

1 UNITED STATES DISTRICT COURT  
2 WESTERN DISTRICT OF WASHINGTON  
3 AT TACOMA

4 OHIO SECURITY INSURANCE  
5 COMPANY,

6 Plaintiff,

7 v.

8 AXIS INSURANCE COMPANY,

9 Defendant.

CASE NO. C15-5698 BHS

ORDER RENOTING AND  
RESERVING RULING ON THE  
PARTIES' CROSS-MOTIONS FOR  
SUMMARY JUDGMENT AND  
REQUESTING PROPOSED  
QUESTIONS FOR  
CERTIFICATION

10 This matter comes before the Court on the cross-motions for summary judgment  
11 of Plaintiff Ohio Security Insurance Company ("Ohio Security") and Defendant Axis  
12 Insurance Company ("Axis"). Dkts. 19, 22. The procedural history and factual  
13 background of this case are set forth in large part in the Court's previous order on the  
14 present cross-motions for summary judgment. *See* Dkt. 35.

15 On June 1, 2017, the Court held oral argument on the outstanding issues of the  
16 "selective tender" rule and the statute of limitations. Dkt. 43. Pursuant to that hearing the  
17 Court will reserve ruling on the selective tender issue for five (5) months to allow the  
18 parties to pursue settlement negotiations.

19 However, the Court has also concluded that the statute of limitations question  
20 should be certified to the Washington Supreme Court. For the reasons stated in its  
21 previous order, the Court is inclined to find that under RCW 4.28.080(7)(a) and RCW  
22 48.05.200(1) service on an authorized foreign insurer may only be had through service on

1 Washington State's Insurance Commissioner. *See* Dkt. 35. However, such a ruling would  
2 appear to contradict the holdings of two on-point decisions from the Washington State  
3 Courts of Appeals, regardless of the fact that those decisions do not appear to address the  
4 exclusivity clause of RCW 48.05.200. Such circumstances are exactly the type which call  
5 for certification under RCW 2.60.020. The Court sees no reason why the certification  
6 should not be made now, as the certification process takes time and will not prejudice the  
7 parties' positions for settlement negotiations in the meantime. As it stands, the Court sees  
8 the question for certification as follows:


9 Do RCW 4.28.080(7)(a), RCW 48.02.200, and RCW 48.05.200 establish service  
10 through the Washington State Insurance Commissioner as a uniform and exclusive means  
11 of service for authorized foreign or alien insurers in Washington State?

12 Before certifying the question, the Court will afford the parties the opportunity to  
13 address whether the question for certification should be otherwise stated. The parties may  
14 submit simultaneous briefing that includes their proposed questions for certification no  
15 later than June 16, 2017. The briefing shall not exceed five (5) pages.

16 The Clerk shall **RENOTE** the parties' cross-motions for summary judgment  
17 (Dkts. 19, 22) for consideration on November 3, 2017.

18 **IT IS SO ORDERED.**

19 Dated this 7th day of June, 2017.

20   
21 **BENJAMIN H. SETTLE**  
22 United States District Judge