

1 MANATT, PHELPS & PHILLIPS, LLP
 2 BARRY S. LANDSBERG (Bar No. CA 117284)
 3 E-mail: blandsberg@manatt.com
 4 SUSAN PAGE WHITE (Bar No. CA 137125)
 5 E-mail: spwhite@manatt.com
 6 11355 West Olympic Boulevard
 Los Angeles, CA 90064-1614
 Telephone: (310) 312-4000
 Facsimile: (310) 312-4224

7 MANATT, PHELPS & PHILLIPS, LLP
 8 AMY B. BRIGGS (Bar No. CA 194028)
 9 E-mail: abriggs@manatt.com
 10 AMANDA M. KNUDSEN (Bar No. CA 252752)
 11 E-mail: aknudsen@manatt.com
 One Embarcadero Center, 30th Floor
 Telephone: (415) 291-7400
 Facsimile: (415) 291-7474

12 *Attorneys for Defendant*
 13 DIGNITY HEALTH f/k/a Catholic Healthcare
 14 West d/b/a Mercy General Hospital

15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA

16 PLATTE RIVER INSURANCE
 17 COMPANY,
 18 Plaintiff,
 19 vs.
 20 DIGNITY HEALTH f/k/a
 21 CATHOLIC HEALTHCARE WEST
 22 d/b/a MERCY GENERAL
 HOSPITAL,
 23 Defendants.

Case No. CV 12-2356 EMC

**JOINT STIPULATION REGARDING
 STAY OF ACTION AND
 [PROPOSED] ORDER ; ORDER SETTING
 CMC**

[Civil Local Rule 7-12]

1 ARCH INSURANCE COMPANY,
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3 Plaintiff,
4
5 vs.
6 DIGNITY HEALTH f/k/a
7 CATHOLIC HEALTHCARE WEST
8 d/b/a MERCY GENERAL
HOSPITAL,
9
10 Defendants.

9 WHEREAS, on May 9, 2012, Plaintiff Platte River Insurance Company
10 (“Platte River”) filed a Complaint against Defendant Dignity Health formerly
11 known as Catholic Healthcare West d/b/a Mercy General Hospital (“Dignity”) in
12 Case No. 3:12-cv-02365 EMC (the “*Platte River* action”);

13 WHEREAS, on May 10, 2012, Plaintiff Arch Insurance Company (“Arch”)
14 (collectively with Platte River, “Plaintiffs”) filed a Complaint against Dignity in
15 Case No. 3:12-cv-02369 EMC (the “*Arch* action”);

16 WHEREAS, on June 15, 2012, the *Platte River* action and the *Arch* action
17 were deemed related and both are now assigned to Judge Edward M. Chen
18 (collectively the *Platte River/Arch* action”);

19 WHEREAS, the *Platte River/Arch* action relates to insurance coverage for
20 the underlying wrongful termination lawsuit against Dignity, entitled *Chopourian v.*
21 *Catholic Healthcare West, et al.*, United States District Court, Eastern District of
22 California, Case No. 2:09-cv-02972-KJM-KJN (the “*Chopourian* lawsuit”);

23 WHEREAS, Platte River issued an excess policy to Dignity with a
24 \$10,000,000 limit of liability in excess of \$10,000,000 (“the *Platte River* Policy”),
25 subject to all of the *Platte River* Policy’s terms, conditions, limitations, exclusions,
26 and endorsements;
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1 WHEREAS, Arch issued an excess policy to Dignity with a \$10,000,000
2 limit of liability in excess of \$20,000,000 (“the Arch Policy”), subject to all of the
3 Arch Policy’s terms, conditions, limitations, exclusions, and endorsements;

4 WHEREAS, on February 29, 2012, a jury verdict was entered in the
5 *Chopourian* lawsuit against Dignity;

6 WHEREAS, on April 30, 2012, Judge Kimberly J. Mueller reduced the
7 initial jury verdict to approximately \$82 million and entered judgment in the
8 *Chopourian* lawsuit accordingly (“the Judgment”);

9 WHEREAS, on May 29, 2012, Dignity challenged the Judgment and filed a
10 (1) Motion for a New Trial or Damages Remittitur, and (2) Motion for Partial
11 Judgment as a Matter of Law in the *Chopourian* lawsuit, both of which seek to
12 overturn and/or further reduce the Judgment;

13 WHEREAS, these motions are scheduled to be heard on September 28, 2012;

14 WHEREAS, if the above-described post-trial motions do not result in full
15 and complete relief to Dignity, Dignity represents that it will appeal the Judgment
16 in the *Chopourian* lawsuit to the Ninth Circuit Court of Appeals;

17 WHEREAS, Dignity currently anticipates that the Ninth Circuit is not likely
18 to render a decision on any appeal until mid-2014, at the earliest (and resolution at
19 that time would occur only if, for instance, the Ninth Circuit did not remand the
20 *Chopourian* lawsuit for a new trial);

21 WHEREAS, the amount of any judgment owing by Dignity in the
22 *Chopourian* lawsuit has yet to be fully resolved and ultimately may never reach the
23 Platte River Policy or the Arch Policy;

24 WHEREAS, Plaintiffs and Dignity agree at this time to a stay of the *Platte*
25 *River/Arch* action pending complete and final resolution of the *Chopourian* lawsuit
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1 to avoid incurring substantial time and expense litigating coverage issues that may
2 become moot because the Platte River Policy and the Arch Policy may never be
3 triggered;

4 WHEREAS, notwithstanding Plaintiffs' and Dignity's agreement at this time
5 to a stay of the *Platte River/Arch* action, Plaintiffs and Dignity reserve their
6 respective rights to request at anytime, upon providing 30 days' written notice, that
7 the Court lift the stay;

8 WHEREAS, Plaintiffs and Dignity may also request that the stay be lifted by
9 filing a stipulation with the Court;

10 WHEREAS, Dignity contends that there is legal authority for this Court to
11 stay the *Platte River/Arch* action pending resolution of the *Chopourian* lawsuit (*see,*
12 *inter alia, Montrose Chem. Corp. v. Superior Court*, 6 Cal. 4th 287, 301-02 (1993);
13 *Montrose Chem. Corp. v. Superior Court*, 25 Cal. App. 4th 902, 907-11 (1994);
14 *Haskel Inc. v. Superior Court*, 33 Cal. App. 4th 963, 979 (1995); *David Kleis, Inc.*
15 *v. Superior Court*, 37 Cal. App. 4th 1035, 1051 (1995); U.S. Const. article III, § 2,
16 cl. 1 (case or controversy requirement); 28 U.S.C. § 2201 (requiring case "of actual
17 controversy"));
18

19 WHEREAS, Dignity contends that this Court has the discretion to stay the
20 proceedings before it (*see Landis v. North American Co.*, 299 U.S. 245, 248 (1936)
21 and *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962) (district court has
22 inherent power to control proceedings to promote economy of time and effort for
23 itself, for counsel, and for litigants)); and
24

25 WHEREAS, under the circumstances, Plaintiffs and Dignity agree at this
26 time to a stay of the *Platte River/Arch* action pending resolution of the *Chopourian*
27 lawsuit.
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1 **STIPULATION**

2 NOW, THEREFORE, IT IS STIPULATED by and between Plaintiffs and
3 Dignity, through their counsel of record, that:

4 1. Upon entry of an order of this Court approving this stipulation, the
5 *Platte River/Arch* action shall be stayed until a further order of the Court lifting any
6 such stay. All pretrial deadlines, including the discovery cut-off date and disclosure
7 of expert witnesses, will be determined by the re-set trial date;

8 2. Upon 30-days' notice, any party may file a motion seeking to lift the
9 stay;

10 3. The parties also may request that the stay be lifted by filing a
11 stipulation with the Court;

12 4. This stipulation is without prejudice to the rights of any party to seek a
13 further stay of this coverage action or to oppose any motion seeking to lift the stay;
14 and
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16 5. By entering into this stipulation, the parties do not waive any claims or
17 defenses whatsoever.
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Dated: August 14, 2012

TROUTMAN SANDERS LLP

BY: /s/ Terrence R. McInnis
Terrence R. McInnis
Attorneys for Plaintiff
PLATTE RIVER INSURANCE
COMPANY

Dated: August 14, 2012

SEDGWICK LLP

BY: /s/ Nicholas Boos
Nicholas Boos
Attorneys for Plaintiff
ARCH INSURANCE COMPANY

Dated: August 14, 2012

MANATT, PHELPS & PHILLIPS, LLP

BY: /s/ Amanda M. Knudsen
Amanda M. Knudsen
Attorneys for Defendant
DIGNITY HEALTH f/k/a Catholic
Healthcare West d/b/a Mercy General
Hospital

Filer's Attestation: Pursuant to General Order No. 45, Section X(B) regarding signatures, Amanda M. Knudsen hereby attests that concurrence in the filing of this document has been obtained.

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ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED. The CMC is reset from 9/14/12 to 11/16/12 at 9:00 a.m. A joint CMC Statement shall be filed by 11/9/12.

Dated: August 16, 2012

By: _____
Judge of the United States District Court

