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8 Of Attorneys for Defendants WAUSAU BUSINESS
INSURANCE COMPANY, WAUSAU
9 UNDERWRITERS INSURANCE CO., AND
EMPLOYERS INSURANCE OF WAUSAU, A
10 MUTUAL COMPANY

11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE DISTRICT OF OREGON

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

17 Plaintiffs,

18 vs.

19 STIMSON LUMBER COMPANY, an Oregon
corporation; NATIONAL SURETY
20 CORPORATION, an Illinois corporation;
21 NORTHWESTERN PACIFIC INDEMNITY
COMPANY, an Oregon corporation; AMERICAN
22 NATIONAL FIRE INSURANCE COMPANY, a
New York corporation; AMERICAN HOME
23 ASSURANCE COMPANY, a New York
corporation; and NATIONAL UNION FIRE
24 INSURANCE COMPANY OF PITTSBURGH, a
Pennsylvania corporation,

25 Defendants.
26

No. 01-CV-514 HU

WAUSAU'S MEMORANDUM IN
FURTHER OPPOSITION TO
STIMSON'S MOTION TO
TRANSFER FOR CONVENIENCE

1 In an effort to eliminate duplication from various parties, Wausau¹ incorporates
2 and relies on the legal memorandum submitted on behalf of the plaintiffs by The Home
3 Indemnity Company in opposition to Stimson Lumber's motion to transfer for
4 convenience. However, to address specific factual issues as to Wausau, Wausau
5 provides the following supplemental facts and relies upon the affidavits of Craig
6 Simonson and Becky Johnson and exhibit attached hereto.

7
8 **FACTS**

9 Wausau negotiated insurance contracts for Stimson Lumber from 1980 until
10 2000. (See Affidavit of Craig Simonson, ¶ 7). During this timeframe, there was a six
11 year gap (1991 to 1997) when Wausau did not issue any insurance contracts to
12 Stimson Lumber. Id.

13 The negotiations and writing of all insurance contracts between Wausau and
14 Stimson occurred in Oregon. Underwriters at the local Oregon Wausau office were
15 contacted by local Oregon insurance brokers to negotiate the terms and conditions of
16 insurance contracts for Stimson Lumber. (See Affidavit of Craig Simonson, ¶ 8). After
17 the initial negotiations, the terms and conditions of the insurance contracts were
18 finalized in Oregon and the local Oregon insurance broker would present the terms and
19 conditions to employees at Stimson for approval. (See Affidavit of Craig Simonson,
20 ¶ 9). Because Stimson's company headquarters are located in Oregon, it is Wausau's
21 understanding that the Stimson employees who reviewed and accepted the terms and
22 conditions were located in Oregon. (See Affidavit of Craig Simonson, ¶ 9). Once the
23 terms and conditions were accepted by Stimson, underwriters from the local Oregon
24 Wausau office would send the information to the Wausau home office for finalizing and

25 _____
26 ¹ Wausau collectively refers to Wausau Business Insurance Company, Wausau
Underwriters Insurance Company and Employers Insurance of Wausau.

1 forwarding to Stimson. The only thing that occurred at Wausau's home office would be
2 to actually type up the insurance contract, based on the instructions from the local
3 Oregon Wausau office, and mail the insurance contract to Stimson or their
4 representative. (See Affidavit of Craig Simonson, ¶ 10). Again, the finalized insurance
5 contract would be returned to Stimson, or its agent in Oregon.

6
7 **ANALYSIS**

8 The crux of the issues to be resolved in this declaratory judgment action are what
9 is required of the various insureds pursuant to the terms of their policies. These
10 policies, at least as to Wausau, were negotiated and written in one place – Oregon.
11 Oregon is thus the appropriate venue for resolution as to the duties under those
12 policies.

13 Stimson urges that California is a more appropriate venue for this declaratory
14 action because several siding claims currently pending against Stimson are located in
15 California. Recently a Washington State court granted certification of a class action in
16 siding claims against Stimson. Attached to the Affidavit of Becky A. Johnson is
17 Exhibit 1, which is a court order certifying the class in the Washington State case. The
18 order certifies “[a]ll persons in the States of Washington, Oregon, California, Idaho,
19 Utah, Colorado and Hawaii who own or have owned buildings clad with Stimson Series
20 400 or Series 500 hardboard siding ...” (See Exhibit 1). This Order reinforces that
21 claims against Stimson are not isolated to California. Siding claims against Stimson are
22 spread across the entire West Coast. The most appropriate venue for this declaratory
23 action is not where the underlying siding claims are pending, but is in Oregon where the
24 insurance contracts were negotiated and written.

25 ///

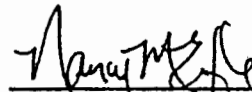
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1 As has been set forth in the legal memorandum submitted by counsel for The
2 Home Indemnity Company, the appropriate forum for resolving the dispute between
3 Stimson and its insurers in Oregon. Stimson motion to transfer this matter should be
4 denied.

5 DATED this 14th day of June, 2001

6 SCHWABE, WILLIAMSON & WYATT
7

8
9 By:



10 Jan K. Kitchel, OSB #78471

11 Nancy Erfle, OSB #90257

12 Becky Johnson, OSB #99446

13 [503] 222-9981

14 Of Attomeys for Defendants Wausau Business
15 Insurance, Wausau Underwriters Insurance,
16 Employers Insurance of Wausau
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23 corporation; and NATIONAL UNION FIRE
INSURANCE COMPANY OF PITTSBURGH, a
24 Pennsylvania corporation,

25 Defendants.
26

No. 01-CV-514 HU

AFFIDAVIT OF BECKY A.
JOHNSON

1 STATE OF OREGON)
2 County of Multnomah) ss.

3 I, Becky A. Johnson, being hereby duly sworn, state as follows:

4 1. I am an attorney who represents Wausau Business Insurance Company,
5 Wausau Underwriters Insurance Company and Employers Insurance of Wausau in the
6 above-entitled case.

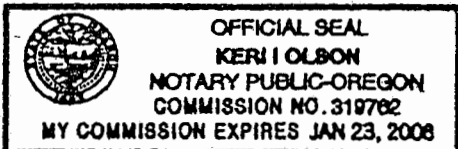
7 2. Attached hereto as Exhibit 1 to this affidavit is a true and correct copy of
8 the class certification order issued in Gardner and Blangeres v. Stimson Lumber
9 Company, No. 00-2-17633-3SBA, Superior Court of Washington and for King County,
10 Dated June 8, 2001.

11 DATED this 14th day of June, 2001

Becky A. Johnson
Becky A. Johnson

14 SUBSCRIBED AND SWORN to before me this 14 day of June, 2001.

Keri J. Olson
NOTARY PUBLIC FOR OREGON
My Commission Expires: 1-23-23



The Honorable Mary I. Yu

Hearing Date: March 30, 2001 at 3:00 p.m.

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SUPERIOR COURT

SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

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

Plaintiffs,

v.

STIMSON LUMBER COMPANY, an Oregon
corporation,

Defendant.

CLASS ACTION

No. 00-2-17633-3SEA

PROPOSED CLASS CERTIFICATION
ORDER

The Court, having considered the motion of Plaintiffs for certification of a class in this action, together with the memoranda and materials submitted, the argument of counsel, and the record in this action, hereby finds and rules as follows:

1. The Court orders certification of the following class in this action pursuant to CR 23(b)(3):

All persons in the states of Washington, Oregon, California, Idaho, Utah, Colorado, and Hawaii who own or have owned buildings clad with Stimson Series 400 or Series 500 hardboard siding ("Forestex hardboard siding") installed after January 1, 1985. ~~et~~

2. Plaintiffs Joy Ann Gardner and Robert Blangeres shall serve as Class Representatives. The firms of Skadler Ahern & McCaughy PLLC, Levy Ram Olson & Rossi LLP, Berding & Weil LLP, and Cunningham, Bourds, Yance, Crowder & Brown are appointed as Class Counsel.

[PROPOSED] CLASS CERTIFICATION ORDER - 1

ORIGINAL

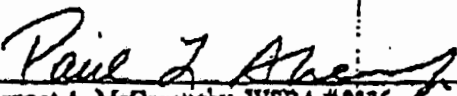
SKADLER, AHERN & MCCOUGHY PLLC
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TEL: 206-464-1754
FAX: 206-464-1755

1 11. Plaintiffs also have satisfied the standards of CR 23(b)(3). The predominant
2 questions concern the manufacture and performance of Forestex hardboard siding, its marketing,
3 Stimson's knowledge, and whether Forestex hardboard siding is defective. A class action is the
4 most efficient - indeed the only - way to litigate these claims. There is no interest in individuals
5 controlling their own actions, and centralization of the litigation here will be efficient. The parties
6 are in the Pacific Northwest, and it appears that the predominance of siding failures have also been
7 in this region.

8 12. If the parties are unable to agree on a form of class notice and a notice plan, Plaintiffs
9 shall file and serve a motion for approval of their proposed form of class notice and notice plan.

10 13. *The Court may manage the case through sub-classing & necessary*
11 *It is so ordered this 8 day of June, 2001. The order shall with by*
12 *effects.*

13 
14 The Honorable Mary L. Yu

15 Presented By:
16 SANDLER AHERN & McCONAUGHY PLLC
17 By 
18 Bennett A. McConaughy, WSBA # 9936
19 Paul L. Ahern, Jr., WSBA # 9190
20 Attorneys for Plaintiffs

21
22 ** Excluded from the class are Stimson, any entity in which Stimson has*
23 *a controlling interest, and its legal representatives, assigns and successors.*
24 *Also excluded is the judge to whom the case is assigned and any member*
25 *of the judge's immediate family. Excluded from the class are claims for*
26 *personal injury and claims excluded by other careful class notices.*

[PROPOSED] CLASS CERTIFICATION ORDER 5
SANDLER AHERN & McCONAUGHY PLLC
1200 FOUR AVENUE, SUITE 1900
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