prosecute any action or proceeding to liquidate its business or affairs, or to dissolve its corporate charter, or to procure the appointment of a receiver, trustee, custodian, or sequestrator under any law except this code; or

(3) Has not organized or completed its organization and obtained a certificate of authority as an insurer prior to the expiration or revocation of its solicitation permit. [1947 c 79 § .31.05; Rem. Supp. 1947 § 45.31.05.]

**48.31.060 Liquidation—Order.** (1) An order to liquidate the business of a domestic insurer shall direct the commissioner forthwith to take possession of the property of the insurer, to liquidate its business, to deal with the insurer's property and business in his own name as commissioner or in the name of the insurer as the court may direct, to give notice to all creditors who may have claims against the insurer to present such claims.

(2) The commissioner may apply under this chapter for an order dissolving the corporate existence of a domestic insurer:

(a) Upon his application for an order of liquidation of such insurer, or at any time after such order has been granted; or

(b) Upon the grounds specified in item (3) of RCW 48.31.050, regardless of whether an order of liquidation is sought or has been obtained. [1947 c 79 § .31.06; Rem. Supp. 1947 § 45.31.06.]

**48.31.070 Liquidation—Alien insurers.** An order to liquidate the business of the United States branch of an alien insurer having trusteed assets in this state shall be in the same terms as those prescribed for domestic insurers, except that only the assets of the business of such United States branch shall be included therein. [1947 c 79 § .31.07; Rem. Supp. 1947 § 45.31.07.]

**48.31.080 Conservation of assets—Foreign insurers.** The commissioner may apply for an order directing him to

conserve the assets within this state of a foreign insurer upon any one or more of the following grounds:

(1) Upon any of the grounds specified in items (1) to (9) inclusive of RCW 48.31.030 and in item (2) of RCW 48.31.050.

(2) That its property has been sequestered in its domiciliary sovereignty or in any other sovereignty. [1947 c 79 § .31.08; Rem. Supp. 1947 § 45.31.08.]

**48.31.090 Conservation of assets—Alien insurers.** The commissioner may apply for an order directing him to conserve the assets within this state of an alien insurer upon any one or more of the following grounds:

(1) Upon any of the grounds specified in items (1) to (9) inclusive of RCW 48.31.030 and in item (2) of RCW 48.31.050; or

(2) That the insurer has failed to comply, within the time designated by the commissioner, with an order of the commissioner pursuant to law to make good an impairment of its trusteed funds; or

(3) That the property of the insurer has been sequestered in its domiciliary sovereignty or elsewhere. [1947 c 79 § .31.09; Rem. Supp. 1947 § 45.31.09.]

**48.31.100 Foreign insurers—Conservation, ancillary proceedings.** (1) An order to conserve the assets of a foreign or alien insurer shall direct the commissioner forthwith to take possession of the property of the insurer within this state and to conserve it, subject to the further direction of the court.

(2) Whenever a domiciliary receiver is appointed for any such insurer in its domiciliary state which is also a reciprocal state, as defined in \*RCW 48.31.110, the court shall on application of the commissioner appoint the commissioner as the ancillary receiver in this state, subject to the provisions of the uniform insurers liquidation act. [1947 c 79 § .31.10; Rem. Supp. 1947 § 45.31.10.]

\*Reviser's note: RCW 48.31.110 was recodified as RCW 48.99.010 pursuant to 1993 c 462 § 81.

**48.31.105 Conduct of proceedings—Requirement to cooperate—Definitions—Violations—Penalties.** (1) An officer, manager, director, trustee, owner, employee, or agent of an insurer or other person with authority over or in charge of a segment of the insurer's affairs shall cooperate with the commissioner in a proceeding under this chapter or an investigation preliminary to the proceeding. The term "person" as used in this section includes a person who exercises control directly or indirectly over activities of the insurer through a holding company or other affiliate of the insurer. "To cooperate" as used in this section includes the following:

(a) To reply promptly in writing to an inquiry from the commissioner requesting such a reply; and

(b) To make available to the commissioner books, accounts, documents, or other records or information or property of or pertaining to the insurer and in his or her possession, custody, or control.

(2) A person may not obstruct or interfere with the commissioner in the conduct of a delinquency proceeding or an investigation preliminary or incidental thereto.

# TITLE XXXVII INSURANCE

## CHAPTER 402-C INSURERS REHABILITATION AND LIQUIDATION

### Section 402-C:5

#### **402-C:5 Injunctions and Orders. –**

I. INJUNCTIONS IN THIS STATE. Any receiver appointed in a proceeding under this chapter may at any time apply for and any court of general jurisdiction in this state may grant, such restraining orders, temporary and permanent injunctions, and other orders as are deemed necessary and proper to prevent:

- (a) The transaction of further business;
- (b) The transfer of property;
- (c) Interference with the receiver or with the proceedings;
- (d) Waste of the insurer's assets;
- (e) Dissipation and transfer of bank accounts;
- (f) The institution or further prosecution of any actions or proceedings;
- (g) The obtaining of preferences, judgments, attachments, garnishments or liens against the insurer or its assets;
- (h) The levying of execution against the insurer or its assets;
- (i) The making of any sale or deed for nonpayment of taxes or assessments that would lessen the value of the assets of the insurer;
- (j) The withholding from the receiver of books, accounts, documents or other records relating to the business of the insurer; or
- (k) Any other threatened or contemplated action that might lessen the value of the insurer's assets or prejudice the rights of policyholders, creditors or shareholders, or the administration of the proceeding.

II. INJUNCTIONS ELSEWHERE. The receiver may apply to any court outside of this state for the relief described in paragraph I.

**Source.** 1969, 272:1, eff. June 23, 1969.

**TITLE XXXVII**  
**INSURANCE**  
**CHAPTER 402-C**  
**INSURERS REHABILITATION AND LIQUIDATION**  
**Formal Proceedings**

**Section 402-C:18**

**402-C:18 Actions by and Against Rehabilitator. –**

I. STAYS IN PENDING LITIGATION. On request of the rehabilitator, any court in this state before which any action or proceeding by or against an insurer is pending when a rehabilitation order against the insurer is entered shall stay the action or proceeding for such time as is necessary for the rehabilitator to obtain proper representation and prepare for further proceedings. The court that entered the rehabilitation order shall order the rehabilitator to take such action respecting the pending litigation as the court deems necessary in the interests of justice and for the protection of creditors, policyholders and the public. The rehabilitator shall immediately consider all litigation pending outside this state and shall petition the courts having jurisdiction over that litigation for stays whenever necessary to protect the estate of the insurer.

II. STATUTES OF LIMITATIONS ON CLAIMS BY INSURER. The time between the filing of a petition for rehabilitation against an insurer and denial of the petition or an order of rehabilitation shall not be considered to be a part of the time within which any action may be commenced by the insurer. Any action by the insurer that might have been commenced when the petition was filed may be commenced at least 60 days after the order of rehabilitation is entered.

III. STATUTES OF LIMITATIONS ON CLAIMS AGAINST INSURER. The time between the filing of a petition for rehabilitation against an insurer and the denial of the petition or an order of rehabilitation shall not be considered to be a part of the time within which any action may be commenced against the insurer. Any action against the insurer that might have been commenced when the petition was filed may be commenced for at least 60 days after the order of rehabilitation is entered or the petition is denied.

IV. Any guaranty association or foreign guaranty association covering life or health insurance or annuities shall have standing to appear in any court proceeding concerning the rehabilitation of a life or health insurer if such association is or may become liable to act as a result of the rehabilitator.

**Source.** 1969, 272:1. 1991, 96:4, eff. Jan. 1, 1992.

**EXHIBIT C**

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THOMAS R. FALLOQUIST  
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SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE

MICHAEL CORRIGAN, RC, MM, DE, RH,	)	
JB, JW, MN, JS and CC individually and as	)	No. 02-2-05956-7
personal representative of the Estate of TC,	)	
	)	
Plaintiffs,	)	
	)	ORDER GRANTING DEFENDANT
vs.	)	CATHOLIC BISHOP OF
	)	SPOKANE'S MOTION FOR STAY
CATHOLIC BISHOP OF SPOKANE, a	)	OF PROCEEDINGS
Corporation Sole, and PATRICK	)	
O'DONNELL, individual,	)	
	)	
Defendants.	)	

THIS MATTER having come on for hearing before this Court on March \_\_\_\_, 2003, after due and proper notice, upon the Motion of the Defendant, Catholic Bishop of Spokane ("Catholic Bishop"), asking the Court to do the following: enter an Order Granting the Catholic Bishop's Motion for Stay of Proceedings.

After reviewing the Catholic Bishop's Motion for Stay of Proceedings and the Catholic Bishop's Memorandum in Support of Motion for Stay of Proceedings with attached exhibits, and after reviewing the pleadings, exhibits and affidavits in opposition to the Catholic Bishop's Motion for Stay of Proceedings, and after hearing said motion and argument of counsel, and the

1 Court being fully advised in the premises, and upon express direction for entry of the same, IT  
2 IS HEREBY ORDERED, ADJUDGED AND DECREED by the Court as follows:  
3

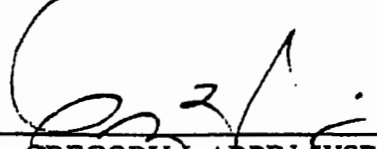
4 That the Catholic Bishop's Motion for Stay of Proceedings is hereby GRANTED, in its  
5 entirety. Pursuant to this ORDER, all proceedings pending in this action are hereby stayed for  
6 a period of ninety (90) days from the date of this order.

7 *Plaintiff may file additional briefing on that notice pertaining to this*  
8 *DONE IN OPEN COURT this 25 day of March, 2003. order.*


9  
10 MARYANN C. MORENO  
11 JUDGE/COURT COMMISSIONER

12 Presented By:

13 PAINE, HAMBLLEN, COFFIN,  
14 BROOKE & MILLER LLP

15  
16 By:   
17 GREGORY J. ARPIN, WSBA #2746  
18 Co-Attorneys for Defendant,  
19 Catholic Bishop of Spokane

20 TURNER, STOEVE & GAGLIARDI, P.S.

21  
22 By:   
23 MICHAEL C. GERAGHTY, WSBA #5152  
24 Co-Attorneys for Defendant,  
25 Catholic Bishop of Spokane

26  
27 GJA\lah\:\Spodocs\13066\00010\plead\00104575.WPD-jah

28  
ORDER GRANTING DEFENDANT  
CATHOLIC BISHOP'S MOTION FOR  
STAY OF PROCEEDINGS - 2

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