

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

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

In Re Liquidator Number: 2012-HICIL-54 Wills
Proof of Claim Number: CLMN713953-1
Claimant Name: Gregory Wills
New Proof of Claim Number: CLMN714296
Claim Number: 112L564866-555 Life Long Claim
Date Of Loss:

ORDER ON LIQUIDATOR'S MOTION TO DISMISS

The Liquidator has filed a motion to dismiss this disputed claim. The claimant, Gregory Wills, seeks a decision allowing the claim in its entirety. The claimant has filed a series of pleadings requesting that the motion to dismiss not be allowed and that he be allowed to pursue his claim.

Facts

Gregory Wills sustained damage to two front teeth in an accident on December 30, 1977, when he was eight years old. The medical records indicate that at the time of the accident, Gregory Wills' front teeth were restored with an understanding that he would also need crowns sometime after the age of 18. The dentist also indicated that crowns need to be replaced periodically during the life of the patient. The initial medical bills were paid under a homeowners policy issued to John and Ann Schaefer by the Home Insurance Company. According to Home, the payments were made voluntarily without a concession of liability. There was no agreement to toll the statute of limitations. Pursuant to New York law the statute of limitations is three years from the date of the accident, potentially tolled during an infant's minority.

After the Liquidation, Gregory Wills, through his father, William Wills, filed a proof of claim for \$200,000. He provided dentist's records and sought additional payments for recent dental treatment, which amount to several thousand dollars. When that claim was denied by the Liquidator, Mr. Wills rejected the determination. Mr. Wills alleged that Home and the Liquidator engaged in bad faith. William Wills filed an affidavit stating that when the claim was originally settled, it was a "life long claim" and that Home agreed to cover Gregory Wills "for life." Mr. Wills did not include any other documentation related to the settlement of the original claim or a copy of the agreement to cover Gregory Wills "for life." On December 12, 2011, the claim was denied by the Home based on the expired statute of limitations.

On January 26, 2012 William Wills filed a Notice of Disputed Claim in the Liquidation seeking \$200,000. The Liquidator reviewed the claim again. On March 9, 2012 the Liquidator agreed to settle the claim for \$2,150, which represents the unpaid dental bills incurred by Gregory Wills in 2011 and 2012. In addition, the Liquidator advised that Gregory Wills could file an additional proof of claim for any later related medical bills. By letter, William Wills asked several questions about the proposed settlement. Attorney Eric Smith, on behalf of the Liquidator, responded to those questions by letter dated March 23, 2012. In that letter, Mr. Smith reiterated the terms of the settlement. By letter dated June 5, 2012, William Wills indicated that Gregory agreed that the Amended Notice of Determination resolved the claim. He also indicated that an additional proof of claim had been completed and would be submitted for the replacement of the two front teeth crowns. Mr. Smith confirmed the settlement by letter dated July 6, 2012, and confirmed that the new proof of claim had been received and assigned a claim number.

The settled claim was listed in the Liquidator's Report of Claims and Recommendations as of August 29, 2012, which was approved by the Court on October 11, 2012. The Report and this action do not include the separate proof of claim with respect to subsequent expenses which was submitted on September 26, 2012 and for which Mr. Wills agreed to accept \$2,885 on October 4, 2012.

William Wills filed a motion with the Referee, along with an amendment indicating that he did not know Mr. Smith's role as counsel for the Liquidator, and that if he had understood Mr. Smith's role Mr. Wills would not have agreed to the settlement. He seeks the medical bills and \$200,000 in compensatory damages.

Analysis

In reviewing the claims file, it is clear that Mr. Smith specified his role in his letters to Mr. Wills. The fact that Mr. Wills did not understand Mr. Smith's role is unfortunate, but not the result of any inappropriate actions or inactions on the part of Mr. Smith.

The documents demonstrate that appropriate steps were taken to resolve the claims for the medical expenses initially submitted to the Liquidator. In addition, the Liquidator agreed to review, and later resolved, a claim for additional medical records. It does not appear from the records that the Liquidator failed to provide adequate information to Mr. Wills. In each instance, Mr. Wills agreed to the Liquidator's proposed settlement.

As to the claim for pain and suffering, the Liquidator denied the claim based on the three year statute of limitations. Gregory Wills was born on September 21, 1969. He was 8 on the date of loss, December 30, 1977. Gregory Wills turned 18 on September 21, 1987. The New York statute might have allowed an additional three years to file the claim, ending September 21, 1990. The statute precludes filing the claim in 2011.

The Liquidator's staff, and Mr. Smith, handled the claim appropriately. The Liquidator has already settled the first claim and included it in a report to the Court, which has received Court approval. The Liquidator has also approved the second claim filed by Mr. Wills and will report on that with its next report to the Court. Those claims and been and will be added to those that are to be paid at the close of

the liquidation process. Based on the documents filed with the Referee, and the New York statute of limitations, the motion to dismiss is granted.

So ordered.

Date: 1/8/13


Referee, Melinda S. Gehris