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FILED 03 APR 04 15 52 USC ORP

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON

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

Civil No. CV 01-514-HU

**INSURERS' JOINT RESPONSE  
TO ORDER OF  
MARCH 25, 2003**

Plaintiff,

v.

**STIMSON LUMBER COMPANY,  
an Oregon corporation, et al.,**

Defendant.

The insurers, with the exception of The Home Indemnity  
Company, submit the following responses to the Court's questions, set forth  
in its Order of March 25, 2003:

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**1(a). Jointly provide a list of list of presently pending underlying siding claims, including whether a motion to stay has been filed, the date of any filing and the adjudication of any such motion.**

Stimson has prepared a table presently pending claims, which includes answers to the above questions, to the extent information is presently available.

**1(b). For each pending siding claim, list which primary carrier may be liable on the claim and which carrier lines up with which primary carrier.**

Please see the attached Table B; A copy of a coverage chart also is attached.

**2. What is the position of each party regarding what effect, if any, a stay granted to The Home has on the defense costs and indemnity liabilities of the remaining primary and excess carriers?**

**Primary Carriers:** To date, The Home has not advised either Wausau or California Insurance Company that it is unable to participate in the defense of any of the pending claims against Stimson. If The Home does not participate in the defense of any of the pending claims, Wausau and California will share defense costs on a fifty/fifty basis and reserve the right to recover the costs from The Home. As to indemnity, the primary carriers believe that, under Oregon law, their obligation is limited to an allocation based on evidence of "actual injury" during the policy period. It appears, based on the presently available information, that the excess carriers would not "drop down" and that Stimson would be responsible for any uninsured years, but see comments below on the OIGA, or other guaranty associations.

Stimson has taken the position that it will not contribute to any

settlement during the pendency of this declaratory action unless the insurers agree to remove that case from the effect of any outcome of this action. Therefore, the insurers believe that the need for relief is heightened by The Home's rehabilitation.

**Excess Carriers:** The excess insurers take no position on the allocation of defense costs. As for indemnity, pursuant to controlling Oregon authority, *Hoffman Constr. Co. v. Fred S. James & Co.*, 313 Or 464, 836 P2d 703 (1992), and the language of the respective excess policies, the excess insurers do not drop down to fill The Home's layer of coverage in a given policy year. Rather, Stimson would be responsible for any gaps in coverage brought on by The Home's rehabilitation. The excess insurers stand prepared to provide more comprehensive briefing on this issue if requested by the Court.

**3(a). What is the position of each party regarding if, when and how the Oregon Insurance Guaranty Association(OIGA) will become involved in the underlying siding claims and this coverage case?**

The insurance carriers believe that if The Home is unable to participate in contributing to indemnify, Stimson will be responsible for injury during The Home policy period. That will be an uninsured loss, and it may trigger OIGA responsibility for that period. That would be an uninsured loss, and it may trigger OIGA responsibility for that period. That would be a claim or claims that Stimson would pursue from the OIGA, or other relevant guaranty associations, including those in California, Hawaii, Washington, and/or New Hampshire. Model act states' associations typically cover property that is permanently located in the state, or where the insured is a resident.

**3(b) What is the position of each party as to who will bear the ultimate risk if The Home is unable to make any contribution to settlement or judgment of the underlying siding claims—the claimants, the insured, the other primary carriers, the excess carriers, OIGA or a combination of them? If a combination of resources is required, what is the order of contribution?**

**Primary:** If The Home is unable to make any contribution, based on the language of the policies and Oregon law, either Stimson or a guaranty association would be responsible for injury during The Home policy period.

**Excess:** Although it is not possible to predict the potential impact on specific claims should The Home be unable to fulfill its indemnity obligations, since each claim will necessarily be driven by the facts and law applicable to that action, the impact on Stimson's layers of insurance will be controlled by Oregon law and the language of the respective insurance policies. Pursuant to controlling Oregon authority, *Hoffman Constr. Co. v. Fred S. James & Co.*, 313 Or 464, and the language of the respective excess insurance policies, the excess insurers do not drop down to fill The Home's layer of coverage in a given policy year. Rather, Stimson would be responsible for any gaps in coverage brought on by The Home's rehabilitation.

**4. What is the position of each party as to the present respective role of each primary carrier in handling the pending siding claims?**

**Primary:** Wausau, California and The Home have an amicable working relationship and, to date, have agreed to share the defense costs on an equal basis.

**Excess:** The excess insurers take no position with respect to the roles of the primary insurers in handling the pending siding claims.

**5. What case schedule do you propose?**

The insurers propose the present scheduling order remain in place.

a) Assuming the Rehabilitator agrees, Stimson and The Home are attempting to agree upon a date to take further depositions of The Home employees. The insurers believe the depositions are irrelevant to the issues to be decided by the court on summary judgment.

b) The insurers believe that mediation, either with or without the presence of The Home, should be scheduled in mid to late June, once the future status of The Home has been determined.

c) All issues in this case may be adjudicated without The Home. Stimson's counterclaims for money damages are the subject of dispositive motions to be filed by the insurers.

d) If the Rehabilitator determines, in early June, that the stay should be lifted, The Home could be incorporated into the existing schedule.

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If The Rehabilitator makes a decision later than that, a slight postponement may be necessary.

DATED this 4<sup>th</sup> day of April, 2003.

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California Insurance Company

**Also On Behalf of:**

WAUSAU BUSINESS INSURANCE  
COMPANY, WAUSAU UNDERWRITERS  
INSURANCE COMPANY and EMPLOYERS  
INSURANCE COMPANY OF WAUSAU, A  
MUTUAL COMPANY,

AMERICAN NATIONAL FIRE  
INSURANCE COMPANY,

AMERICAN HOME ASSURANCE  
COMPANY, THE INSURANCE COMPANY  
OF THE STATE OF PENNSYLVANIA and  
NATIONAL UNION FIRE INSURANCE  
COMPANY OF PITTSBURGH

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**INSURERS' JOINT RESPONSE TO ORDER OF  
MARCH 25, 2003**

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**TABLE B**

**POTENTIAL LIABILITY OF PRIMARY AND EXCESS CARRIERS**

<b>Pending Case</b>	<b>Potentially Liable Primary Carriers</b>	<b>Excess Carrier</b>
<i>Acain v. Schuler Homes</i> State of Hawaii, Fifth Circuit Case No. 00-01-0174	Wausau California Home	National Union American Nat'l Fire ICSOP
<i>Baypointe at Ardenwood Homeowners Association v. J.F. Shea Company, Inc., et al.</i> State of California, Superior Court, Alameda County Case No. H2066309	Settlement pending	
<i>Bridge Street Commons, LLC v. Speckert Building Supplies, et al.</i> State of CA, Superior Court, Sutter County Case No. CSC01-0036 or CVCS 01-0036	Wausau California Home	National Union American Nat'l Fire ICSOP
<i>Lisa Carr and Duanne McGrath Fraley v. Stimson Lumber Company</i> State of CA (consolidated with Dockins), Superior Court Alameda County Case No. C-814472-6	Wausau California Home	National Union American Nat'l Fire ICSOP
<i>D Squared Investments, et al. v. Gardemeyer Construction, et al.</i> State of California, Sacramento County Case No. 01-AS-03509	Wausau California Home	National Union American Nat'l Fire ICSOP
<i>Everteen Dockins v. Stimson Lumber Company</i> State of CA (consolidated with Carr), Superior Court Alameda County Case No. C-833359-7	Wausau California Home	National Union American Nat'l Fire ICSOP
<i>Joy A. Gardner and Robert Blangeres v. Stimson Lumber Co.</i> State of WA (consolidated with Blangeres), King County Case No. 00-2-17633-3 (Blangeres case no. 00-2-02122-4-SEA)	Wausau California Home	National Union American Nat'l Fire ICSOP
<i>Kuau Bayview Subdivision</i>	No information available	

Pending Case	Potentially Liabile Primary Carriers	Excess Carrier
<b><i>Lick Mill Creek Apts. v. Calprom, Inc., et al.</i></b> State of CA, Superior Court Santa Clara County Case No. CV 766394	Wausau California Home	National Union American Nat'l Fire ICSOP
<b><i>Lori Mills and Robert Mills v. Forestex Co., et al.</i></b> State of CA, Tuolumne County Case No. CV 47659	Wausau California Home	National Union American Nat'l Fire ICSOP
<b><i>Ocean Corner Association v. Ocean Colony Partners</i></b> State of California, Superior Court, San Mateo County Case No. 412186	Wausau California Home	National Union American Nat'l Fire ICSOP
<b><i>Shelter Cove Apartments, Ltd. v. Forestex Company</i></b> State of CA Placer County Case No. S CV 8099	Wausau California Home	National Union American Nat'l Fire ICSOP
<b><i>TCR #407 Johnson Ranch Limited v. Stimson Lumber Company, and Chintimini Forest Products Inc.</i></b> Oregon State, Multnomah County Circuit Court Case No. 011011105	Wausau California Home	National Union American Nat'l Fire ICSOP
<b><i>Willsey v. Carleton Homes</i></b> State of CA, Sacramento County Case No. 00AS4455	Wausau California Home	National Union American Nat'l Fire ICSOP

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# STIMSON LUMBER COVER

Year	1986	1987	1988	1989	1990	1991	1992	1993
\$40 mil	WAUSAU	WAUSAU	WAUSAU	WAUSAU	NATIONAL SURETY	NATIONAL SURETY	NATIONAL SURETY	
\$35 mil					NW PACIFIC INDEMNITY	NW PACIFIC INDEMNITY	NW PACIFIC INDEMNITY	
\$30 mil					NW PACIFIC INDEMNITY	NW PACIFIC INDEMNITY	NW PACIFIC INDEMNITY	
\$25 mil		NATIONAL SURETY						
\$20 mil		NW PACIFIC INDEMNITY						
\$15 mil								
\$10 mil								
\$5 mil		CALIFORNIA UNION						
\$0	WAUSAU	WAUSAU	WAUSAU	INDUSTRIAL INDEMNITY WAUSAU	INS. CO. STATE OF PA (AIG) HOME	INS. CO. STATE OF PA (AIG) HOME	INS. CO. STATE OF PA (AIG) HOME	

\*Two policies, one for \$1 mil (2320-etc.) and one for \$100K (2330-etc.).