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BEFORE THE COURT-APPOINTED REFEREE
IN RE THE HOME INSURANCE COMPANY IN LIQUIDATION
DISPUTED CLAIMS DOCKET

In Re Liquidator Number: 2008-HICIL-37
Proof of Claim Number: CLMN 703351-01
Claimant Name: John A. Hubbard
Claimant Number: CDV 2007-745
Policy or Contract Number:
Insured or Reinsured Name: John A. Hubbard
Date of Loss:

MOTION TO RECOMMIT

COMES NOW, John A Hubbard, Claimant and hereby respectfully files his Motion to Recommit requesting that the New Hampshire Court view the report of the assigned referee.

I hereby dispute the Order on the Disposition of Claim entered by Referee Melissa S. Gerhris on June 18, 2009. I would also like it noted that I did not receive a copy of the Order on Disposition of Claim. My former Attorney obtained a copy on-line.

HISTORY

On January 22, 1987, I was severely injured in a work-related accident, in which my right arm was pulled off at the shoulder socket. As my arm was ground in the uncovered gears of a machine, my arm was not salvageable. During this same incident, I also suffered severe facial lacerations.

On January 22, 1990, I filed a complaint against my former employer, for whom I was working at the time of the accident, Carl Weisman & Sons (CW&S). This complaint was filed in the Montana Eight Judicial District Court. On November 13, 2000, CW&S and I entered into a Stipulation. In this Stipulation CW&S confessed liability and assigned all its rights under the Home policy with respect to the matter to which CW&S confessed liability. On December 10, 2000, a judgment was entered against CW&S for \$2,389,000 plus interest.

1 I filed an action against Home both individually and as assignee of CW&S' rights. This
2 action has stalled because of the liquidation proceedings.

3 On January 21, 2008, the Home Insurance Company in Liquidation issued its
4 Classification Determination listing my claim as a Class V or Class VI.

5 **LEGAL ANALYSIS**

6 **I. The Home policy provides coverage for my claim against CW&S for injury**
7 **sustained while working for CW&S.**

8 In the instant case, the language of the contract is not clear and explicit. The exclusion for
9 injury "arising out of and in the course of employment" in the Home policy is ambiguous. Homes
10 reliance on the employee exclusion must fail as the employee exclusionary language has been
11 found to be ambiguous by Montana Courts.

12 Home's exclusions as drafted are open to different constructions, which render it
13 ambiguous. In light of its ambiguity, the construction favoring coverage must be utilized. This
14 construction is consistent with reasonable expectation of coverage for claims.

15 Under § 33-18-201, MCA, I filed an action against Home for breach of contract, bad faith,
16 malice, and violation of Montana's Unfair Claims Settlement Practices Act. I also filed a claim
17 against Home as an Independent cause of action. Wherefore, § 33-18-424, MCA, provides that,
18 "An insured or a third-party claimant has an independent cause of action against an insurer for
19 actual damages caused by the insurer's violation of subsection (1), (4), (5), (6), (9), or (13) of §
20 33-18-201, MCA. These actions have not proceeded due to the liquidation proceeding; however,
21 that does not obviate Home's obligation to provide coverage as provided by policy.
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1 **II. My claim falls under a Class II classification.**

2 I have a claim against Home based on CW&S assignment of rights under the Home policy
3 with respect to the matter to which CW&S confessed liability, and as such it is my contention that
4 the class determination by Home Insurance Company in Liquidation is in error pursuant to RCA
5 402-C: 44, which determines:

6 RCA 402-C: 44, Order of Distribution
7 V. RESIDUAL CLASSIFICATION.

8 All other claims including claims of any state or local government, not falling within
9 other classes under this section.

10 Also, the claim cannot fall under a Class VI; as that classification is solely for judgments.

11 RCA 402-C: 44, Order of Distribution
12 VI. JUDGMENTS.

13 Claims based solely on judgments.

14 In this matter, I have no judgment against the liquidator rather with the insured, which would
15 constitute classification under Class II.

16 It is my argument that my claim is not a Residual Classification and falls within another
17 class under this section, that section being a Class II, which establishes

18 RCA 402-C: 44, Order of Distribution
19 II. POLICY RELATED CLAIMS.

20 [] and liability claims against insureds [].

21 Further, the merits of my claim have been fully established; therefore, my claim should
22 receive a priority classification, specifically a Class II classification as Class II includes claims by
23 policy holders and insureds; in the instant case, CW&S has assigned to me all its rights under the
24 Home policy with respect to the matter to which CW& S confessed liability. As an assignee of
25 CW&S' rights, my claim should receive a Class II classification pursuant to RSA 402-C:44.

1 Home argues that, "if Home had a duty to defend and indemnify CW&S for Mr. Hubbard's
2 claims based on the policy language, those claims would fall in Class II." It is my assertion that
3 Home does have a duty to defend and indemnify CW&S for my claim; therefore, my claim falls
4 under a Class II.

5 **CONCLUSION**

6 For the reasons stated herein, the Claimant requests that New Hampshire Court review the
7 report of the referee/Order on the Disposition of Claim entered June 18, 2009. Further, the
8 Claimant is acting Pro Se and requests that copies of documentation be sent to him at 615 7th Ave
9 S, Great Falls, MT 59405.

10 DATED this 1st day of July, 2009.

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13 John A. Hubbard
14 John A. Hubbard, Claimant
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CERTIFICATE OF MAILING

I do hereby certify that a true and correct copy of the within and forgoing was placed in the U.S. Mail, postage prepaid, on the 1st day of July, 2009, addressed to the following individuals at the following addresses:

The Home Insurance Company in Liquidation
Claims Determination Unit
PO Box 1720
Manchester, NH 03105-1720

Office of the Attorney General
Department of Justice
Attention: Home Insurance
33 Capitol Street
Concord, NH 03301

Office of the Clerk
Merrimack County Superior Court
Attention: Home Docket, No. 03-E-0106
4 Court Street
Concord, NH 03301

John A. Hubbard
John A. Hubbard, Claimant