

RECEIVED

AUG 24 2009

INSURANCE COMMISSIONER
COMPANY SUPERVISION

1 EXPEDITE
2 No Hearing is Set
3 Hearing is Set
4 Date: September 4, 2009
5 Time: 9:00 a.m.
6 The Honorable Judge McPhee

7 **STATE OF WASHINGTON**
8 **THURSTON COUNTY SUPERIOR COURT**

9 MIKE KREIDLER,
10 INSURANCE COMMISSIONER,
11 Petitioner,

NO. 04-2-02427-4

AMENDED
CERTIFICATE OF SERVICE

11 v.

12 CASCADE NATIONAL INSURANCE
13 COMPANY,
14 Respondent.

15 This will hereby certify that on the **21st** day of August, 2009, I served a true and correct
16 copy of the Civil Notice of Issue; Motion for Temporary Restraining Order, Order to Show
17 Cause Re: Preliminary Injunction, and for Declaratory Order; Declaration of Marshall
18 McGinnis in Support of Temporary Restraining Order, Order to Show Cause Re: Preliminary
19 Injunction, and for Declaratory Order; Declaration of Carol Sureau in Support of Temporary
20 Restraining Order; Order to Show Cause Re: Preliminary Injunction, and for Declaratory
21 Order; Declaration of Heather Polz in Support of Temporary Restraining Order; Order to
22 Show Cause Re: Preliminary Injunction, and for Declaratory Order; (Proposed) Order
23 Granting Preliminary Injunction and Motion for Declaratory Judgment; (Proposed Order for
24 Temporary Restraining Order and Show Cause Hearing Date Re: Preliminary Injunction;
25 Stipulated Order for Temporary Restraining Order and Show Cause Hearing Date Re:
26 Preliminary Injunction; **amended Civil Notice of Issue; amended Order for Temporary**

1 **Restraining Order and Show Cause Hearing Date Re: Preliminary Injunction;** and this
2 Certificate of Service via the U.S. Mail, first-class postage prepaid, in sealed envelopes, from
3 Olympia, Washington, to the following interested parties:

4 Elizabeth J. Anderson, Sr. VP
5 **Columbia Bank**
6 Special Credits Department
7 1301 "A" Street
8 Tacoma, WA 98401

9 Harold Anderson
10 P.O. Box 3626
11 Sun River, OR 97707
12 **Former President of Cascade Majority Shareholder**
13 (Also via email)

14 Terrence J. Donahue
15 Eisenhower & Carlson
16 1201 Pacific Avenue, Suite 1200
17 Tacoma, WA 98402-4395
18 **Attorney for Columbia Bank**

19 Michael Gossler
20 **Attention: Karen Oliphant**
21 Montgomery Purdue Blankinship Austin
22 701 Fifth Avenue, Suite 550
23 Seattle, WA 98104-7096
24 **Attorneys for Harold Anderson**

25 Joseph K. Hegedus
26 Lewis Brisbois Bisgaard Smith
27 221 N. Figueroa Street, Suite 1200
28 Los Angeles, CA 90012
29 **Special Request for Notice**

30 Jeffrey A. King
31 Kent & Wittekind PC
32 111 W Monroe, Suite 1000
33 Phoenix, AZ 85003
34 **Attorneys for Insureds Try Us Trucking + Rufer**

35 Brian F. Kreger
36 Ryan Swanson Cleveland
37 1201 Third Avenue, Suite 3400
38 Seattle, WA 98101-3034
39 **Attorney for Gudeman & Weiss**

40 / / /

1 William T. Lebo, CPCU, President
2 Lebo Mgmt & Insurance Consulting
3 14722 38th Avenue NE
4 Lake Forest Park, WA 98155
5 ***Former Outside Director of Cascade***

6 Thomas S. Linde
7 Law Offices of Laurin S. Schweet
8 295 80th Avenue SE, Suite 102
9 Mercer Island,, WA 98040
10 ***Attorneys for Bank of America NA,
11 Creditor of MBR Corp (Allied...)***

12 Eric Mendoza
13 Bank of America NA
14 CA9-702-03-03, POB 479
15 Pasadena, CA 91102-6102
16 ***Creditor of MBR Corp (Allied...)***

17 Larry Morrison, President
18 Business Transition Network, Inc.
19 16515 Stilly Way
20 Arlington, WA 98223
21 ***Former Outside Director of Cascade***

22 W. Theodore Vander Wel
23 Attorney at Law
24 10500 NE 8th Street, Suite 1900
25 Bellevue, WA 98004
26 ***Attorney for Morrison and Lebo***

Marina N. Vitek, Esq.
Roxborough Pomerance NYE LLP
5820 Canoga Avenue, Suite 250
Woodland Hills, CA 91367
Attorneys for Mainstay Business Solutions

John W. Wolfe
Wolfe Leinback
701 Fifth Avenue, Suite 6110
Seattle, WA 98104-7043
Attorney for Harold Anderson

Mike Kreidler, Ins. Commissioner
Office of Insurance Commissioner
P. O. Box 40256
Olympia, WA 98504-0256

1 Marshall McGinnis, Deputy Receiver
2 c/o Cascade National Insurance Company
3 PO Box 3366
4 Bellevue, WA 98009-3366
5 ***For Cascade National Insurance Company***

6 Jim Odiome, Receiver
7 Office Of Insurance Commissioner
8 P.O. Box 40255
9 Olympia, WA 98504-0255
10 ***For Cascade National Insurance Company***

11 Victoria L. Vreeland
12 Gordon Thomas Honeywell
13 600 University St Suite 2100
14 Seattle, WA 98101-4185

15 Alaska Guaranty Association
16 1401 Rudakof Circle
17 Anchorage, AK 99508

18 C. Guerry Collins, Esq.
19 Lord Bissell & Brooke, LLP
20 300 S. Grand Avenue, 8th Floor
21 Los Angeles, CA 90071
22 ***For CA Ins. Guarantee Association (CIGA)***

23 Oregon Ins. Guaranty Association
24 10700 SW Beaverton Hwy, Suite 426
25 Beaverton, OR 97005

26 WA Insurance Guaranty Association
c/o Western Guaranty Fund Services
1720 S. Bellaire, Suite 408
Denver, CO 80222

Alaska Division of Insurance
Linda S. Hall, Director of Juneau Office
State Office Building, 9th Floor
333 Willoughby Avenue
Juneau, AK 99801

California Department of Insurance
John Garamendi, Insurance Commissioner
300 South Spring Street, South Tower
Los Angeles, CA 90013

OR Dept. of Consumer and Business Svcs.
Joel Ario, Ins. Division Administrator
350 Winter Street NE, Room 440
Salem, OR 97309

1 Michael W. Mayberry,
2 Matthew B. Edwards,
3 Owens Davies, P.S.
4 1115 West Bay Drive, Suite 302
5 Olympia, WA 98502
6 *Attorneys for Respondents Marcel Matar & Statewide General Insurance Agency, Inc.*

7 Brian L. Budsberg
8 PO Box 1489
9 Olympia WA 98507-1489
10 *Attorney for Respondents Marcel Matar & Statewide General Insurance Agency, Inc.*

11 John Mellen
12 Law Offices of Keller Rohrback L.L.P.
13 1201 Third Avenue, Suite 3200
14 Seattle, WA 98101-3052
15 *Attorneys for Harold Anderson*

16 Richard Alan Stout
17 Richard Alan Stout, Attorney at Law LLC
18 18160 Cottonwood Road PMB 273
19 Sunriver, OR 97707
20 *Attorney for Amica Mutual Insurance Co.*

21 Bradley W. Hoff
22 Christopher M. Alston
23 Foster Petter PLLC
24 1111 Third Avenue, Suite 3400
25 Seattle, WA 98101-3299
26 *Attorneys for Claimant James T. Feltman*

DATED this 21st day of August, 2009.


DARLA AUMILLER
Legal Assistant

EXPEDITE (if filing within 5 court days of hearing)

Hearing is set:

Date: September 18, 2009

Time: 9:00 a.m.

Judge/Calendar: Judge Thomas McPhee

FILED

AUG 20 2009

SUPERIOR COURT
BETTY J. GOULD
THURSTON COUNTY CLERK

**SUPERIOR COURT OF WASHINGTON
FOR THURSTON COUNTY**

Mike Kreidler, Insurance Commissioner
Plaintiff/Petitioner,

vs.

Cascade National Insurance Company
Defendant/Respondent.

NO. 04-2-02427-4

**CIVIL NOTICE OF ISSUE (NTIS)
Clerk's Action Required**

TO: THURSTON COUNTY CLERK and to all other parties listed herein:

PLEASE TAKE NOTICE that an issue of law in this case will be heard on the date below and the Clerk is directed to note this issue on the calendar checked below.

Calendar Date: ~~September 18, 2009~~, 9:00 a.m. **Day of Week:** Friday

August 25, 2009

IMPORTANT WARNING: If this Notice of Issue is not timely filed, contains a wrong day or date, or is scheduled for a wrong calendar date, your hearing will not be scheduled. You will not be notified.

Bench/Judge Copies: Deliver to Superior Court, Building 2, Rm. 150
Filing Deadlines: By 12:00 noon, 5 court days preceding the scheduled hearing date [LCR 5(b)(2)]
Confirmation: Confirm at www.co.thurston.wa.us/clerk by clicking on Hearing Confirmation, by calling (360) 786-5423 by 12:00 noon three court days prior to the hearing date [LCR 16(f)(2)].
2000 Lakeridge Drive SW, Building 2, Olympia WA 98502.

Court Address:

CIVIL MOTIONS (Friday – 9:00 am)
CONFIRMATION REQUIRED

ASSIGNED JUDGE:

Judge Thomas McPhee

Judge Richard D. Hicks

Judge Anne Hirsch

Judge Carol Murphy

Type of Motion:

Default

Discovery

Summary Judgment/Dismissal

Change Venue

Continue Trial

Show Cause

Present Order

TRO/Preliminary Injunction

Other: Declaratory Order

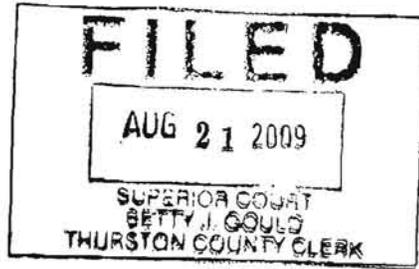
UNLAWFUL DETAINERS (Friday – 10:00 am)
CONFIRMATION REQUIRED

DOL REVOCATIONS (Friday – 9:00 am)
CONFIRMATION REQUIRED

RALJ APPEALS (Tuesday – 9:00 am)
No Confirmation Necessary

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Certificate of Service	
I certify that on August 20, 2009, I <input checked="" type="checkbox"/> deposited in the United States mail, <input type="checkbox"/> delivered through a legal messenger service, <input type="checkbox"/> personally delivered, a copy of this document to the attorney(s) of record for <input checked="" type="checkbox"/> Plaintiff/ Petitioner <input checked="" type="checkbox"/> Defendant/Respondent <input checked="" type="checkbox"/> All Other Parties of Record.	PRESENTING PARTY: Sign: <u><i>Heather L. Polz</i></u> Print/Type Name: Heather L. Polz WSBA # 30502 (if attorney) Address: PO Box 40100 City/State/Zip: Olympia, WA 98504-0100 Attorney for: Insurance Commissioner Telephone: (360) 664-0865 Date: 08/20/2009
<u><i>Darla Aumiller</i></u> Attorney for <input type="checkbox"/> Plaintiff/Petitioner <input type="checkbox"/> Defendant/Respondent <input checked="" type="checkbox"/> Other: Darla Aumiller, Legal Assistant to Heather L. Polz, AAG	
LIST NAMES, ADDRESSES & TELEPHONE NUMBERS OF ALL PARTIES REQUIRING NOTICE	
A LIST OF ALL THE PARTIES AND COUNSEL SERVED, AND PERSONS SERVED WITH COURTESY COPIES, IS IN THE CERTIFICATE OF SERVICE, WHICH IS FILED HEREWITH ON AUGUST 20, 2009	



1 EXPEDITE
2 No Hearing is Set
3 Hearing is Set
4 Date:
5 Time:
6 The Honorable Judge McPhee

8 STATE OF WASHINGTON
9 THURSTON COUNTY SUPERIOR COURT

10 MIKE KREIDLER,
11 INSURANCE COMMISSIONER,

12 Petitioner,

13 v.

14 CASCADE NATIONAL
15 INSURANCE COMPANY,

16 Respondent.

NO. 04-2-02427-4

ORDER FOR TEMPORARY
RESTRAINING ORDER AND
SHOW CAUSE HEARING DATE
RE: PRELIMINARY
INJUNCTION
~~PROPOSED~~

17 Cascade National Insurance Company, in Liquidation, ("Cascade") and the
18 Washington State Office of the Insurance Commissioner, Mike Kreidler Insurance
19 Commissioner, (collectively the "OIC") brought a Motion for a Temporary Restraining Order
20 for hearing on August 20, 2009. Cascade and the OIC were represented by ROBERT M.
21 MCKENNA, Attorney General, HEATHER POLZ and MARTA DELEON, Assistant
22 Attorneys General. Requestor Columbia Bank (did) (did not) appeared and was represented
23 by DONALD ANDERSON, of Eisenhower & Carlson, PLLC. The Court considered the
24 Motion for Temporary Restraining Order, and Declarations of Carol Sureau, Marshall
25 McGinness, and Heather Polz in support thereof, the records filed to date in this matter, and
26 heard the argument of counsel.

ORDER FOR TEMPORARY
RESTRAINING ORDER AND SHOW
CAUSE HEARING DATE RE:
PRELIMINARY INJUNCTION

I. FINDINGS AND CONCLUSIONS

1. The Court finds that irreparable harm will result to Cascade if this Order is not entered because the staff time and resources that would be required to respond to Columbia Bank's public records request before this Court determines if the records in the Receivers' possession are public records would be a waste of Cascade's assets.

2. The Court finds that the Cascade and its Receivers, and the OIC have a reasonable likelihood of prevailing on the merits in their request for a preliminary injunction and permanent injunction. Cascade and its Receivers have a clear legal and equitable right under the Insurance Code to prevent the waste of Cascade's assets.

3. The Court finds that it is appropriate to temporarily restrain the Requestor from seeking records that are not clearly subject to the Public Records Act.

II. ORDER

Therefore, good cause appearing, IT IS HEREBY ORDERED that:

~~1. The Requestor, Columbia Banks, is prohibited from requesting records that are exclusively in the possession of Cascade or its Receivers until this Court has an opportunity to determine whether those records are subject to the Public Records Act;~~

2. No penalties shall accrue for failure by the OIC or Cascade to produce documents exclusively in the possession of Cascade or its Receivers until this Court has an opportunity to determine whether those records are subject to the Public Records Act;

3. This temporary restraining order shall go into effect on August 20, 2009, at 11:30 AM and shall remain in effect until this court has an opportunity to decide Cascade's motion for a preliminary injunction;

4. ~~The parties are Requestor Columbia Bank is~~ ordered to show cause why the preliminary injunction should not be entered on Sept 4, 2009, at 9 a.m./p.m.; and

OIC is restrained from producing records otherwise in the sole possession of the receiver until that time directed by the courts

ORDER FOR TEMPORARY
RESTRAINING ORDER AND SHOW
CAUSE HEARING DATE RE:
PRELIMINARY INJUNCTION

ATTORNEY GENERAL OF WASHINGTON
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100
(360) 664-9006

1 5. Pursuant to RCW 4.92.080, no security bond shall be required of the State of
2 Washington in this matter.

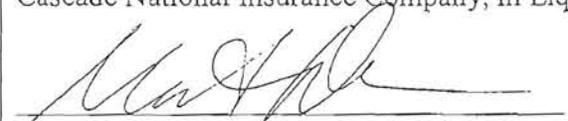
3 Dated this 21 day of August, 2009.

4
5 
6 JUDGE THOMAS MCPHEE

7
8
9 Presented by:

10 ROBERT M. MCKENNA
11 Attorney General

12 
13 Heather Polz, WSBA #30502
14 Assistant Attorney General
15 Attorneys for the Receiver to
16 Cascade National Insurance Company, in Liquidation

17 
18 Marta DeLeon, WSBA #35779
19 Assistant Attorney General
20 Attorneys for the OIC

21 Approved as to form and Presentation Waived,
22 EISENHOWER & CARLSON, PLLC

23 
24 Donald Anderson, WSBA # 8373
25 Attorneys for Requestor Columbia Bank
26

ORDER FOR TEMPORARY
RESTRAINING ORDER AND SHOW
CAUSE HEARING DATE RE:
PRELIMINARY INJUNCTION

EXPEDITE (if filing within 5 court days of hearing)

Hearing is set:

Date: September 18, 2009

Time: 9:00 a.m.

Judge/Calendar: Judge Thomas McPhee

**SUPERIOR COURT OF WASHINGTON
FOR THURSTON COUNTY**

Mike Kreidler, Insurance Commissioner
Plaintiff/Petitioner,

vs.

Cascade National Insurance Company
Defendant/Respondent.

NO. 04-2-02427-4

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Clerk's Action Required**

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Calendar Date: September 18, 2009, 9:00 a.m. Day of Week: Friday

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Court Address:

CIVIL MOTIONS (Friday – 9:00 am)
CONFIRMATION REQUIRED

ASSIGNED JUDGE:

- Judge Thomas McPhee
 Judge Richard D. Hicks
 Judge Anne Hirsch
 Judge Carol Murphy

Type of Motion:

- Default
 Discovery
 Summary Judgment/Dismissal
 Change Venue
 Continue Trial
 Show Cause
 Present Order
 TRO/Preliminary Injunction
 Other: Declaratory Order

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CONFIRMATION REQUIRED

DOL REVOCATIONS (Friday–9:00 am)
CONFIRMATION REQUIRED

RALJ APPEALS (Tuesday – 9:00 am)
No Confirmation Necessary

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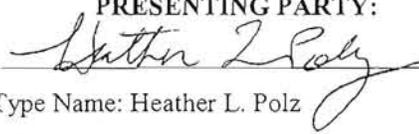
Certificate of Service

I certify that on August 20, 2009, I deposited in the United States mail, delivered through a legal messenger service, personally delivered, a copy of this document to the attorney(s) of record for Plaintiff/
Petitioner Defendant/Respondent All Other Parties of Record.



Attorney for Plaintiff/Petitioner
 Defendant/Respondent
 Other: Darla Aumiller, Legal Assistant to Heather L. Polz, AAG

PRESENTING PARTY:

Sign: 

Print/Type Name: Heather L. Polz

WSBA # 30502 (if attorney)

Address: PO Box 40100

City/State/Zip: Olympia, WA 98504-0100

Attorney for: Insurance Commissioner

Telephone: (360) 664-0865

Date: 08/20/2009

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**LIST NAMES, ADDRESSES & TELEPHONE NUMBERS
OF ALL PARTIES REQUIRING NOTICE**

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**A LIST OF ALL THE PARTIES AND COUNSEL
SERVED, AND PERSONS SERVED WITH
COURTESY COPIES, IS IN THE CERTIFICATE
OF SERVICE, WHICH IS FILED HEREWITH ON
AUGUST 20, 2009**

1 EXPEDITE
2 No Hearing is Set
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4 Date: September 18, 2009
5 Time: 9:00 a.m.
6 The Honorable Judge McPhee

7
8 **STATE OF WASHINGTON**
9 **THURSTON COUNTY SUPERIOR COURT**

10 MIKE KREIDLER,
11 INSURANCE COMMISSIONER,
12
13 v.
14 CASCADE NATIONAL INSURANCE
15 COMPANY,
16 Respondent.

NO. 04-2-02427-4

MOTION FOR TEMPORARY
RESTRAINING ORDER, ORDER TO
SHOW CAUSE RE: PRELIMINARY
INJUNCTION, AND FOR
DECLARATORY ORDER

17 **I. RELIEF REQUESTED**

18 COMES NOW the State of Washington, Office of the Insurance Commissioner, by
19 and through its attorneys, ROBERT M. MCKENNA, Attorney General, and HEATHER L.
20 POLZ, Assistant Attorney General, and, pursuant to CR 65(b), CR 57, RCW 7.40.010, RCW
21 7.24.010 and RCW 48.31.200, moves this Court for an order that:

22 1. Declares that Cascade documents that belong to Cascade and are only in
23 Cascade's possession or the possession of its Receivers are private records and are not
24 subject to the Public Records Act;

25 2. Prohibits Columbia Bank from using the Public Records Act to circumvent
26 the Court's exclusive supervision of the Receivership; and

1 with the OIC's position that the Court has exclusive supervision of the Receivership. See
2 Insurance Commissioner's Reply To Responses of Mainstay and Columbia Bank To Petition
3 For Order of Liquidation and Approval Of Plan Of Liquidation. Now, among other things,
4 Columbia Bank is seeking in its June 23, 2009:

- 5 • "Any and all documents providing the factual or analytical basis
6 for the Quarterly Reports of Receiver filed in Kreidler v. Cascade
7 National Insurance Company, Thurston County Cause No. 04-2-
8 02427-4."
- 9 • "Any actuarial study or report in your possession related to
10 Cascade National Insurance Company or Kreidler v. Cascade
11 National Insurance Company, Thurston County Cause No. 04-2-
12 02427-4."
- 13 • "Any and all documents pertaining to administrative expenses
14 incurred in connection with the receivership which is the subject of
15 Kreidler v. Cascade National Insurance Company, Thurston
16 County Cause No. 04-2-02427-4."
- 17 • "Any and all documents relating to each recovery of any assets by
18 the receiver of Cascade National Insurance Company."
- 19 • "Any and all documents relating to paid loss and reserve data from
20 the California Guaranty Association of March 31, 2009 and any
21 updates or supplements thereto."

22 Sureau Decl., Ex. A.

23 After receiving the June 23, 2009 request, counsel for the OIC and Cascade
24 communicated with Mr. Anderson, on July 6, 2009 and July 17, 2009, explaining that the
25 majority of the records Columbia has requested would not be produced because they are
26 private insurance company records not subject to the Public Records Act. See Declaration of
Heather Polz (Polz Decl.) In a July 17, 2009 letter, the OIC's counsel notified Mr. Anderson
that because he did not withdraw or limit his request, Cascade and the OIC would jointly file
a motion to obtain a temporary restraining order, preliminary injunction and declaratory
judgment with regard to the public records request. Polz Decl. In this letter, counsel also
requested that Mr. Anderson provide any relevant authority if he believed Cascade's records
to be public. *Id.* The letter also requested that Mr. Anderson stipulate to the private nature of

1 the Cascade documents. *Id.* To date, Mr. Anderson has not responded with any legal
2 authority or agreed to stipulate to the private nature of the records. *Id.*

3 On July 22, 2009, Mr. Anderson indicated that he was primarily seeking “information
4 that has been supplied to the Insurance Commissioner’s office supporting the quarterly
5 reports prepared in the receivership, particularly with respect to liabilities, and any actuarial
6 studies used in estimating those liabilities.” *See* Polz Decl. Mr. Anderson further indicated
7 that he is not seeking individual claim files regarding Cascade’s insureds.¹ *Id.* He further
8 granted a 30 day stay of any potential penalties should the OIC agree to staged production,
9 and provide an explanation of the documents they believe are exempt. *Id.* However, Mr.
10 Anderson reserved the right to renew his requests for documents claimed as exempt by the
11 OIC after that 30 days expired. *Id.* The thirty days expires August 21, 2009. *Id.*

12 In an August 10, 2009 email to Mr. Anderson, Assistant Attorney General Heather
13 Polz, counsel to Cascade and the OIC, informed Mr. Anderson of the OIC’s concerns
14 regarding penalties that can be associated with public records requests and requested that Mr.
15 Anderson withdraw his request and, instead, make a motion directly to this court for the
16 records that the OIC has asserted are private. *See* Polz Decl. She further notified Mr.
17 Anderson that counsel for Cascade and the OIC would seek a temporary restraining order on
18 August 20, 2009, if he did not withdraw his public records request and move the court for
19 these private company documents. *See* Polz Decl. Mr. Anderson declined to make a motion
20 to this Court for the requested private company documents, and as a result, the OIC believes
21 that a temporary restraining order and the other requested relief are necessary in order to
22 protect the OIC from potential penalties under the Public Records Act (“PRA”). Sureau
23 Decl. at 2-3. Cascade is also concerned regarding potential harm to Cascade’s receivership

24
25 ¹ On August 18, 2009, Mr. Anderson sent a letter withdrawing the fifth bullet of the public records
26 request pertaining to the claims by or against Cascade’s insureds. This letter also clarified that he did not seek
documents prior to January 1, 2004. *See* Polz Decl. The OIC has already begun staged production of documents
in its possession that are responsive to Columbia’s request. *Id.*

1 process should the records in question be provided to members of the public. McGinnis
2 Decl. at 2-3.

3 On August 17, 2009, counsel for the OIC and Cascade confirmed with Mr. Anderson
4 that this TRO and Motion for a Preliminary Injunction would be filed on August 20, 2009.
5 See Polz Decl. Mr. Anderson agreed to service via email, and Mr. Polz agreed to forward the
6 pleadings to him on August 20, 2009 prior to appearing at the 4:30 p.m. ex parte calendar.

7 *Id.*

8 III. STATEMENT OF ISSUES

- 9 1. Whether, pursuant to CR 65(b), this court should enter a temporary restraining
10 order barring Columbia Bank from submitting subsequent public records
11 request until the Court can determine the nature of the documents at issue?
- 12 2. Whether Columbia Bank should be ordered to show cause why a preliminary
13 injunction should not be entered?
- 14 3. Whether documents that are only in the possession of Cascade and its
15 Receivers are private records that are not subject to the Public Records Act?

16 IV. EVIDENCE RELIED UPON

- 17 1. The Declaration of Deputy Insurance Commissioner For Legal Affairs, Carol Sureau.
- 18 2. The Declaration of Cascade's Deputy Receiver, Marshall McGinnis.
- 19 3. The Declaration of Heather Polz, Assistant Attorney General.
- 20 4. And the documents and records on file with this Court.

21 V. AUTHORITY

22 A. Injunctive Relief In The Form Of A Temporary Retraining Order Is Warranted 23 Because The Records In Question Are Private And Their Disclosure Will Harm The Receivership Process.

24 The Department's Motion for a Temporary Restraining Order is brought pursuant to
25 CR 65(b). A party seeking a temporary or permanent injunction must show (1) that he has a
26 clear legal or equitable right, (2) that he has a well-grounded fear of immediate invasion of

1 that right, and (3) that the acts complained of are either resulting in or will result in actual or
2 substantial injury to him. See *Washington Federation of State Employees v. State*, 99 Wn.2d
3 878, 888, 665 P.2d 1337 (1983). The OIC has satisfied the requirements for temporary relief,
4 and the court should, therefore, exercise its discretion and enter the proposed order pending a
5 hearing on a motion for preliminary injunction.

6 **1. The OIC has a legal right not to produce private documents that pertain to**
7 **Cascade's receivership and are not in the OIC's possession.**

8 The OIC has a legal right not to produce Cascade's private documents that are solely in
9 Cascade's possession or the possession of its Receivers because these documents do not fall
10 under the definition of a public record. A "public record" includes any writing containing
11 information relating to the conduct of government or the performance of any governmental or
12 proprietary function prepared, owned, used, or retained by any state or local agency regardless
13 of physical form or characteristics." RCW 42.17.020(41). Here, the records in question
14 pertain to the receivership and liquidation of a private insurance company, not the "conduct of
15 government," or the performance of a governmental function. The OIC and the state of
16 Washington do not own Cascade, hence, Cascade's records are not prepared, owned, used, or
17 retained by a state agency.

18 Washington's insurance statutes further define public records, indicating that "[t]he
19 records of the commissioner and insurance filings in his or her office shall be open to public
20 inspection, except as otherwise provided by this code." RCW 48.02.120(2). However,
21 "[a]ctuarial formulas, statistics, and assumptions submitted in support of a rate or form filing
22 by an insurer ...or submitted to the commissioner upon his or her request shall be withheld
23 from public inspection in order to preserve trade secrets or prevent unfair competition." RCW
24 48.02.120(3). Thus, RCW 48.02.120 supports the proposition that records of the
25 Commissioner (and not the Receiver) are open to the public and that actuarial formulas and
26 statistics at the OIC are sensitive information that are not subject to disclosure. This is strong

1 evidence that, even if they were in the hands of the OIC, the actuarial studies and other
2 statistics and assumptions supporting Cascade's quarterly reports would be withheld from
3 Columbia.

4 The fact that Cascade and its records remain private even when in liquidation is also
5 made clear by the definition of "insurer" under Washington's Uniform Insurers Liquidation
6 Act, Chapter 48.99 RCW. Under this Act, an "insurer" means any person, firm, association,
7 or aggregation of persons doing an insurance business and subject to the insurance supervisory
8 authority of, or to liquidation, rehabilitation ... by, the commissioner." RCW 48.99.010(1).
9 Thus, under this definition, an insurance company still remains an insurer while in liquidation
10 and is not transformed into an arm of the government as a result of the liquidation process.
11 Instead, the insurance company remains an independent entity "subject to insurance
12 supervisory authority." *Id.*

13 Washington case law makes clear that a document's characteristics do not change based
14 only on the identity of the person who is handling them:

15 [W]e reject the notion that documents are public or private simply because
16 the person who handles them is or is not a public servant (or government
17 employee). A judge's notes in conference are not public simply because
18 the individual is an elected official. Nor are the entire records of a county
sheriff or prosecutor subject to inspection if such inspection would
jeopardize law enforcement.

19 *Cowles Publishing Company v. Murphy*, 96 Wn.2d 584, 587, 637 P.2d 966 (1981). Thus,
20 under *Cowles*, when the Receiver, an employee of the OIC, reviews a Cascade document in his
21 capacity as Receiver, the document still remains private.

22 Although the private nature of receivership records has not been tested in Washington,
23 in other jurisdictions, the Courts have found that documents in the possession of a receiver or
24 liquidator are not public records. For example, in Kentucky, the Court of Appeals denied a
25 reporter records from an insolvent insurance company following the reporter's public records
26 request to the insurance commissioner. *Kentucky Central Life Ins. Co. v. Park Broadcasting of*

1 | *Kentucky, Inc.*, 913 S.W.2d 330, 331, 335 (1996). The *Kentucky Central Life* court
2 | summarized its holding as follows:

3 | We conclude the “records” at issue are the private records of Kentucky
4 | Central. We have no doubt that the legislature did not intend to convert
5 | companies such as Kentucky Central into public agencies through the
6 | Rehabilitation Act. To hold that the rehabilitator, who essentially steps
7 | into the shoes of the directors, officers and managers of the insurance
8 | company, is a public agency effectively makes the company and all its
9 | records subject to the strictures of the Open Records Act. The company's
10 | records should not lose their private status simply because the rehabilitator
11 | has used, possessed, or has access to them. The rehabilitation statutes were
12 | designed to effectuate the process with “minimal interference with the
13 | normal prerogative of proprietors....” Subjecting Kentucky Central's
14 | records to the broad disclosure contemplated under the Open Records Act
15 | would completely frustrate the purpose and intent of the law. The records
16 | that were made by, or generated for, Stephens' use in his capacity as
17 | rehabilitator are within the exclusive jurisdiction of the court and are not
18 | “public records” subject to the Open Records Act. *See* KRS 304.33-040;
19 | 304.33-150(2); and 26A.200.

20 | *Id.* at 335-36². The *Kentucky Central Life* court's holding is in keeping with the OIC's position
21 | that the appointment of receivers does not transform Cascade into a state agency or its
22 | documents into public records.

23 | In reaching its holding, the *Kentucky Central Life* court found the position of
24 | rehabilitator to be legally distinguishable from the insurance commissioner:

25 | In our view, the Insurance Code creates a court-appointed position of
26 | rehabilitator that is legally distinguishable from the office of
27 | commissioner. While it is the commissioner who is the statutorily
28 | designated appointee who must serve as the rehabilitator of an insurance
29 | company, it does not follow that the two positions are one entity for
30 | purposes of the Open Records Act. To the contrary, the fact that the code
31 | mandates a court order appointing the commissioner to serve as
32 | rehabilitator suggests the legislature contemplated a separate office of
33 | rehabilitator.

34 | *Kentucky Central Life Ins. Co. v. Park Broadcasting of Kentucky, Inc.*, 913 S.W.2d 330, 332
35 | (1996). In reviewing state law, the *Kentucky Central Life* court concluded that the legislature
36 | carefully utilized the terms “rehabilitator” and “commissioner,” delineating the differences in

37 | ² Jurisdictions besides Kentucky have also ruled that records of private insurance companies in
38 | receivership are not public records. *See Farrimond v. State of Oklahoma*, 8 P.3d 872 (2000).

1 the functions, duties, etc. in the rehabilitation process, and not using these terms
2 interchangeably or synonymously. *Id.* at 332. The court also considered the fact that all
3 compensation and expenses of the rehabilitation are paid by the insurer. *Id.* Further, because
4 the insurance commissioner's role as rehabilitator is legally separate from his role as regulator,
5 the *Kentucky Central Life* court found that the rehabilitator cannot be considered a "public
6 agency." *Id.* at 334.

7 Like in the *Kentucky Central Life* case, here in Washington the receiver's role is
8 distinct from the role of the Insurance Commissioner or OIC. Under Washington's Uniform
9 Insurers Liquidation Act, when a receiver is to be appointed for the liquidation or rehabilitation
10 of an insurance company, the court "shall appoint the [insurance] commissioner as such
11 receiver." RCW 48.99.020(1); RCW 48.99.010(2). Then, the court directs the Insurance
12 Commissioner, as receiver, to take possession of the assets of the insurer and to administer
13 them "under the orders of the court." RCW 48.99.020(1). "*As domiciliary receiver*³ *the*
14 *commissioner* shall be vested by operation of law with the title to all of the property, contacts,
15 and rights of action, and all of the books and records of in the insurer wherever located, as of
16 the date of entry of the order directing him to rehabilitate or liquidate a domestic insurer... and
17 he shall have the right to recover the same and reduce the same to possession....RCW
18 48.99.020(2) (emphasis added). Thus, like in *Kentucky Central Life*, Washington's law
19 distinguishes between the Insurance Commissioner's role as regulator and that of receiver and
20 does not use the terms "commissioner" and "receiver" interchangeably or synonymously. *See*
21 RCW 48.99.020. Also like in Kentucky, Washington's law gives the Insurance Commissioner
22 the power to appoint special deputy commissioners to act for him in the receivership and to
23 employ other persons as necessary. RCW 48.99.020(6). Again like in Kentucky, in
24 Washington, the compensation for the special deputies and other persons working on the

25 _____
26 ³ "Receiver" means receiver, liquidator, rehabilitator, or conservator as the context may require." RCW
48.99.010(12).

1 rehabilitation or liquidation are paid out of the assets of the insurer, or in this case, Cascade.
2 *Id.* Because the records of Cascade, even in liquidation, remain private records, the OIC has
3 the right to be free of any obligation to produce those records that remain in the sole possession
4 of Cascade and its Receivers.

5 **2. The OIC has a well-grounded fear of immediate invasion of that right.**

6 The July 17, 2009 correspondence from Mr. Anderson gave the OIC 30 days of no
7 penalties to review potentially responsive records and agreed not to seek penalties unless
8 Columbia Bank renewed its requests for documents identified by the OIC as exempt. Given
9 Columbia Bank's refusal to bring a motion and insistence on pursuing a public records
10 request, the OIC has a well-grounded fear that Columbia Bank will file a new request, and
11 then file an action under the Public Records Act seeking penalties for the OIC's non-
12 disclosure of Cascade's private company records. *See* Sureau Decl. In other words, the OIC
13 has a well-grounded fear of the invasion of the OIC's right to deny the public records request
14 for Cascade documents. This fear is bolstered because the private nature of the records of
15 insolvent insurance companies is an issue of first impression in Washington State.

16 The Public Records Act ("the Act") reserves interpretation of the Act, including
17 whether documents are subject to the Act, to the Courts. Therefore there is a risk that this
18 Court may disagree that the OIC is not required to produce private company documents.
19 Under the Act, penalties can be assessed per document, and multiplied per day. *See* Sureau
20 Decl. Further, a requestor has up to a year to bring an action. In this case, there are
21 potentially tens, if not hundreds of thousands of documents. *See* McGinnis Decl. If
22 hypothetically, the Court were to disagree with the OIC's legal conclusion and determined
23 that the OIC should be penalized \$5 per document, per day, and there are ultimately 50,000
24 responsive documents, and that the OIC was 1 day late in producing documents, that penalty
25 would be \$250,000, and attorneys' fees and costs involved in the litigation would be added.
26

1 Therefore, the OIC has a well-grounded fear of penalties and fees under the Public Records
2 Act.

3 **3. The acts complained of are either resulting in or will result in actual and
4 substantial injury to the OIC and Cascade.**

5 Cascade's Deputy Receiver, Marshall McGinnis, states in his Declaration that the
6 production of the requested records would result in injury to Cascade's liquidation process in
7 that it would require all of his three person staff's time for many months. *See* McGinnis Decl.
8 Obviously, the searching and production of private records would be an enormous waste of
9 Cascade's limited assets. *Id.* Especially in light of the fact that Cascade's liquidation could
10 last an additional ten or more years, it would be extremely injurious to Cascade, its claimants,
11 other insurers and the state of Washington for public records requests for such private
12 insurance company records to be deemed valid. *Id.* For example, at the close of Cascade's
13 liquidation process, any amount owed to the Washington Guarantee Association that cannot be
14 paid from Cascade's remaining assets will be borne by all insurers doing business in
15 Washington. *Id.* Finally, the assessment of penalties and fines against the OIC for any
16 violation of the Public Records Act in conjunction with this case would result in substantial
17 injury to the OIC.

18 **B. Motion to Show Cause Why a Preliminary Injunction Should Not Be Entered.**

19 Restraining orders and injunctions may be granted by the superior court or any judge
20 thereof. RCW 7.40.010. In addition to the provisions set out in RCW 7.40.020 and RCW
21 7.40.050, the Insurance Code also provides that in rehabilitation and liquidation proceedings,
22 the court may, on application by the Insurance Commissioner for an order to show cause, issue
23 an injunction without notice restraining all persons from the waste or disposition of the
24 insurer's property until further order of the court. RCW 48.31.200(1). The statute provides:

25 Upon application by the commissioner for such an order to show cause or
26 at any time thereafter, the court may without notice issue an injunction
restraining the insurer, its officers, directors, stockholders, members,
subscribers, agents, and all other persons from the transaction of its

1 business or the waste or disposition of its property until the further order
2 of the court.

3 RCW 48.31.200(1). This Chapter further provides that, at any time during a receivership or
4 liquidation, the court may issue such orders and injunctions deemed necessary to prevent
5 interference in the proceeding or to prevent wasting the assets of the insurer. The statute
6 further provides that:

7 The court may at any time during a proceeding under this chapter issue
8 such other *injunctions or orders as may be deemed necessary to prevent*
9 *interference with the commissioner or the proceeding, or waste of the*
10 *assets of the insurer, or the commencement or prosecution of any actions, or*
11 *the obtaining of preferences, judgments, attachments or other liens, or*
12 *the making of any levy against the insurer or against its assets or any part*
13 *thereof.*

14 RCW 48.31.200(2) (emphasis added).

15 Here, the OIC is appropriately requesting an order to show cause why a preliminary
16 injunction should not be entered. Namely, the OIC is making such motion to the court
17 requesting that the court issue an injunction restraining Columbia Bank from pursuing its
18 public records request for private insurance company records. This Court has authority to
19 issue such an injunction. RCW 48.31.200(2).

20 **C. A Declaratory Judgment Order Should Be Entered In Order To Protect Cascade
21 From Future Records Requests For Private Records.**

22 Under the Uniform Declaratory Judgments Act, "Courts of record within their
23 respective jurisdictions shall have power to declare rights, status and other legal relations
24 whether or not further relief is or could be claimed." RCW 7.24.010. A person whose rights
25 are affected by a statute may have any question of construction determined and obtain a
26 declaration of rights or other legal relations thereunder. RCW 7.24.020.

Based on RCW Chapter 7.24 and CR 57, the OIC is entitled to a declaratory judgment
order regarding the OIC's right to deny a public records request for private insurance company
documents that are only in the insurer's possession or the possession of its receivers.

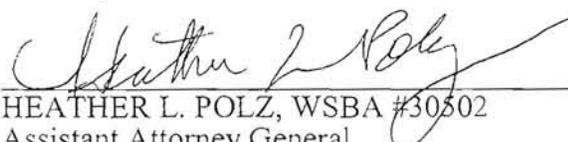
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VI. CONCLUSION

For all of the above-stated reasons, the OIC respectfully requests that a temporary restraining order be entered, as well as an order to show cause why a preliminary injunction should not be entered. Finally, the OIC respectfully requests that a declaratory judgment order be entered protecting Cascade's records and resources from future public records requests.

Dated this 20 day of August, 2009.

ROBERT M. MCKENNA
Attorney General


HEATHER L. POLZ, WSBA #30502
Assistant Attorney General
Telephone: (360) 664-0865

- EXPEDITE
- No Hearing is Set
- Hearing is Set

Date:

Time:

The Honorable Judge McPhee

**STATE OF WASHINGTON
THURSTON COUNTY SUPERIOR COURT**

MIKE KREIDLER,
INSURANCE COMMISSIONER,

Petitioner,

v.

CASCADE NATIONAL
INSURANCE COMPANY,

Respondent.

NO. 04-2-02427-4

DECLARATION OF MARSHALL
MCGINNIS IN SUPPORT OF
TEMPORARY RESTRAINING
ORDER, ORDER TO SHOW
CAUSE RE: PRELIMINARY
INJUNCTION, AND FOR
DECLARATORY ORDER

I, Marshall McGinnis, declare as follows:

1. I am over the age of 18, not a party to the above-entitled action, and competent to be a witness. I make this declaration based on my personal knowledge acquired as court-appointed Deputy Receiver of Cascade National Insurance Company, in Liquidation ("Cascade").

2. I became Cascade's Deputy Receiver while employed as a Company Licensing Manager in the Company Supervision Division of the Office of the Insurance Commissioner ("OIC). Although I retired from the OIC in 2008, I remain a court-appointed Deputy Receiver responsible for the day to day operations of Cascade. Based on my years of experience working at the OIC and my many years in the insurance business, Washington State has always protected private insurance company records from public disclosure.

DECLARATION OF
M. MCGINNIS IN SUPPORT OF
MOTION FOR TRO, ORDER TO
SHOW CAUSE AND FOR
DECLARATORY ORDER

1

ATTORNEY GENERAL OF WASHINGTON
Government Compliance & Enforcement
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100
(360) 664-9006

1 3. As Cascade's Deputy Receiver, I endeavor to liquidate the company's assets
2 and fulfill all of my statutory duties in an efficient manner, using as few legal and staff
3 resources as possible. Being Deputy Receiver is a part-time position. Besides myself, there
4 are two full-time staff people working on Cascade's liquidation as well as another part-time
5 administrative employee. Cascade has also contracted with firms to perform certain legal and
6 financial services for Cascade.

7 4. Although I was originally both an OIC employee and a court-appointed Deputy
8 Receiver, I have always endeavored to keep the private company records of Cascade separate
9 from the records in my possession as an OIC employee. I do not routinely forward private
10 company records belonging to Cascade to any person outside of the receivership.

11 5. I have reviewed Columbia Bank's June 23, 2009 public records request to the
12 OIC regarding Cascade. Most of the documents sought are, to the best of my knowledge,
13 private documents only in the possession of Cascade and never forwarded to the OIC. At this
14 time, I do not know exactly how many records in Cascade's (or its attorneys') possession
15 would be responsive to Columbia Bank's request, but I estimate that the number of pages could
16 be tens or hundreds of thousands.

17 6. I believe that producing the requested private records regarding Cascade and its
18 liquidation will result in injury to the liquidation process. Searching for and providing the
19 records would occupy all of Cascade's staff resources for many months, rendering the staff
20 unable to fulfill their regular duties. This would be an enormous waste of Cascade's limited
21 assets.

22 7. Further, if Columbia's request is granted, any member of the public could claim
23 the records of any company in receivership are public and could request their production at any
24 given time in the future. I expect that Cascade's liquidation process could last another ten or
25 more years. Ten years or more of responding to requests for records by the public would make
26 this, and all other receivership matters in Washington, extremely burdensome and costly.

DECLARATION OF
M. MCGINNIS IN SUPPORT OF
MOTION FOR TRO, ORDER TO
SHOW CAUSE AND FOR
DECLARATORY ORDER

2

ATTORNEY GENERAL OF WASHINGTON
Government Compliance & Enforcement
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100
(360) 664-9006

1 8. Ultimately, the waste of Cascade's assets primarily harms the hundreds of
2 people and businesses who currently have recognized claims against the assets of Cascade by
3 depleting the amount of money that can be paid during the liquidation process. In Cascade's
4 case, the primary claim against Cascade is held by the various state guarantee associations. As
5 respects the state of Washington, any amount owed to the Washington Guarantee Association
6 that cannot be paid from Cascade's remaining assets is ultimately borne by all Insurers doing
7 business in Washington.

8 I declare under penalty of perjury under the laws of the laws of the State of Washington
9 that the foregoing is true and correct.

10 DATED in BELLEVUE, Washington, this 18 day of August, 2009.

11 
12 MARSHALL MCGINNIS
13 Deputy Receiver, Cascade National Ins. Co.

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DECLARATION OF
M. MCGINNIS IN SUPPORT OF
MOTION FOR TRO, ORDER TO
SHOW CAUSE AND FOR
DECLARATORY ORDER

- 1 EXPEDITE
2 No Hearing is Set
3 Hearing is Set

Date:
Time:

The Honorable Judge McPhee

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7
8 **STATE OF WASHINGTON**
9 **THURSTON COUNTY SUPERIOR COURT**

10 MIKE KREIDLER,
INSURANCE COMMISSIONER,

11 Petitioner,

12 v.

13 CASCADE NATIONAL
INSURANCE COMPANY,

14 Respondent.

NO. 04-2-02427-4

DECLARATION OF CAROL
SUREAU IN SUPPORT OF
TEMPORARY RESTRAINING
ORDER, ORDER TO SHOW
CAUSE RE: PRELIMINARY
INJUNCTION, AND FOR
DECLARATORY ORDER

15 I, Carol Sureau, declare as follows:

16 1. I am over the age of 18, not a party to the above-entitled action, and competent
17 to be a witness. I make this declaration based on my personal knowledge acquired as the
18 Deputy Insurance Commissioner for Legal Affairs since November, 2000 at the Office of the
19 Insurance Commissioner.

20 2. Attached hereto as Exhibit A is a true and correct copy of the June 23, 2009
21 public records request that the Office of the Insurance Commissioner ("OIC") received from
22 Columbia Bank's counsel, Donald Anderson.

23 3. To the best of my knowledge, the vast majority of the requested records belong
24 to Cascade National Insurance Company, in Liquidation ("Cascade"), and are in the possession
25 of Cascade and its Deputy Receiver, Marshall McGinnis. Further, it is the OIC's position that
26 the appointment of OIC employee James Odiorne as Receiver and former employee Marshall

DECLARATION OF
CAROL SUREAU IN SUPPORT
OF MOTION FOR TRO, ORDER
TO SHOW CAUSE AND FOR
DECLARATORY ORDER

1

ATTORNEY GENERAL OF WASHINGTON
Government Compliance & Enforcement
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100
(360) 664-9006

1 McGinnis as its Deputy Receiver does not transform Cascade into a state agency or its
2 documents into public records. It is OIC's position that, while Mr. Odiorne has duties as a
3 public official in his role as Deputy Insurance Commissioner, as Cascade's Receiver he is
4 appointed to act essentially as an executive officer of a private company that is under the
5 supervision of the court. Similarly, as Cascade's Deputy Receiver, Mr. McGinnis is also
6 acting like an executive officer, albeit under the court's supervision.

7 4. I am familiar with the Public Records Act and the penalties and fees that can be
8 assessed against an agency for not providing public records in accordance with the law.
9 Because penalties under the public records act begin at five dollars, and can be assessed per
10 document, and multiplied per day, I inquired as to the number of potentially responsive
11 documents in the possession of Cascade. I have been informed that there are potentially tens
12 or even hundreds of thousands of potentially responsive documents in Cascade's possession. I
13 am also familiar with several recent public records cases where sums of over \$100,000 have
14 been awarded for significantly fewer documents than are potentially at issue here. If the OIC's
15 understanding of the private nature of these documents is not affirmed by the courts, there is a
16 potential for enormous penalties under the Public Records Act based solely on the number of
17 potentially responsive documents.

18 5. I have a well-grounded fear that Columbia Bank will file an action against the
19 OIC claiming that the requested Cascade documents are public records, and will seek penalties
20 and attorneys' fees under the Public Records Act. A declaratory judgment order will clarify to

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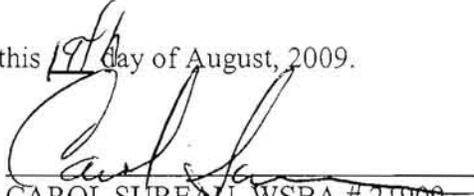
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DECLARATION OF
CAROL SUREAU IN SUPPORT
OF MOTION FOR TRO, ORDER
TO SHOW CAUSE AND FOR
DECLARATORY ORDER

1 this and any future requestors that a private entity's records in the possession of a Receiver are
2 private, and are, therefore, not public records subject to the Public Records Act.

3 I declare under penalty of perjury under the laws of the laws of the State of Washington
4 that the foregoing is true and correct.

5 DATED in Olympia, Washington, this 19th day of August, 2009.



CAROL SUREAU, WSBA # 21909
Deputy Insurance Commissioner for Legal Affairs
Office of the Insurance Commissioner

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DECLARATION OF
CAROL SUREAU IN SUPPORT
OF MOTION FOR TRO, ORDER
TO SHOW CAUSE AND FOR
DECLARATORY ORDER

ATTORNEY GENERAL OF WASHINGTON
Government Compliance & Enforcement
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100
(360) 664-9006

EXHIBIT A

Public Record Request Details
Office of the Insurance Commissioner

Tracker ID : 2917

Requester Name : Anderson, Donald

Received Date : 6/23/2009

Information Requested : Cascade National Insurance Company. See Request for details.

Division(s) Assigned : Hearings, Rates & Forms, Consumer Advocacy, Legal, Company Supervision

Final Response Date : 07/24/2009

Request Type : PD

Address : Eisenhower & Carlson
WA,
United States

Phone :

Fax :

Email : danderson@eisenhowerlaw.com

EISENHOWER

EISENHOWER & CARLSON, PLLC

1200 Wells Fargo Plaza
1201 Pacific Avenue
Tacoma, WA 98402Tel: 253.572.4500
Fax: 253.272.5732A Pacific Northwest Law Firm
www.eisenhowerlaw.com**DONALD L. ANDERSON**
danderson@eisenhowerlaw.com

June 23, 2009

**Via Facsimile and
Certified Mail, Return Receipt Requested**Public Records
Office of the Insurance Commissioner
5000 Capitol Boulevard
Tumwater, WA 98501Re: Cascade National Insurance Company
Thurston County Cause No. 04-2-02427-4
Public Records Request

To Whom It May Concern:

Please consider this an official public records request pursuant to the Washington State Public Records Act, RCW 42.56 *et seq.* Please provide the below-referenced documents in electronic form to DAnderson@eisenhowerlaw.com or by copies on computer disk. If the Commission is unable to provide electronic copies of requested documents, please call me at (253) 572-4500 to discuss the size of the disclosure in order to calculate the appropriate fees.

We hereby request the following:

- Any and all documents providing the factual or analytical basis for the Quarterly Reports of Receiver filed in Kreidler v. Cascade National Insurance Company, Thurston County Cause No. 04-2-02427-4.
- Any actuarial study or report in your possession related to Cascade National Insurance Company or Kreidler v. Cascade National Insurance Company, Thurston County Cause No. 04-2-02427-4.
- Any and all documents pertaining to administrative expenses incurred in connection with the receivership which is the subject of Kreidler v. Cascade National Insurance Company, Thurston County Cause No. 04-2-02427-4.

Public Records
Office of the Insurance Commissioner
June 23, 2009
Page 2

- Any and all documents pertaining to litigation expenses incurred in Kreidler v. Pixler, Western District of Washington Cause No. C06-697RSL.
 - Any and all documents pertaining to claims made by or against insureds of Cascade National Insurance Company, including but not limited to (1) the claim, (2) correspondence regarding such claim, (3) documentation of the disposition of such claim, and (4) documentation of the payment of such claim, if any.
 - Any and all documents received or produced in discovery in the case of Kreidler v. Pixler, U.S. District Court for the Western District of Washington Cause No. C06-697RSL.
 - Any and all documents received or produced in discovery in Kreidler v. Anderson, King County Superior Court Cause No. 06-2-34413-8.
 - Any and all documents relating to the settlement of any claim in Kreidler v. Anderson, King County Superior Court Cause No. 06-2-34413-8.
 - Any and all documents relating to each recovery of any assets by the receiver of Cascade National Insurance Company.
 - Any and all documents relating to any standby letters of credit for the benefit of Cascade National Insurance Company.
 - Any and all documents relating to paid loss and reserve data from the California Guaranty Association of March 31, 2009 and any updates or supplements thereto.
 - Any and all records in any way related to any meeting between Marshall McGuiness, Jim Odiorne and Harold Anderson at the Olive Garden Restaurant, including but not limited to a meeting in August 2004, and specifically including but not limited to:
 - (a) Calendar, day timer and computer calendar records of Marshall McGuiness and Jim Odiorne;
 - (b) Expense reimbursement requests by and reimbursement payments to Marshall McGuiness and Jim Odiorne for August 2004 and any other month in which such a meeting took place;
 - (c) Mileage, motor pool or other records including travel to such a meeting; and
 - (d) Notes, logs, correspondence and emails relating to such a meeting.
-

Public Records
Office of the Insurance Commissioner
June 23, 2009
Page 3

We would request and accept partial responses as the documents are identified. Thank you in advance for your prompt response.

Very truly yours,



Donald L. Anderson

DLA:dan
cc: Elizabeth Anderson
00417390.DOC/11001-27

EISENHOWER

EISENHOWER & CARLSON, PLLC

1200 Wells Fargo Plaza
1201 Pacific Avenue
Tacoma, WA 98402Tel: 253.572.4500
Fax: 253.272.5732A Pacific Northwest Law Firm
www.eisenhowerlaw.com***Fax Cover Sheet***

June 23, 2009

To:	Company:	Fax No.:
Public Records	Office of Insurance Commissioner	(360) 664-2782

From:	Donald L. Anderson	Number of Pages: 4
		<i>(including this page)</i>

Regarding:	Cascade National Insurance
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Client/Matter #:	11001-27
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Comments:

Attached please find our Public Records Requested dated June 23, 2009, the original of which is being mailed.

1 EXPEDITE
2 No Hearing is Set
3 Hearing is Set
4 Date: September 18, 2009
5 Time: 9:00 a.m.
6 The Honorable Judge McPhee

7 STATE OF WASHINGTON
8 THURSTON COUNTY SUPERIOR COURT

9 MIKE KREIDLER,
10 INSURANCE COMMISSIONER,

11 Petitioner,

12 v.

13 CASCADE NATIONAL INSURANCE
14 COMPANY,

15 Respondent.

NO. 04-2-02427-4

DECLARATION OF HEATHER
POLZ IN SUPPORT OF
TEMPORARY RESTRAINING
ORDER, ORDER TO SHOW CAUSE
RE: PRELIMINARY INJUNCTION,
AND FOR DECLARATORY ORDER

I, Heather Polz, declare as follows:

1. I am over the age of 18, not a party to the above-captioned action, and competent to be a witness. I make this declaration based on my personal knowledge acquired acting as Assistant Attorney General representing the Receiver for Cascade National Insurance Company, in Liquidation (Cascade) and the Office of the Insurance Commissioner (OIC).

2. On July 6, 2009, Assistant Attorney General Marta DeLeon and I spoke with Donald Anderson, counsel for Columbia Bank, regarding Columbia's June 23, 2009 public records request. We indicated to Mr. Anderson that the majority of the requested documents are private company records and are not subject to the Public Records Act. Ms. DeLeon also represents the Receiver and the OIC.

3. On July 17, 2009, Ms. DeLeon sent Mr. Anderson a letter reiterating that

DECLARATION OF
HEATHER POLZ IN SUPPORT OF
MOTION FOR TRO, ORDER TO SHOW
CAUSE AND FOR DECLARATORY
ORDER

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ATTORNEY GENERAL OF WASHINGTON
Government Compliance & Enforcement
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100
(360) 664-9006

1 Cascade's records are private and not subject to the Public Records Act. The letter stated that
2 due to the fact that Mr. Anderson had not withdrawn or limited the public records request,
3 Cascade and the OIC would jointly file a motion to obtain a temporary restraining order,
4 preliminary injunction and declaratory judgment. The letter also requested that Mr. Anderson
5 provide any relevant authority if he believed Cascade's records to be public and that he
6 stipulate to the private nature of the Cascade documents. To date, Mr. Anderson has not
7 responded with any legal authority or agreed to stipulate to the private nature of the records.

8 4. Attached as Exhibit A is a true and correct copy of Mr. Anderson's July 22,
9 2009 email to Marta DeLeon, with a carbon copy to myself. In this email, Mr. Anderson
10 granted a 30-day stay of any potential penalties should the OIC agree to staged production of
11 documents with an explanation of the documents that the OIC believes to be exempt. These
12 30 days expire August 21, 2009.

13 5. Attached hereto as Exhibit B is a true and correct copy of my August 10, 2009
14 email to Mr. Anderson.

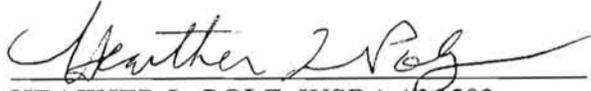
15 6. In an August 17, 2009 phone call with Mr. Anderson, he declined to withdraw
16 Columbia's records request or to make a motion to this Court for Cascade's requested, private
17 documents. During this conversation, I clarified that I would seek the temporary restraining
18 order at the August 20, 2009 4:30 p.m. ex parte motion calendar in Thurston County Superior
19 Court. During this conversation, Mr. Anderson agreed to service of documents via email, and
20 I said that I would email him the Motion for the Temporary Restraining Order, Order to Show
21 Cause Re: Preliminary Injunction And Declaratory Order on August 20, 2009 prior to
22 appearing in court.

23 7. On August 18, 2009, Mr. Anderson emailed a letter to me withdrawing the
24 fifth bullet of the public records request pertaining to the claims by or against Cascade's
25 insureds. This letter also clarified that he did not seek documents prior to January 1, 2004.
26

1 The OIC has already begun stated production of documents in its possession that are
2 responsive to Columbia's request.

3 I declare under penalty of perjury under the laws of the laws of the State of Washington
4 that the foregoing is true and correct.

5 DATED in Olympia, Washington, this 20 day of August, 2009.

6 

7 HEATHER L. POLZ, WSBA #30502

8 Assistant Attorney General

9 Telephone: (360) 664-0865

10 Attorney for Cascade and OIC

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DECLARATION OF
HEATHER POLZ IN SUPPORT OF
MOTION FOR TRO, ORDER TO SHOW
CAUSE AND FOR DECLARATORY
ORDER

EXHIBIT A

Polz, Heather (ATG)

From: Anderson, Donald L. [DAnderson@Eisenhowerlaw.com]
Sent: Wednesday, July 22, 2009 5:37 PM
To: DeLeon, Marta (ATG)
Cc: Polz, Heather (ATG); eanderson@columbiabank.com
Subject: RE: Cascade National Insurance Company, In Receivership

Ms. DeLeon:

This correspondence is in response to your letter of July 17 and my discussion today with Eric Mark of the Insurance Commissioner's office.

I will be out of the office for the next two weeks and will not be available on July 24 or 31 when you indicate you may attempt to obtain a TRO and preliminary injunction. While we do not agree that a blanket exemption exists for records emanating from Cascade National Insurance Company, we are willing to focus our request to allow for staged compliance without the risk of penalty to the State.

Our principal interest is the information that has been supplied to the Insurance Commissioner's office supporting the quarterly reports prepared in the receivership, particularly with respect to liabilities, and any actuarial studies used in estimating those liabilities.

As I previously indicated, our request is not intended to cover any individual claims files.

We are willing to accept production in a reasonably staged manner. We are willing to stay production and partially waive penalties which may become due for delay with respect to documents you claim are exempt from disclosure, provided that you identify the categories of documents claimed exempt and the basis of the claimed exemptions within 30 days.

We will agree that the time between the receipt of the initial request and our written renewal of a request for any documents claimed as exempt will not be counted toward the reasonable time for response or be used for the calculation of any penalty which may later be claimed to be due for non-disclosure of those documents. While not a withdrawal of our request, this will allow for a more focused and deliberate approach to the disclosure. In short, you would have at least 30 risk free days to identify which requests you contend ask for exempt documents and why they are exempt. The clock wouldn't start to run again unless those requests are renewed in writing.

Please confirm if this arrangement is acceptable.

Don Anderson

Donald L. Anderson
Eisenhower & Carlson PLLC
1200 Wells Fargo Plaza
1201 Pacific Ave.
Tacoma, WA 98402
(253) 572-4500 phone
(253) 272-5732 fax
danderson@eisenhowerlaw.com

From: DeLeon, Marta (ATG) [mailto:MartaD@ATG.WA.GOV]
Sent: Monday, July 06, 2009 11:41 AM
To: Anderson, Donald L.
Cc: Polz, Heather (ATG)
Subject: Cascade National Insurance Company, In Receivership

Mr. Anderson,

Thank you for speaking with Heather Polz and myself today regarding your request for information about the Cascade receivership. The Office of the Insurance Commissioner (OIC) is reviewing their files for records that would be responsive to your public records request. You can expect the OIC to communicate with you directly regarding the collection and production of any documents in response to your request. However, it appears that most of the voluminous records you requested are the records of a private company, not public records, and as such are not subject to the Public Records Act.

During our conversation, you indicated that what you are most interested in is not "every document," but instead summary information that supports the quarterly reports, particularly information about the liabilities of Cascade. You also indicated that you believe Columbia Bank is entitled to this information as a secured creditor of Legends Holding, Inc. However, a review of the pleadings in this action indicates that Columbia Bank attempted to obtain similar information by court order at the outset of this liquidation. In the *Order of Liquidation and Approval of Plan of Liquidation*, which was signed by Terrance Donahue, counsel for Columbia Bank, the Receivership Court found the quarterly reports to be a sufficient means of providing information to Columbia Bank and any other interested party.

We will pass along to the OIC that you are primarily seeking summary information that supports the Cascade quarterly reports, particularly information about Cascade's liabilities. However, the OIC's response will remain governed by the public records laws.

Sincerely,

Marta DeLeon

Assistant Attorney General

Office of the Attorney General

Government Compliance and Enforcement Division

1125 Washington Street SE

PO Box 40100

Olympia, WA 98504-0100

(360) 753-3168

(360) 664-0229 FAX

martad@atg.wa.gov

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EXHIBIT B

Polz, Heather (ATG)

From: Polz, Heather (ATG)
Sent: Monday, August 10, 2009 9:12 AM
To: 'danderson@eisenhowerlaw.com'
Cc: DeLeon, Marta (ATG)
Subject: Columbia Bank's Public Records Request

Dear Mr. Anderson:

On behalf of the OIC, we are writing to request that you withdraw Columbia Bank's June 23, 2009 public records request and, instead, directly seek the Thurston County Superior Court's permission to obtain the requested documents. We believe that a request by Columbia directly to the receivership court is the most expeditious and straight-forward manner in which to deal with the disputed issue of whether the records belonging to a private insurance company, in this case Cascade, are subject to public disclosure.

It is appropriate for Columbia to bring this issue directly to the Court's attention because Columbia's pending public records request is an attempt to obtain already requested information through a different source, which merits the court's review and input. Columbia previously attempted to obtain information pertaining to the quarterly reports at the time the Order of Liquidation was entered. For example, Columbia's Response To Verified Petition For Order Of Liquidation And Approval Of Plan Of Liquidation, dated October 25, 2005, sought the following information:

- "[c]larification as to the type of legal expenses, the purpose of the legal expenses, and the basis for the estimation of \$75,000.00 per month";
- "[c]larification as to how the claims process will be handled, whether by independent contractor, etc., and the basis for the estimation of \$50,000.00 per month";
- "[a]n opportunity to review distributions to state Guaranty Associations prior [to payment], with an opportunity to object if the amounts or process are questionable";
- "[a] more detailed description of how the Guaranty Associations will be monitored, their claims reviewed, etc.";
- receipt of "the monthly financials generated internally by the receiver during the course of this liquidation, including the actual costs incurred for the items identified on the proposed budget."

At the close of its Response brief, Columbia requested that certain aspects of the liquidation be modified to accommodate Columbia's requests. However, the Order of Liquidation did not provide for any of Columbia's requested information. Because the propriety of providing the requested information to Columbia will be before the receivership court in some form or fashion, it is most appropriate, and efficient, for Columbia to bring the motion, squarely laying out the documents Columbia believes that it needs.

Should Columbia be unwilling to withdraw its public records request, we will seek a Temporary Restraining Order on Thursday, August 20, 2009 at 8:30 a.m. at the ex parte desk in Thurston County Superior Court. Thereafter, we will seek a show cause hearing on September 4, 2009, in order to obtain a preliminary injunction and a declaratory judgment.

Should Columbia decide to pursue its public records request, it is necessary to clarify exactly to what extent you have narrowed Columbia's public records request. Based on your prior correspondence, we understand that you agreed to narrow the scope of Columbia's request so as to eliminate private records in the possession of Cascade. Specifically, in your July 22, 2009 email, you indicated that Columbia was willing to focus its public records request, stating that:

"Our principal interest is the information that has been supplied to the Insurance Commissioner's office supporting the quarterly reports prepared in the receivership, particularly with respect to liabilities, and any actuarial studies used in estimating those liabilities.

As I previously indicated, our request is not intended to cover any individual claims files."

The OIC interprets this statement to mean that Columbia is now seeking only summary documents supporting the receivership reports that the OIC has in its possession through its capacity as regulator. This would not include documents exclusively in the possession of the Receiver, or exclusively in the possession of Cascade or both. Further, it would only include those documents created since the day the Petition for Receivership was filed in Superior Court. The OIC interprets your narrowed request to replace all of the bullets in the June 23, 2009 public records request with the exception of the final bullet regarding the Olive Garden meeting. Please notify us immediately if this is not an accurate clarification of your request. It is only fair to inform Columbia that there are virtually no documents in the OIC's possession meeting this description because the overwhelming majority of the documents supporting the quarterly reports are prepared for, delivered to, kept by, and in the possession of the Receiver only.

Thank you for your attention to this matter.

Sincerely,

Heather L. Polz, AAG
Government Compliance and Enforcement Division
Highways-Licenses Building
1125 Washington Street SE
MS: 40100
Olympia, WA 98504-0100
Phone: 360-664-0865
Fax: 360-664-0229
Email: heatherp1@atg.wa.gov

THIS E-MAIL AND ANY ATTACHMENTS ARE INTENDED ONLY FOR THE NAMED ADDRESSEE(S) AND ARE PRIVILEGED ATTORNEY-CLIENT COMMUNICATION AND/OR WORK PRODUCT. REVIEW, DISSEMINATION, OR USE OF THIS E-MAIL OR ITS CONTENTS BY PERSONS OTHER THAN THE ADDRESSEE(S) IS PROHIBITED. IF YOU RECEIVE THIS MESSAGE IN ERROR, PLEASE DELETE IT AND NOTIFY THE SENDER.

OPINIONS IN THIS E-MAIL DO NOT CONSTITUTE AN OFFICIAL ATTORNEY GENERAL OPINION
PLEASE PRINT ONLY WHEN NECESSARY

- 1 EXPEDITE
2 No Hearing is Set
3 Hearing is Set

4 Date:
5 Time:

6 The Honorable Judge McPhee
7
8

9 **STATE OF WASHINGTON**
10 **THURSTON COUNTY SUPERIOR COURT**

11 MIKE KREIDLER,
12 INSURANCE COMMISSIONER,

13 Petitioner,

14 v.

15 CASCADE NATIONAL
16 INSURANCE COMPANY,

17 Respondent.

18 NO. 04-2-02427-4

19 **ORDER GRANTING**
20 **PRELIMINARY INJUNCTION**
21 **AND MOTION FOR**
22 **DECLARATORY JUDGMENT**
23 **[PROPOSED]**

24 This matter came before the Court on a Motion for Preliminary Injunction and
25 Declaratory Judgment by Cascade National Insurance Company, in Liquidation (“Cascade”),
26 and the Office of the Insurance Commissioner, (“OIC”). The Court considered the papers
and pleadings filed by the parties in this matter, as well as the arguments of counsel.

I. FINDINGS AND CONCLUSIONS

1. The Court finds that irreparable harm will result to Cascade if this Order is not
entered because the staff time and resources that would be required to respond to Columbia
Bank’s public records request would be a waste of Cascade’s assets.

2. The Court finds that the Cascade and its Receivers, and the OIC have a
Cascade and its Receivers have a clear legal and equitable right under the Insurance Code to
prevent the waste of Cascade’s assets.

ORDER GRANTING PRELIMINARY
INJUNCTION AND MOTION FOR
DECLARATORY JUDGMENT

1

ATTORNEY GENERAL OF WASHINGTON
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100
(360) 664-9006

1 Assistant Attorney General
2 Attorneys for the Receiver to
3 Cascade National Insurance Company, in Liquidation

4 

5 Marta DeLeon, WSBA #35779
6 Assistant Attorney General
7 Attorneys for the OIC

8 Approved as to form and Presentation Waived,
9 EISENHOWER & CARLSON, PLLC

10 Donald Anderson, WSBA # 8373
11 Attorneys for Requestor Columbia Bank

- EXPEDITE
- No Hearing is Set
- Hearing is Set

Date:

Time:

The Honorable Judge McPhee

**STATE OF WASHINGTON
THURSTON COUNTY SUPERIOR COURT**

MIKE KREIDLER,
INSURANCE COMMISSIONER,

Petitioner,

v.

CASCADE NATIONAL
INSURANCE COMPANY,

Respondent.

NO. 04-2-02427-4

**ORDER FOR TEMPORARY
RESTRAINING ORDER AND
SHOW CAUSE HEARING DATE
RE: PRELIMINARY
INJUNCTION
[PROPOSED]**

Cascade National Insurance Company, in Liquidation, ("Cascade") and the Washington State Office of the Insurance Commissioner, Mike Kreidler Insurance Commissioner, (collectively the "OIC") brought a Motion for a Temporary Restraining Order for hearing on August 20, 2009. Cascade and the OIC were represented by ROBERT M. MCKENNA, Attorney General, HEATHER POLZ and MARTA DELEON, Assistant Attorneys General. Requestor Columbia Bank (did) (did not) appeared and was represented by DONALD ANDERSON, of Eisenhower & Carlson, PLLC. The Court considered the Motion for Temporary Restraining Order, and Declarations of Carol Sureau, Marshall McGinness, and Heather Polz in support thereof, the records filed to date in this matter, and heard the argument of counsel.

ORDER FOR TEMPORARY
RESTRAINING ORDER AND SHOW
CAUSE HEARING DATE RE:
PRELIMINARY INJUNCTION

1 5. Pursuant to RCW 4.92.080, no security bond shall be required of the State of
2 Washington in this matter.

3 Dated this _____ day of August, 2009.

4
5
6 JUDGE THOMAS MCPHEE
7

8 Presented by:

9
10 ROBERT M. MCKENNA
11 Attorney General

12 

13 Heather Polz, WSBA #30502
14 Assistant Attorney General
15 Attorneys for the Receiver to
16 Cascade National Insurance Company, in Liquidation

17 

18 Marta DeLeon, WSBA #35779
19 Assistant Attorney General
20 Attorneys for the OIC

21 Approved as to form and Presentation Waived,
22 EISENHOWER & CARLSON, PLLC

23 Donald Anderson, WSBA # 8373
24 Attorneys for Requestor Columbia Bank
25
26

ORDER FOR TEMPORARY
RESTRAINING ORDER AND SHOW
CAUSE HEARING DATE RE:
PRELIMINARY INJUNCTION

- EXPEDITE
- No Hearing is Set
- Hearing is Set

Date:

Time:

The Honorable Judge McPhee

**STATE OF WASHINGTON
THURSTON COUNTY SUPERIOR COURT**

MIKE KREIDLER,
INSURANCE COMMISSIONER,

Petitioner,

v.

CASCADE NATIONAL
INSURANCE COMPANY,

Respondent.

NO. 04-2-02427-4

STIPULATED ORDER FOR
TEMPORARY RESTRAINING
ORDER AND SHOW CAUSE
HEARING DATE RE:
PRELIMINARY INJUNCTION

Cascade National Insurance Company, in Liquidation, ("Cascade") and the Washington State Office of the Insurance Commissioner, Mike Kreidler Insurance Commissioner, (collectively the "OIC") brought a Motion for a Temporary Restraining Order for hearing on August 20, 2009. Cascade and the OIC were represented by ROBERT M. MCKENNA, Attorney General, HEATHER POLZ and MARTA DELEON, Assistant Attorneys General. Requestor Columbia Bank (did) (did not) appear and is represented by DONALD ANDERSON, of Eisenhower & Carlson, PLLC. The Court considered the Motion for Temporary Restraining Order, and Declarations of Carol Sureau, Marshall McGinness, and Heather Polz in support thereof, the records filed to date in this matter, and heard the argument of counsel. The Parties hereby stipulate and agree:

STIPULATED ORDER FOR
TEMPORARY RESTRAINING
ORDER AND SHOW CAUSE
HEARING DATE RE:
PRELIMINARY INJUNCTION

1
2 1. That irreparable harm will result to Cascade if this Order is not entered
3 because the staff time and resources that would be required to respond to Columbia Bank's
4 public records request before this Court determines if the records in the Receivers'
5 possession are public records would be a waste of Cascade's assets.

6 2. That the Cascade has a reasonable likelihood of prevailing on the merits in its
7 claims for a preliminary injunction and permanent injunction. Cascade and its Receivers
8 have a clear legal and equitable right under the Insurance Code to prevent the waste of
9 Cascade's assets.

10 3. It is appropriate to temporarily restrain the Requestor from seeking records
11 solely in the possession of Cascade and its Receivers until the Court determines whether
12 these records are clearly subject to the Public Records Act.

13 4. The hearing to show cause should be extended to a mutually agreeable date
14 that gives the Requestor a meaningful opportunity to draft a response to the Motion for a
15 preliminary injunction.

16 II. ORDER

17 Therefore, good cause appearing, IT IS HEREBY ORDERED that:

18 1. The Requestor, Columbia Banks, is prohibited from requesting records that
19 are exclusively in the possession of Cascade or its Receivers until this Court has an
20 opportunity to determine whether those records are subject to the Public Records Act;

21 2. No penalties shall accrue for failure by the OIC or Cascade to produce
22 documents exclusively in the possession of Cascade or its Receivers until this Court has an
23 opportunity to determine whether those records are subject to the Public Records Act;

24 3. This temporary restraining order shall go into effect on August 20, 2009, at
25 _____ p.m. and shall remain in effect until this court has an opportunity to decide
26 Cascade's motion for a preliminary injunction;

STIPULATED ORDER FOR
TEMPORARY RESTRAINING
ORDER AND SHOW CAUSE
HEARING DATE RE:
PRELIMINARY INJUNCTION

1 4. Requestor Columbia Bank is ordered to show cause why the preliminary
2 injunction should not be entered on September 18, 2009, at 9:00 a.m.; and

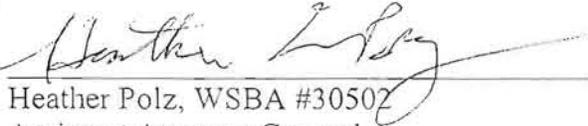
3 5. Pursuant to RCW 4.92.080, no security bond shall be required of the State of
4 Washington in this matter.

5 Dated this _____ day of August, 2009.

6
7
8 JUDGE THOMAS MCPHEE
9

10 Presented by:

11 ROBERT M. MCKENNA
12 Attorney General

13 

14 Heather Polz, WSBA #30502
15 Assistant Attorney General
16 Attorneys for the Receiver to
17 Cascade National Insurance Company, in Liquidation

18 

19 Marta DeLeon, WSBA #35779
20 Assistant Attorney General
21 Attorneys for the OIC

22 Approved as to form and Presentation Waived,
23 EISENHOWER & CARLSON, PLLC

24 Donald Anderson, WSBA # 8373
25 Attorneys for Requestor Columbia Bank
26

STIPULATED ORDER FOR
TEMPORARY RESTRAINING
ORDER AND SHOW CAUSE
HEARING DATE RE:
PRELIMINARY INJUNCTION

- 1 EXPEDITE
- 2 No Hearing is Set
- 3 Hearing is Set

4 Date:
5 Time:

6 The Honorable Judge McPhee

7 **STATE OF WASHINGTON**
8 **THURSTON COUNTY SUPERIOR COURT**

9 MIKE KREIDLER,
10 INSURANCE COMMISSIONER,
11
12 Petitioner,

NO. 04-2-02427-4

CERTIFICATE OF SERVICE

11 v.

12 CASCADE NATIONAL INSURANCE
13 COMPANY,
14 Respondent.

15 This will hereby certify that on the 20th day of August, 2009, I served a true and
16 correct copy of the Civil Notice of Issue; Motion for Temporary Restraining Order,
17 Order to Show Cause Re: Preliminary Injunction, and for Declaratory Order;
18 Declaration of Marshall McGinnis in Support of Temporary Restraining Order, Order
19 to Show Cause Re: Preliminary Injunction, and for Declaratory Order; Declaration of
20 Carol Sureau in Support of Temporary Restraining Order; Order to Show Cause Re:
21 Preliminary Injunction, and for Declaratory Order; Declaration of Heather Polz in
22 Support of Temporary Restraining Order; Order to Show Cause Re: Preliminary
23 Injunction, and for Declaratory Order; (Proposed) Order Granting Preliminary
24 Injunction and Motion for Declaratory Judgment; (Proposed Order for Temporary
25 Restraining Order and Show Cause Hearing Date Re: Preliminary Injunction;
26 Stipulated Order for Temporary Restraining Order and Show Cause Hearing Date Re:

1 **Preliminary Injunction; and Certificate of Service** via the U.S. Mail, first-class postage
2 prepaid, in sealed envelopes, from Olympia, Washington, to the following interested parties:

3 Elizabeth J. Anderson, Sr. VP
4 **Columbia Bank**
5 Special Credits Department
6 1301 "A" Street
7 Tacoma, WA 98401

8 Harold Anderson
9 P.O. Box 3626
10 Sun River, OR 97707
11 *Former President of Cascade Majority Shareholder*
12 (Also via email)

13 Terrence J. Donahue
14 Eisenhower & Carlson
15 1201 Pacific Avenue, Suite 1200
16 Tacoma, WA 98402-4395
17 *Attorney for Columbia Bank*

18 Michael Gossler
19 *Attention: Karen Oliphant*
20 Montgomery Purdue Blankinship Austin
21 701 Fifth Avenue, Suite 550
22 Seattle, WA 98104-7096
23 *Attorneys for Harold Anderson*

24 Joseph K. Hegedus
25 Lewis Brisbois Bisgaard Smith
26 221 N. Figueroa Street, Suite 1200
Los Angeles, CA 90012
Special Request for Notice

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Kent & Wittekind PC
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Attorneys for Insureds Try Us Trucking + Rufer

Brian F. Kreger
Ryan Swanson Cleveland
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Seattle, WA 98101-3034
Attorney for Gudeman & Weiss

///

///

1 William T. Lebo, CPCU, President
2 Lebo Mgmt & Insurance Consulting
3 14722 38th Avenue NE
4 Lake Forest Park, WA 98155
5 ***Former Outside Director of Cascade***

6 Thomas S. Linde
7 Law Offices of Laurin S. Schweet
8 295 80th Avenue SE, Suite 102
9 Mercer Island,, WA 98040
10 ***Attorneys for Bank of America NA,
11 Creditor of MBR Corp (Allied...)***

12 Eric Mendoza
13 Bank of America NA
14 CA9-702-03-03, POB 479
15 Pasadena, CA 91102-6102
16 ***Creditor of MBR Corp (Allied...)***

17 Larry Morrison, President
18 Business Transition Network, Inc.
19 16515 Stilly Way
20 Arlington, WA 98223
21 ***Former Outside Director of Cascade***

22 W. Theodore Vander Wel
23 Attorney at Law
24 10500 NE 8th Street, Suite 1900
25 Bellevue, WA 98004
26 ***Attorney for Morrison and Lebo***

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Attorneys for Mainstay Business Solutions

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701 Fifth Avenue, Suite 6110
Seattle, WA 98104-7043
Attorney for Harold Anderson

Mike Kreidler, Ins. Commissioner
Office of Insurance Commissioner
P. O. Box 40256
Olympia, WA 98504-0256

1 Marshall McGinnis, Deputy Receiver
2 c/o Cascade National Insurance Company
3 PO Box 3366
4 Bellevue, WA 98009-3366
5 ***For Cascade National Insurance Company***

6 Jim Odiorne, Receiver
7 Office Of Insurance Commissioner
8 P.O. Box 40255
9 Olympia, WA 98504-0255
10 ***For Cascade National Insurance Company***

11 Victoria L. Vreeland
12 Gordon Thomas Honeywell
13 600 University St Suite 2100
14 Seattle, WA 98101-4185

15 Alaska Guaranty Association
16 1401 Rudakof Circle
17 Anchorage, AK 99508

18 C. Guerry Collins, Esq.
19 Lord Bissell & Brooke, LLP
20 300 S. Grand Avenue, 8th Floor
21 Los Angeles, CA 90071
22 ***For CA Ins. Guarantee Association (CIGA)***

23 Oregon Ins. Guaranty Association
24 10700 SW Beaverton Hwy, Suite 426
25 Beaverton, OR 97005

26 WA Insurance Guaranty Association
c/o Western Guaranty Fund Services
1720 S. Bellaire, Suite 408
Denver, CO 80222

Alaska Division of Insurance
Linda S. Hall, Director of Juneau Office
State Office Building, 9th Floor
333 Willoughby Avenue
Juneau, AK 99801

California Department of Insurance
John Garamendi, Insurance Commissioner
300 South Spring Street, South Tower
Los Angeles, CA 90013

OR Dept. of Consumer and Business Svcs.
Joel Ario, Ins. Division Administrator
350 Winter Street NE, Room 440
Salem, OR 97309

1 Michael W. Mayberry,
2 Matthew B. Edwards,
3 Owens Davies, P.S.
4 1115 West Bay Drive, Suite 302
5 Olympia, WA 98502
6 *Attorneys for Respondents Marcel Matar & Statewide General Insurance Agency, Inc.*

7 Brian L. Budsberg
8 PO Box 1489
9 Olympia WA 98507-1489
10 *Attorney for Respondents Marcel Matar & Statewide General Insurance Agency, Inc.*

11 John Mellen
12 Law Offices of Keller Rohrback L.L.P.
13 1201 Third Avenue, Suite 3200
14 Seattle, WA 98101-3052
15 *Attorneys for Harold Anderson*

16 Richard Alan Stout
17 Richard Alan Stout, Attorney at Law LLC
18 18160 Cottonwood Road PMB 273
19 Sunriver, OR 97707
20 *Attorney for Amica Mutual Insurance Co.*

21 Bradley W. Hoff
22 Christopher M. Alston
23 Foster Petter PLLC
24 1111 Third Avenue, Suite 3400
25 Seattle, WA 98101-3299
26 *Attorneys for Claimant James T. Feltman*

DATED this 20th day of August, 2009.


DARLA AUMILLER
Legal Assistant

