

**EXHIBIT E**

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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

DECLARATION OF MARK G.  
HONEYWELL

My name is Mark G. Honeywell and my business address is 600 University, Suite 2100, Seattle, Washington, 98101. I make this declaration under penalty of perjury under the penalties of the State of Washington.

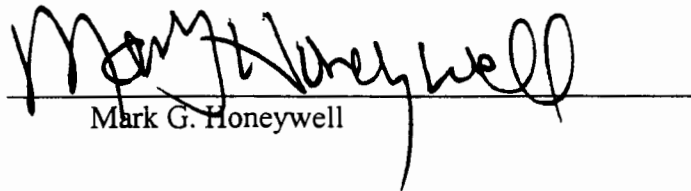
1. Attached hereto as **Exhibit 1** are true and correct copies of proceedings held in the U.S. District Court for the District of Oregon in which three insurance companies (The Home, WAUSAU, and California Insurance Company), seek declaratory judgment that certain claims against Stimson are not covered by their policies. These proceedings and

3/26

1 orders establish that all three carriers have agreed to defend Stimson in this class action and  
2 other actions pending in other jurisdictions, regardless of the pendency of the declaratory  
3 judgment action.

4 2. Attached hereto as Exhibit 2 is a true and correct copy of an order entered on  
5 March 25, 2003, by the United States District Court for the District of Oregon in the coverage  
6 action in response to The Home's Motion for Stay.  
7

8 DECLARED UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE  
9 STATE OF WASHINGTON THIS 26<sup>th</sup> DAY OF MARCH, 2003.

10   
11 \_\_\_\_\_  
12 Mark G. Honeywell

**EXHIBIT 1**

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

CALIFORNIA INSURANCE )  
COMPANY, ET AL., )

Plaintiffs, )

vs. )

STIMSON LUMBER COMPANY, )  
ET AL., )

Defendants. )

Case No. CV-01-514-HU

July 24, 2001 ←

Portland, Oregon

TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE DENNIS J. HUBEL

UNITED STATES DISTRICT COURT MAGISTRATE

APPEARANCES

FOR HOME INSURANCE: Dianne Dailey  
Attorney at Law

FOR CALIFORNIA INSURANCE COMPANY: Sheila Potter  
Attorney at Law

FOR AMERICAN HOME AND OTHERS: Vivian Solomon  
Attorney at Law

FOR NATIONAL SURETY CORPORATION: William Earle  
Attorney at Law

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APPEARANCES (Continued)

FOR WAUSAU INSURANCE: Jan Kitchel  
Becky Johnson  
Attorneys at Law

FOR AMERICAN NATIONAL FIRE INSURANCE COMPANY: Michael Lehner  
Attorney at Law

FOR STIMSON LUMBER: Edwin Perry  
James Riddle  
Attorneys at Law

COURT REPORTER: Dennis W. Apodaca, RPR  
1000 S.W. Third Ave., Room 301  
Portland, OR 97204  
(503) 326-8182

Proceedings recorded stenographically,  
computer-aided transcription.

1 get a ruling by this Court on what's covered and what isn't,  
2 we would then be able to settle these cases with a  
3 reasonable contribution from Stimson and from the insurance  
4 companies.

5 That's the real world situation we are faced with  
6 now, and that's why it is very ripe because we have one  
7 going to trial on Monday.

8 THE COURT: And very unlikely, if I keep it and  
9 don't stay it, for your trial next week.

10 MR. KITCHEL: Undoubtedly you won't decide the  
11 entire case by next Monday. But that's one of them. We  
12 have to consider the most dangerous case probably, and I  
13 hope I'm not making a statement on the record that comes  
14 back to hurt us, but the case in Washington is the class  
15 action that was certified. That's a very dangerous case.  
16 It has a lot of potential claimants in it. It is a case  
17 that really cries out for a decision by someone, hopefully  
18 you, Your Honor, on what's covered and what isn't.

19 There have been other requests, I understand,  
20 although I haven't seen them in writing, to certify some of  
21 the California cases as a national class action. So we are  
22 faced with a class action in the state of Washington. We  
23 are faced with other cases in California that may go  
24 national, although I don't think there are too many states  
25 outside the west that would be involved. At least it would

1 be a multistate West Coast look.

2 So it is real money. It is on the line right now.  
3 A lot of those cases could be settled right now; could have  
4 been settled last week possibly, if we had guidance on  
5 coverage. Let me cover a couple of other things that I  
6 don't want the Court to have misapprehension on.

7 One of the big issues in the Montrose cases in  
8 California, the Wilson Distributing case here in Oregon, is  
9 whether or not the insurer is trying to get out a duty to  
10 defend. All the California cases that were cited by  
11 Mr. Riddle in support of his stay have to do with duty to  
12 defend issues.

13 In this case now, when I originally filed the case  
14 in Multnomah County, there was one case, one underlying case  
15 on which we were denying a duty to defend. Now, that case  
16 has been consolidated with another case where there is  
17 clearly a duty to defend. So all the pending cases are  
18 currently being defended by the insurance companies. We are  
19 not trying to get out of them.

20 THE COURT: What do I do with the allegation in  
21 Paragraph 22 that we have a complaint that starts off at  
22 Line 12, plaintiffs contend that they have no duty to defend  
23 or indemnify Stimson with respect to certain siding lines.  
24 It sounds like it isn't indicated.

25 MR. KITCHEL: I would have to have Ms. Dailey



1 respond to that right now. We are speaking for Wausau. We  
2 are actively defending all the cases that are at issue, and  
3 we will continue to do that.

4 THE COURT: You said affirmatively Wausau concedes  
5 to defend all of the pending cases?

6 MR. KITCHEL: All the ones we listed that we know  
7 of right now. There may be some tendered in the future.  
8 But as the cases are pled right now, we concede duty to  
9 defend on those.

10 MS. DAILEY: Your Honor, with regard to that  
11 allegation, as I mentioned earlier in my argument, there had  
12 been situations in the past where the carriers have refused  
13 to defend. And since Stimson has settled or gone to trial  
14 on those cases, we have no understanding as to whether they  
15 are going to come back to us and ask us to reimburse for  
16 that. It is with regard to those types of cases we would be  
17 need a ruling also.

18 THE COURT: Are there any cases, as currently  
19 pled, that The Home is contesting the duty to defend?

20 MS. DAILEY: No, not any pending cases.

21 THE COURT: Go ahead, Mr. Kitchel.

22 MR. KITCHEL: I think I have covered most of what  
23 I intended to talk about on the argument.

24 A couple of things have been raised, not  
25 necessarily by Mr. Riddle in his argument, but raised in the

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

THE HOME INDEMNITY COMPANY, a )  
New Hampshire corporation; )  
WAUSAU BUSINESS INSURANCE )  
COMPANY; WAUSAU UNDERWRITERS )  
INSURANCE COMPANY; and )  
EMPLOYERS INSURANCE OF WAUSAU, )  
A MUTUAL COMPANY, Wisconsin )  
corporations; and CALIFORNIA )  
INSURANCE COMPANY, a )  
California corporation, )

Plaintiffs, )

No. CV-01-514-HU

v. )

STIMSON LUMBER COMPANY, an )  
Oregon corporation; NATIONAL )  
SURETY CORPORATION, an )  
Illinois corporation; )  
NORTHWESTERN PACIFIC INDEMNITY )  
COMPANY, an Oregon )  
corporation; AMERICAN NATIONAL )  
FIRE INSURANCE COMPANY, a New )  
York corporation; AMERICAN )  
HOME ASSURANCE COMPANY, a New )  
York corporation; THE )  
INSURANCE COMPANY OF THE STATE )  
OF PENNSYLVANIA, a )  
Pennsylvania corporation; and )  
NATIONAL UNION FIRE INSURANCE )  
COMPANY OF PITTSBURGH, a )  
Pennsylvania corporation, )

Defendants. )

FINDINGS & RECOMMENDATION

1 order to come within the exception to the policy  
2 exclusion. They were required to come forward in this  
3 proceeding with evidence that they caused some of the  
4 pollution of C-CE's property but that the pollution  
5 was the result of sudden and accidental releases of  
6 the contaminants claimed by C-CE to have originated on  
7 the Wilsons' property. An insurer may not put its  
8 insured in that position. Given plaintiff's obligation  
9 to defend, there can be no detriment to it to abide  
10 the final outcome of the underlying action to  
11 determine whether it is obligated to indemnify. The  
12 trial court erred in denying the Wilsons' motions to  
13 stay this proceeding as it relates to plaintiff's duty  
14 to indemnify and in entering summary judgment for  
15 plaintiff.

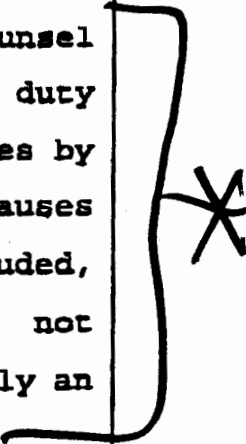
16 Id. at 175, 908 P.2d at 832.

17 Stimson argues that a number of plaintiffs' alleged coverage  
18 defenses arise from the same operative facts at issue in the  
19 siding claims and are therefore, so "logically related" to the  
20 "issues of consequence" in the underlying actions that this  
21 action must be stayed. For example, Stimson argues, plaintiffs'  
22 coverage defenses impact at least the following three issues:  
23 (1) did Stimson expect or intend the property damage alleged by  
24 the plaintiffs in the underlying cases such that those losses  
25 were non-fortuitous; (2) were the damages allegedly sustained by  
26 the underlying plaintiffs caused by the "intentional or  
27 fraudulent" conduct of Stimson; and (3) was "deterioration" of  
28 the siding itself a complete or partial cause of the underlying  
29 plaintiffs' alleged damages.

30 Plaintiffs read North Pacific to create two relevant  
31 questions in the stay analysis: (1) whether the insurer could  
32 develop facts in a declaratory judgment action, commenced before  
33 the underlying tort action is concluded, that would negate the  
34 insurer's duty to defend; and (2) does the declaratory judgment  
35 action force an insured to prematurely litigate the insured's

1 potential liability in the underlying tort claims and require  
 2 the insured to take inconsistent positions? I agree with  
 3 plaintiffs that this is a fair reading of North Pacific.

4 As to the first question, the operative Complaint in the  
 5 case seeks a declaration concerning plaintiffs' duty to defend  
 6 as well as to indemnify. First Am. Compl. at ¶ 22 (plaintiffs  
 7 "contend they have no duty to defend and/or indemnify Stimson").  
 8 However, based on the insurers' representations through counsel  
 9 during oral argument, there is no apparent challenge to the duty  
 10 to defend any of the current siding claims. Any challenges by  
 11 plaintiffs to the duty to defend any concluded litigation causes  
 12 no detriment to Stimson because, if the litigation is concluded,  
 13 the prejudices noted by the Montrose II court are not  
 14 implicated. As a result, the duty to defend is not presently an  
 15 issue in this case.



16 As to the second inquiry under North Pacific, plaintiffs  
 17 argue that Stimson will not be forced to take an inconsistent  
 18 position between this action and the underlying siding claims.  
 19 Plaintiffs indicate that they seek a determination of what  
 20 claims are excluded from coverage, not a declaration of whether  
 21 Stimson committed the torts alleged in the underlying complaint.  
 22 Plaintiffs state that they have never asserted, for example,  
 23 that Stimson expected or intended the damage or engaged in  
 24 fraudulent conduct, but that they have simply reiterated the  
 25 claims by the underlying plaintiffs in the siding claims in an  
 26 attempt to accurately frame the coverage issues. Accordingly,  
 27 plaintiffs argue, the factual determinations necessary for the  
 28 adjudication of the declaratory judgment and for the underlying

1 siding claims are different and will not force Stimson to take  
2 inconsistent positions in the two cases.

3 Plaintiffs also cite to a number of cases in which a court  
4 has adjudicated a declaratory judgment regarding coverage by an  
5 insurer before the conclusion of the underlying action against  
6 the insured. E.g., United States Fid. & Guar. Co. v. Star  
7 Tech., Inc., 935 F. Supp. 1110 (D. Or. 1996) (interpreting  
8 insurance policy in declaratory judgment action as to insurer's  
9 duty to defend underlying patent infringement action against  
10 insured); Gulman, 172 Or. App. 528, 21 P.3d 101 (interpreting  
11 insurance policy in declaratory judgment action as to insurer's  
12 duty to defend underlying tort claim against insured); Drake v.  
13 Mutual of Enumclaw Ins. Co., 167 Or. App. 475, 1 P.3d 1065  
14 (2000) (same).

15 While plaintiffs correctly note that these courts resolved  
16 the issues in a declaratory action while an underlying action  
17 was pending, none of the cases address a motion to stay or  
18 discuss the potential for overlapping factual issues between the  
19 underlying claim and the coverage issues in the declaratory  
20 relief action. Thus, these cases bear little relevance to the  
21 instant motion.

22 Neither party cites Ferguson v. Birmingham Fire Ins. Co.,  
23 254 Or. 496, 460 P.2d 342 (1969). There, the Oregon Supreme  
24 Court found a duty to defend when the complaint alleged a  
25 willful trespass on the part of the insured, but recovery could  
26 be had against the insured, without amendment of the complaint,  
27 for non-willful trespass. Id. at 504-07, 346-47. Although the  
28 policy excluded coverage for willful conduct of the insured,

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

THE HOME INDEMNITY COMPANY,
a New Hampshire corporation;
WAUSAU BUSINESS INSURANCE
COMPANY; WAUSAU UNDERWRITERS
INSURANCE COMPANY; and
EMPLOYERS INSURANCE OF WAUSAU,
A MUTUAL COMPANY, Wisconsin
corporations; and CALIFORNIA
INSURANCE COMPANY, a California
corporation,

Plaintiffs,

v.

STIMSON LUMBER COMPANY, an
Oregon corporation; NATIONAL
SURETY CORPORATION, an Illinois
corporation; NORTHWESTERN
PACIFIC INDEMNITY COMPANY, an
Oregon corporation; AMERICAN
HOME ASSURANCE COMPANY, a New
York corporation; THE INSURANCE
COMPANY OF THE STATE OF
PENNSYLVANIA, a Pennsylvania
corporation; and NATIONAL UNION
FIRE INSURANCE COMPANY OF
PITTSBURGH, a Pennsylvania
corporation,

Defendants.

Civil No. 01-514-HU

ORDER ADOPTING FINDINGS
AND RECOMMENDATION



**EXHIBIT 2**



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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

THE HOME INDEMNITY COMPANY, a )  
New Hampshire corporation; )  
WAUSAU BUSINESS INSURANCE )  
COMPANY; WAUSAU UNDERWRITERS )  
INSURANCE COMPANY; and )  
EMPLOYERS INSURANCE OF WAUSAU, ) No. CV-01-514-HU  
A MUTUAL COMPANY, Wisconsin )  
corporations; and CALIFORNIA )  
INSURANCE COMPANY, a )  
California corporation, )

Plaintiffs,

v.

STIMSON LUMBER COMPANY, an )  
Oregon corporation; AMERICAN )  
NATIONAL FIRE INSURANCE )  
COMPANY, a New York corpora- )  
tion; THE INSURANCE COMPANY )  
OF THE STATE OF PENNSYLVANIA, )  
a Pennsylvania corporation; )  
and NATIONAL UNION FIRE IN- )  
SURANCE COMPANY OF PITTSBURGH, )  
a Pennsylvania corporation, )

Defendants.

ORDER

1 - ORDER

1 Dianne K. Dailey  
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4 Attorney for Plaintiff The Home Indemnity Company

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12 Attorneys for Plaintiffs Wausau Business Insurance  
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Employers Insurance of Wausau

14 Edwin C. Perry  
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24 Company

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Vivian Raits Solomon  
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333 SW Taylor Street  
27 Portland, Oregon 97204

28 / / /

2 - ORDER

1 Pamela M. Andrews  
Stephen G. Skinner  
2 JOHNSON CHRISTIE ANDREWS & SKINNER, P.S.  
7400 Bank of America Tower  
3 701 Fifth Avenue  
Seattle, Washington 98104

4 Attorneys for Defendants The Insurance Company of the  
5 State of Pennsylvania, and National Union Fire Insurance  
Company of Pittsburgh

6 HUBEL, Magistrate Judge:

7 Plaintiffs The Home Indemnity Company ("the Home"), Wausau  
8 Business Insurance Company, Wausau Underwriters Insurance  
9 Company, Employers Insurance of Wausau (collectively "Wausau"),  
10 and California Insurance Company, bring this action against  
11 Stimson Lumber Company ("Stimson") and several other insurance  
12 companies. Plaintiffs issued contracts of primary liability  
13 insurance to Stimson. Defendants, other than Stimson ("the  
14 excess insurers"), issued contracts of excess liability  
15 insurance to Stimson.

16 Plaintiffs seek a declaration, pursuant to the Declaratory  
17 Judgment Act, 28 U.S.C. §§ 2201-2202, of plaintiffs' obligations  
18 to Stimson in connection with Stimson's claims for insurance  
19 coverage under the insurance contracts. Plaintiffs additionally  
20 seek a declaration of the excess insurers' obligations to  
21 Stimson and to plaintiffs with regard to payment of any damages  
22 under contracts of insurance issued by plaintiffs or the excess  
23 insurers.

24 As pleaded in the First Amended Complaint, plaintiffs, the  
25 excess insurers, and other insurers, provided certain liability  
26 insurance to Stimson from 1980 to the present. Stimson  
27 manufactures a reformulated exterior hardboard siding and other  
28

3 - ORDER

1 wood products, including the Forestex Series 400 and 500  
2 hardboard siding products. Upon information and belief,  
3 plaintiffs contend that Stimson manufactured the Forestex siding  
4 ("the siding"), from 1986 until on or about June 1997, at its  
5 plant in Oregon. Stimson sold these products throughout the  
6 western United States.

7 Stimson notified plaintiffs and some or all of the excess  
8 insurers of various suits and claims against Stimson arising out  
9 of the use of the siding ("the siding claims"). Stimson  
10 maintains that the insurers are obligated to defend or indemnify  
11 Stimson in connection with the siding claims. The parties have  
12 represented that there are approximately twenty siding claims  
13 presently pending, most of them in California. Plaintiffs have  
14 investigated the siding claims and have agreed to defend Stimson  
15 as to certain of those claims, subject to a reservation of  
16 rights. Stimson contends that plaintiffs are obligated to  
17 defend or indemnify it more broadly than plaintiffs have agreed  
18 to do with respect to the siding claims. The excess insurers  
19 provided certain excess liability insurance to Stimson, and that  
20 excess liability insurance may be reached as a result of the  
21 payment of sums by or on behalf of Stimson in connection with  
22 the siding claims.

23 Based on these facts, plaintiffs bring two claims: (1) a  
24 declaratory judgment claim against Stimson in which plaintiffs  
25 seek to clarify the limits of their coverage of the siding  
26 claims; and (2) a declaratory judgment claim against the excess  
27 insurers seeking a declaration of the excess insurers'  
28 obligations to Stimson regarding the payment of any sums by or

4 - ORDER

1 on behalf of Stimson in connection with the siding claims, and  
2 seeking a declaration of the proper allocation among Stimson's  
3 primary and excess insurers and between those insurers and  
4 Stimson, of liability for any sums for which Stimson may be  
5 obligated in connection with the siding claims.

6 Stimson counterclaims against plaintiffs for breach of  
7 contract and for breach of the implied covenant of good faith  
8 and fair dealing. Stimson seeks damages of not less than  
9 \$312,522 for those two claims. Stimson also brings a  
10 counterclaim for declaratory relief against plaintiffs seeking  
11 a declaration of its rights under plaintiffs' insurance  
12 policies, including, but not limited to, a declaration that  
13 plaintiffs are obligated to fully defend and indemnify Stimson  
14 in connection with all of the pending siding claims and to  
15 reimburse Stimson for costs and expenses incurred in connection  
16 with the defense and resolution of two particular claims.

17 Presently, The Home moves for a stay of ninety days based  
18 on a stay order issued by the Superior Court of New Hampshire on  
19 March 5, 2003. In that Order, the court granted a petition by  
20 the Commissioner of Insurance for the State of New Hampshire and  
21 ordered The Home into rehabilitation under New Hampshire law.  
22 The court appointed the Insurance Commissioner Rehabilitator of  
23 The Home. The court's order also includes a provision staying  
24 all actions against The Home and its insureds. Exh. A to March  
25 12, 2003 Dianne K. Dailey Affid, at p. 2.

26 I grant The Home's motion subject to the following  
27 conditions. Furthermore, I order all other parties to the  
28 action to respond to the inquiries listed below.

5 - ORDER

1 First, as to The Home, the motion to stay is granted subject  
2 to The Home submitting a request to the Rehabilitator as soon as  
3 possible, but no later than March 31, 2003, seeking a response  
4 from the Rehabilitator to the following inquiries:

5 1) will the Rehabilitator object to summary judgment  
6 motions proceeding in the case with the representation from the  
7 three plaintiffs that any motion filed by plaintiffs will be  
8 filed as a single joint motion on behalf of all three  
9 plaintiffs, including The Home, under the current briefing  
10 schedule which requires motions to be filed April 4, 2003,  
11 responses to motions to be filed April 25, 2003, and replies to  
12 be filed May 9, 2003 -

13 a) with The Home's participation in the summary  
14 judgment motion litigation?

15 b) without The Home's participation in the summary  
16 judgment motion litigation, but with any rulings on the motions  
17 binding The Home given that the plaintiffs will be proceeding  
18 jointly? and

19 c) without The Home's participation in the summary  
20 judgment motion litigation and without any rulings binding The  
21 Home?

22 2) will the Rehabilitator allow The Home's participation  
23 in the scheduled mediation of this case with Ninth Circuit Court  
24 of Appeals Judge Edward Leavy on April 15 and 16, 2003, with the  
25 knowledge that the parties have represented that what they  
26 expect to accomplish at the mediation is the negotiation of a  
27 formula for contribution to settlements of or judgments against  
28 Stinson for siding claims by Stinson, the three primary insurers

6 - ORDER

1 (The Home, Wausau, and California Insurance Company), and the  
2 excess insurers (American National Fire Insurance Company, The  
3 Insurance Company of the State of Pennsylvania, and National  
4 Union Fire Insurance Company of Pittsburgh)? Additionally, The  
5 Home shall represent to the Rehabilitator that it requests the  
6 Rehabilitator to allow it to participate in this mediation with  
7 the authority to agree to a formula as outlined above, subject  
8 to any specific contribution by The Home in any given case  
9 requiring the prior approval of the Rehabilitator.

10 3) what is the Rehabilitator's position on whether current  
11 or former employees of The Home may be deposed in this coverage  
12 case with the understanding that Stimson believes that The  
13 Home's current and former employees have information pertinent  
14 to the coverage dispute not only between Stimson and The Home,  
15 but also to the dispute between Stimson and the other carriers.

16 In posing these requests to the Rehabilitator, The Home  
17 shall underscore the importance of a timely response by the  
18 Rehabilitator to the efficient resolution of the claims pending  
19 in this case. The Home shall serve a copy of its submission to  
20 the Rehabilitator on the other plaintiffs, Stimson, the excess  
21 carriers, and this Court.

22 Second, as to the other parties, Stimson's position is that  
23 if I grant a stay to The Home, I should stay the case as to the  
24 other parties as well. On the other hand, the other plaintiffs  
25 and the excess carriers desire to proceed, notwithstanding any  
26 stay granted to The Home. Any stay with respect to The Home  
27 creates a number of issues. To fully assess the impact of  
28 extending the stay to the other plaintiffs, I request that all

7 - ORDER

1 other parties (Stimson, the other two plaintiffs, and the excess  
2 carriers), respond to the following inquiries:

3 1) jointly provide a list of all of the presently pending  
4 underlying siding claims including whether a motion to stay has  
5 been filed, the date of any such filing, and the adjudication of  
6 any such motion. If a stay has been granted, include  
7 information as to whom is bound by the stay order, including  
8 what defendants, what claims, and the dates the stay is in  
9 effect. Additionally, for each pending siding claim, list which  
10 primary carrier may be liable on the claim and which excess  
11 carrier lines up with which primary carrier;

12 2) the position of each party regarding what effect, if  
13 any, a stay granted to The Home has on the defense costs and  
14 indemnity liabilities of the remaining primary and excess  
15 carriers?

16 3) the position of each party regarding if, when, and how  
17 the Oregon Insurance Guaranty Association will become involved  
18 in the underlying siding claims and this coverage case, and the  
19 position of each party as to who will bear the ultimate risk if  
20 The Home is unable to make any contribution toward the  
21 settlement or judgment of the underlying siding claims - the  
22 claimants, the insured, the other primary carriers, the excess  
23 carriers, the Oregon Insurance Guaranty Association, or a  
24 combination of them? If the parties believe that resources from  
25 a combination of parties may be required, what order of  
26 contribution is followed?

27 4) the position of each party as to the present respective  
28 role of each primary carrier in handling the pending siding

8 - ORDER



1 claims. That is, in any given underlying siding claim, Stimson  
2 has tendered that claim to one or more of the primary and excess  
3 carriers. What is the working relationship among the primary  
4 carriers in responding to that tender? Additionally, why is it  
5 important or unimportant for Stimson to obtain additional  
6 discovery from The Home in order to litigate the summary  
7 judgment motions brought by Stimson against the other plaintiffs  
8 or excess carriers, or brought against Stimson by the other  
9 plaintiffs or excess carriers.

10 5) a statement addressing the case schedule. From Stimson,  
11 I request a proposed case schedule if a stay is granted as to  
12 all carriers. From the other carriers (both primary and  
13 excess), I request a proposed case schedule that takes into  
14 account a stay only as to The Home. The carriers' proposed  
15 schedule(s) should address

16 a) how to accommodate Stimson's request to depose  
17 additional former or current employees of The Home before the  
18 final summary judgment briefs are due;

19 b) when to schedule a mediation without The Home;  
20 c) what issues should be adjudicated without The Home,  
21 and when (e.g. at summary judgment or at trial) - just the  
22 declaratory relief claims (both those brought by plaintiffs and  
23 Stimson's counterclaim), or Stimson's counterclaims for money  
24 damages as well; and

25 d) reincorporation of The Home in this litigation if  
26 the stay against The Home is lifted.

27 Responses to these inquiries by Stimson, the remaining two  
28 plaintiffs, and the excess carriers, is due no later than April

9 - ORDER

1 4, 2003. To the extent the primary and excess carriers can  
 2 agree on a proposed schedule, or a response to any of the  
 3 inquiries, they may submit a joint response. To the extent  
 4 their positions vary, separate responses are to be filed. Each  
 5 party may then file a response to the April 4, 2003 filing by  
 6 any other party, no later than April 11, 2003.

7 CONCLUSION

8 The Home's motion for stay (#94) is granted subject to the  
 9 conditions outlined above.

10 IT IS SO ORDERED.

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 12 Dated this 25th day of March

13 2003.

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 16 /s/ Dennis James Hubel  
 17 Dennis James Hubel  
 18 United States Magistrate Judge  
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10 - ORDER

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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

ORDER GRANTING DEFENDANT'S  
MOTION FOR STAY  
(Revised Proposed)

This matter came before the Court on Defendant's Motion for Stay. The Court has considered the pleadings filed in this matter, including:

- Defendant's Motion and Memorandum for Stay;
- Declaration of Joan C. Foley in Support of Defendant's Motion for Stay;
- Class Plaintiffs' Opposition to Defendant's Motion to Stay;
- Declaration of Michael D. Sandler in Opposition to Motion to Stay;
- Defendant's Reply in Support of Motion to Stay;



1 Copy Received, Approved as for Form:

2 SANDLER AHERN & McCONAUGHY

3  
4 By: \_\_\_\_\_

Bennett McConaughy, WSBA #9336

5 Paul Ahern, WSBA #9190

Linda Larson, WSBA #9171

6 Michael D. Sandler, WSBA #15027

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