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7 ASSIGNED TO THE HONORABLE MARY I. YU

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9 SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

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

13 Plaintiffs,

14 vs.

15 STIMSON LUMBER COMPANY, an
16 Oregon corporation,

17 Defendant.

NO. 00-2-17633-3 SEA

DEFENDANT'S MOTION AND
MEMORANDUM FOR STAY

HEARING DATE: Thursday, March 20, 2003

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19 **I. RELIEF REQUESTED**

20 Defendant Stimson Lumber Company ("Stimson") seeks an order to stay this action
21 through June 3, 2003. A New Hampshire court has recently entered an Order Appointing
22 Rehabilitator ("Rehabilitation Order") of The Home Insurance Company ("Home"), one of
23 the three insurers of Stimson. This rehabilitation order enjoins all actions against Home's
24 insureds for ninety (90) days. Under Washington's Uniform Insurance Liquidation Act
25 ("UILA"), the rehabilitation order enjoins the present action. In addition, the New Hampshire
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DEF'S MOTION/MEMORANDUM FOR STAY - 1 of 10
(00-2-17633-3 SEA)
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LAW OFFICES
GORDON, THOMAS, HONEYWELL, MALANCA,
PETERSON & DAHEIM LLP
ONE UNION SQUARE
600 UNIVERSITY, SUITE 2100
SEATTLE, WASHINGTON 98101-4185
(206) 676-7500 - FACSIMILE (206) 676-7575

1 order should be honored under the principles of comity and the full faith and credit clause of
2 the United States Constitution.

3 II. STATEMENT OF FACTS

4 Stimson is an insured of Home. On June 20, 2000, plaintiffs filed a Class Complaint
5 against Stimson.

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7 On March 5, 2003, Justice Katharine A. McGuire of the State of New Hampshire
8 Superior Court entered an Order Appointing Rehabilitator of Home.¹ Home is a New
9 Hampshire corporation.² The order enjoined:

10 The commencement or continuation of a judicial,
11 administrative, or other action or proceeding against The Home
12 or **any insured of The Home** that was or could have been
13 commenced before the commencement of this case, or to
14 recover a claim against The Home that arose before the
15 commencement of the Rehabilitation, for ninety (90) days,
16 except as may be modified by further order of the Court; ...
17 (emphasis added)³

18 On March 11, 2003, Stimson's counsel informed plaintiffs' counsel of the Order
19 Appointing Rehabilitator and faxed plaintiffs' counsel the Order.⁴

20 III. STATEMENT OF ISSUES

21 1. Does Washington's UILA require this Court to honor the Rehabilitation Order
22 mandating a 90 day stay of this action?

23 2. Should the Rehabilitation Order be honored by this Court under the principle
24 of comity and full faith and credit clause of the United States Constitution?

25 ¹ Order Appointing Rehabilitator dated March 5, 2003, attached as Exhibit A to Foley Declaration.

26 ² Foley Decl., ¶ 3.

³ Foley Decl., Ex. A, p. 2.

⁴ Foley Decl., ¶ 4.

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IV. EVIDENCE RELIED UPON

Defendant relies upon the following declaration, as well as the pleadings and files herein:

1. Declaration of Joan C. Foley.

V. AUTHORITY

This Court should enter an order staying this action through June 3, 2003, which is 90 days from the entry of the Rehabilitation Order. The stay provision in the Order Appointing Rehabilitator is applicable to this action.

A. Washington Courts are Required to Comply with the New Hampshire Court's Rehabilitation Order Pursuant to Washington's Uniform Insurers Liquidation Act.

The insurance industry has been excluded from federal regulation under the commerce clause and from the operation of federal bankruptcy law, leaving the states to "assume[] the primary role in regulating insurance." *Lac D'Amiante du Quebec v. American Home Assur. Co.*, 864 F.2d 1033, 1039 (3rd Cir. 1988). To that end, many states have adopted the UILA, including Washington and New Hampshire. Washington adopted the UILA as Chapters 48.31 and 48.99 RCW.

The Washington UILA "applies to all insurance companies being liquidated in Washington and in all reciprocal states." (emphasis added). *Allied Fidelity Ins. Co. v. Ruth*, 57 Wn. App. 785, 786, 790 P.2d 206 (1990). A reciprocal state is defined in RCW 48.99.010 as any state other than Washington in which "in substance and effect" the provisions of this Act are in force.

The court in *Allied Fidelity Ins. Co.*, 57 Wn. App. at 786, has determined that the "initial question" is whether or not the liquidation statutes of the state where the

1 rehabilitation/liquidation order was entered and Washington's are "sufficiently similar" so
2 that state would be considered a reciprocal state under our Act. A review and comparison of
3 the insurance liquidation statutes of Washington and other state is necessary to determine if
4 "in substance and effect" the provisions of the statutes are the same. *Id.*

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6 In *Allied*, the court held that the liquidation statutes of Indiana and Washington were
7 sufficiently similar to make Indiana a reciprocal state under the Washington UILA. The court
8 found that the plaintiff agent was required to pursue his claim against the insurer in Indiana
9 because Washington and Indiana were reciprocal states under the Washington UILA. The
10 court held the trial court lacked jurisdiction to enter judgment in favor of the agent. As stated
11 by the court:

12 [T]he Snohomish County Superior Court had no jurisdiction to
13 enter judgment on Ruth's counterclaim. Once the order from
14 Indiana was brought to the attention of the court it should have
15 vacated the judgment. A judgment entered by a court which
16 lacks jurisdiction is void and must be vacated whenever the lack
17 of jurisdiction comes to light. A trial court has no discretion
18 when dealing with a void judgment; the court must vacate it.
Brickum Inv. Co. v. Vernham Corp., 46 Wn. App. 517, 520, 731
P.2d 533 (1987). Here, the court had no jurisdiction to enter an
order against Allied.

19 *Allied*, 57 Wn. App. at 790-91.

20 The *Allied* court vacated the judgment and remanded to the trial court for such further
21 proceedings as were consistent with the Washington UILA and "appropriate orders entered in
22 the course of the liquidation proceedings underway in Indiana." *Id.* at 791.

23 Here, as in *Allied*, New Hampshire is a reciprocal state under the Washington UILA.
24 New Hampshire has a "sufficiently similar" provision of the Washington Act concerning
25 stays. The chart below indicates the corresponding sections of the two acts.
26

Washington	New Hampshire
<p>RCW 48.31.045(1) provides: 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.</p>	<p>RSA 402-C:5(I) provides: 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:</p> <ul style="list-style-type: none"> (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 of 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.

Both acts authorize a stay of litigation issued in rehabilitation proceedings where it is necessary for the rehabilitator to prepare for further proceedings. Consequently, New Hampshire is a reciprocal state under the Washington UILA. Thus, the Washington UILA requires this Court to comply with the Rehabilitation Order.

1 Numerous other state and federal courts to address the issue have enforced stays
2 issued in out-of-state insurance rehabilitation or insolvency proceedings. *See, e.g., Ace Grain*
3 *Co. v. Rhode Island Ins. Co.*, 107 F.Supp. 80 (S.D.N.Y. 1992)(act provisions barring further
4 prosecutions of actions while delinquency proceedings ongoing in “reciprocal state” applies to
5 insurers undergoing rehabilitation); *Nasef v. U & I Investments, Inc.*, 91 Or.App. 344, 755
6 p.2D 136 (1988) (judgment obtained in one state after entry of stay issued by “reciprocal
7 state” was vacated because action should not have proceeded after entry of stay order in sister
8 state) (*cited with approval in Allied*, 57 Wn. App. at 790).

10 In *Nasef*, an Indiana court entered an order of rehabilitation enjoining the
11 commencement, prosecution, or further prosecution of any suit, action, or other proceeding
12 against an Indiana insurer undergoing rehabilitation. After issuance of the rehabilitation
13 order, the insurer sought to stay a pending action in Oregon against the insurer. The trial
14 court denied the insurer’s motion to stay and the case proceeded to trial, resulting in a \$99,000
15 judgment against the insurer. On appeal, the Oregon appellate court vacated the judgment and
16 remanded the case on the grounds that the trial court erred in not enforcing the stay because
17 the existence of the delinquency proceedings in the “reciprocal state” of Indiana barred any
18 further prosecution of the action against the insurer in Oregon and the trial should not have
19 gone forward. *Id.* at 348.

22 Likewise, here the Order entered by the New Hampshire court is entitled to full force
23 and effect in this state because New Hampshire is a “reciprocal state” within the meaning of
24 Washington’s UILA. This Court should immediately enforce the stay imposed by the
25 Rehabilitation Order.

1 **B. The Rehabilitation Order Should Be Enforced Based Upon Full Faith and Credit**
2 **Grounds and General Principles of Comity.**

3 Apart from Washington's UILA, the Rehabilitation Order is entitled to full faith and
4 credit by this Court in accordance with the full faith and credit clause of the United States
5 Constitution. U.S. Constitution, Art. 4, § 1. Courts have repeatedly enforced other out-of-
6 state insurance orders in their own state courts under the "full faith and credit clause." *See,*
7 *e.g., Beecher v. Lewis Press Company*, 661 N.Y.S.2d 116 (1997) (holding New York was
8 required to give full faith and credit to an order by the state court of Rhode Island staying any
9 further proceedings against all insureds of an insolvent insurer, whether or not the insured
10 would ultimately be entitled to liability coverage); *Bryant v. Shields, Britton & Fraser*, 930
11 S.W.2d 836 (Tex. App. 1996) (ordering dismissal of lawsuit initiated against insurer and
12 liquidator on grounds that Tennessee liquidation order was entitled to full faith and credit in
13 Texas); *Herstam v. Silvercreek Water & Sanitation Dist.*, 895 P.2d 1131, 1136 (Colo. Ct.
14 App. 1995) (giving full faith and credit to Arizona Insurance order in Colorado); *Bard v.*
15 *Charles R. Meyers Ins. Agency, Inc.*, 839 S.W.2d 791 (Tex. 1992) (giving full faith and credit
16 in Texas to Vermont liquidation order containing an injunction against filing of claims against
17 insurer or a liquidator outside of the liquidation proceedings in Vermont); *Lawrence v. Illinois*
18 *Life and Health Guar. Ass'n.*, 688 N.E.2d 675, 293 Ill.App.3d 489 (1997) (Illinois court gave
19 full faith and credit to a California court order in an insolvency proceeding against a
20 California-domiciled insurer); *Low v. Imperial Co.*, 140 Ariz. 426, 682 P.2d 431 (Ariz. Ct.
21 App. 1984) (injunction issued by California receivership court was entitled to full faith and
22 credit by Arizona Courts).

1 A variety of other state courts, *including Washington*, have chosen to enforce out-of-
2 state court rehabilitation or delinquency orders, pursuant to general principles of comity,
3 without reaching the Constitutional question. Washington courts and courts from across the
4 nation recognize that enforcement of a sister state's orders with respect to rehabilitation or
5 insolvency proceedings is necessary to protect the sister state's interests in preserving the
6 assets of the insurer and allowing the sister court to exercise that state's power to regulate the
7 business of insurers domiciled in its own state without the risk of inconsistent proceedings in
8 other states that could jeopardize the assets of the insureds and interfere with the ability of the
9 insurance commissioner to handle the complex task of rehabilitation or insolvency. *See, e.g.,*
10 *Allied*, 57 Wn. App. 783; *American Bonding Co. v. Coast Metal Sales, Inc.*, 679 So.2d 1250
11 (Fla. App. 1996) (granting writ of certiorari and enforcing on comity grounds stay issued by
12 Arizona court); *Integrity Ins. Co. v. Martin*, 105 Nev. 16, 769 P.2d 69 (Nev. 1989) (honoring
13 New Jersey stay order in Nevada).

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16 Even federal courts, which are not bound by the "full faith and credit" clause to
17 enforce a state court order, and who cannot be enjoined by a state court because of the
18 Supremacy Clause of the Constitution, have recognized the paramount power of the states to
19 recognize the business of insurance under the McCarran-Ferguson Act, 15 U.S.C. §§1011 *et*
20 *seq.* Federal courts have enforced out-of-state insurance delinquency or rehabilitation orders
21 by staying or dismissing the federal actions against the insured or its policyholders under
22 abstention principles. *See, e.g., Wolfson v. Mutual Benefit Life Ins. Co.*, 51 F.3d 141, 145 (8th
23 Cir. 1995) (affirming stay of Nebraska federal action on abstention grounds because of
24 pending rehabilitation proceeding in New Jersey state court recognizing exercise of federal
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1 jurisdiction could compromise state's interest in successful rehabilitation because "[c]laims
2 litigation is a major on-going expense of a solvent insurer"); *Barnhardt Marine Ins., Inc. v.*
3 *New England Int'l Sur. Of Amer., Inc.*, 961 F.2d 529, 531-532 (5th Cir. 1992) (abstention
4 required stay of broker's action against insurer because liability presented conflict with
5 Louisiana liquidation proceeding); *Hartford Cas. Ins. Co. v. Borg-Warner Corp.* 913 F.2d
6 419, 426 (7th Cir. 1990) (abstention on grounds of pending Illinois insolvency proceeding);
7 *Grimes v. Crown Life Ins. Co.*, 857 F.2d 699, 705-706, (1989), *cert. denied*, 489 U.S. 1096,
8 109 S.Ct. 1568, 103 L.Ed.2d 934 (10th Cir. 1988) (reversing dismissal of case, but remanding
9 with directions to stay on abstention grounds because of New York liquidation proceedings);
10 *Lac D'Amiante du Quebec*, 864 F.2d 1033 at 1045 (abstaining on grounds of pending New
11 York liquidation proceedings); *Law Enforcement Ins. Co., Ltd. v. Corcoran*, 807 F.2d 38, 44
12 (2d Cir. 1986), *cert. denied*, 481 U.S. 1017, 107 S.Ct. 1896, 95 L.Ed.2d 503 (1987)
13 (abstaining in favor of New York rehabilitation proceedings that turned into liquidation
14 proceedings); *AMS Marketing, Inc. v. Fidelity Sec. Life Ins. Co.*, 830 F.Supp. 1284, 1287
15 (D.Ariz. 1993) (abstaining on grounds of Arizona insurance receivership proceedings);
16 *Corcoran v. Universal Reinsurance Corp.*, 713 F.Supp. 77, 80 (S.D.N.Y. 1989) (declining on
17 abstention grounds to exercise removal jurisdiction because of New York insurance
18 liquidation proceedings); *see also, U.S. Financial Crop. V. Warfield*, 839 F.Supp. 684, 690
19 (D.Ariz. 1993) (determining that the federal court lacked subject matter jurisdiction because
20 of the state court injunction issued in Arizona liquidation proceedings because issue was
21 exclusively within province of stated under McCarran-Ferguson Act).
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1 Even apart from Washington's UILA, the substantial authority from state and federal
2 courts across the country weighs in favor of enforcing the stay issued by the New Hampshire
3 court pursuant to the full faith and credit clause of the United States Constitution and under
4 general principles of comity.

5
6 **IV. CONCLUSION**

7 In accordance with the reciprocity provisions of the Washington UILA, the full faith
8 and credit clause of the U.S. Constitution and general principles of comity, the Rehabilitation
9 Order entered by the New Hampshire court and issuing a 90 day stay of proceedings against
10 the insureds of Home, which includes Stimson, is entitled to full force and effect in these
11 proceedings. Accordingly, this Court should grant defendant's motion.

12 Dated this 12th day of March, 2003.

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

15 By Joan C. Foley

16 Mark Honeywell, WSBA No. 01567

17 mhoneywell@gth-law.com

18 Joan C. Foley, WSBA No. 25861

19 jfoley@gth-law.com

20 Timothy L. Ashcraft, WSBA No. 26196

21 tashcraft@gth-law.com

22 Attorneys for Defendant Stimson

23 Lumber Company

24 STEVEN H. GURNEE & ASSOCIATES

25 By: _____

26 Steven H. Gurnee, Esq.

Kirk J. Wolden, Esq.

Attorneys for Defendant Stimson

Lumber Company