

**THE STATE OF NEW HAMPSHIRE  
MERRIMACK S.S. SUPERIOR COURT**

**BEFORE THE COURT-APPOINTED REFEREE  
IN RE THE LIQUIDATION OF HOME INSURANCE COMPANY**

**DISPUTED CLAIMS DOCKET**

**In Re Liquidator Number: 2008-HICIL-41  
Proof Of Claim Number: CLMN712396-01  
Claimant: Harry L. Bowles**

**CLAIMANT'S RESPONSE TO LIQUIDATOR'S 8-9-2009 OBJECTION TO CLAIMANT'S  
REQUEST FOR FURTHER DISCOVERY AND REQUEST FOR REFEREE'S  
REDETERMINATION OF 8-19-2009 ORDER DENYING FURTHER DISCOVERY**

Comes Claimant Harry L. Bowles ("Bowles") in response to the Liquidator's August 8, 2009 Objection to Claimant's Request for Further Discovery Supplemental Response to Discovery Order. Bowles request's the Referee reconsider and abate her Order dated August 19, 2009 in which further discovery was denied and Bowles was ordered to submit briefing by September 14, 2009. Bowles registers his belief that justice is not served by denial of further discovery.

I

Summary of the Argument

1. The nature of this litigation has changed radically within the past months since Bowles requested an evidentiary hearing on March 5, 2009 that was objected to by the Liquidator on the ground that TPCIGA was authorized to **independently** determine that there was a "covered claim" made against Home Policy No. LPL-F871578 and to take action to defend the policy.

2. The single goal of the Liquidator's legal counsel is to obtain a ruling from this Superior Court that Home Insurance Company in Liquidation (HICIL) was not a co-conspirator with TPCIGA in TPCIGA's fraudulent intervention in Bowles' malpractice lawsuit in Texas to defend the policy in obvious violation of the Court's Order of Liquidation and the New Hampshire Insurance Code.

3. The Referee's grant of a small portion of Bowles' Discovery Requests submitted April 24, 2009 resulted in Bowles learning for the first time that Bishop, Peterson & Sharp, the insured law firm, was disbanded and dissolved in the summer of 1993 prior to its having rendered legal services to Bowles, and that Bishop subsequently requested Home to cover Bowles' "prospective lawsuit" under the policy.

4. Discovery disclosed that no Home official ever gave Home's unconditional commitment that Bowles' "prospective lawsuit" would be covered under Policy No. LPL-F871578.

5. Bowles contends that, in fact, coverage was denied, and that the Referee cannot make a ruling on the Proof of Claim without production by the Liquidator of a document proving that Home committed itself to provide coverage in strict adherence to the provisions of the insurance contract, with particular regard to Section C - Exclusions, Subsections I - (a) and I-(b).

6. Through correspondence with the Daniels-Head Agency that issued the policy, the focus of controversy now concerns an alleged Discovery Clause Notice received by Home from Bishop prior to February 6, 2004 as well as the transfer of "runoff claims" to TPCIGA for handling after June 13, 2003.

7. Referee Gehris, counsel for the Liquidator, and counsel for TPCIGA received copies of Bowles' September 1, 1990 letter to the Daniels-Head Agency concerning Home's commitment to cover the lawsuit in Texas as a claim against Policy No. LPL-F871578. The response by

Daniels-Head's Ms. Levy was immediate, and a copy is attached herewith. It may be noted that Daniels-Head was not informed that there was an extension of benefits to cover the suit, and no mention of their receipt of a copy of the Discovery Clause Notice.

8. Bowles asserts that the Referee cannot make a ruling on the Proof of Claim without production of the alleged Discovery Clause Notice, which is an item that the Referee refused to allow production of in the June 15, 2009 Discovery Order.

9. Bowles complains that, without a full exposition of relevant facts through discovery, including **the contents of the alleged Discovery Clause Notice**, the brief that he has been ordered to file cannot have a proper basis, either in law or in fact.

## II

### Historical Recap

10. This litigation is based in large part on the assertions contained in two sworn affidavits concerning how the Texas Property and Casualty Insurance Guaranty Association ("TPCIGA") assumed the authority to employ, and did employ, a Houston defense attorney in August 2005 to defend Home Insurance Policy No. LPL-F871578 for the insured law firm, Bishop, Peterson & Sharp, P.C. ("BPS"). One affidavit was by TPCIGA's Amber A. Walker and the other by Senior Manager for The Home Insurance Company in Liquidation ("HICIL").

11. Each of the officials stated that The Home Insurance Company was aware of Bowles' dissatisfaction with the legal services provided by BPS prior to cancellation of the policy on February 6, 1994.

12. Barta alleges that a claim against the policy was timely reported "**pursuant to its Discovery Clause**".

13. The affiants allege that Home “undertook” to provide a defense of the policy when Bowles filed his malpractice action in August 1995.

14. Barta testified that Home forwarded its entire Bishop claim file to TPCIGA, alleging this was done pursuant to Subchapter G of the Texas Property and Casualty Insurance Guaranty Act because the pending lawsuit potentially constituted a covered claim under that Act.

15. Homes’ transfer of the Bishop claim file could not have occurred prior to June 13, 2003 when the Order of Liquidation was Order of Liquidation was issued by the Superior Court of Merrimack County, New Hampshire placing the company in liquidation.

16. There had been no resolution of Bowles’ lawsuit prior to June 13, 2003 Order of Liquidation.

17. On July 14, 2009 the Liquidator submitted supplementary documents responsive to the Discovery Order allegedly showing that that a Bishop, Peterson & Sharp claim file was transmitted by Risk Enterprise Management to TPCIGA on June 23, 2003.

18. Barta alleges that once the claim file was transferred, HICIL, aka the Liquidator, had no further direct involvement in Bowles’ lawsuit.

### III

#### Law of the Case

19. Per the Order of Liquidation dated June 13, 2003 and the New Hampshire Insurance Code, The Home and its directors, officers, employees, agents and representatives were prohibited from proceeding with the business of The Home, except upon the express written authorization of the Liquidator.

20. Per the Order of Liquidation and the New Hampshire Insurance Code, the Liquidator was required to cancel all in-force Home contracts of insurance and bonds effective 30 days after the date of the Order of Liquidation.

21. Section 462.102 of the Texas Property and Casualty Insurance Guaranty Act states that:

In performing the association's statutory obligations under this chapter, the association is not considered:

- (1) to be engaged in the business of insurance;
- (2) to have assumed or succeeded to a liability of the impaired insurer;
- (3) to otherwise stand in place of the impaired insurer for any purpose, including for the purpose of whether the association is subject to personal jurisdiction of the courts of another state.

22. In intervening in Bowles' case, TPCIGA, in violation of the Texas statute, proceeded to "stand in place of the impaired insurer (HICIL)" to make the determination that a covered claim against the policy was made by an insured party.

23. Section 462.213 of the Texas Property and Casualty Insurance Guaranty Act states that:

- (a) Except as provided by Subsection (b) and Section 462.252 (workers' compensation claims), an individual claim may not exceed \$300,000.

24. Firstly, Bowles never submitted a claim to TPCIGA of any kind. Secondly, Bowles' lawsuit against Bishop, et al in August 1995 included actual damage claims of more than \$1,500,000. Thus, any claim by Bishop, et al transferred by Home to TPCIGA could not be accepted as a covered claim under the Texas Guaranty statute.

### III

#### Conclusion

25. New information very recently received by Bowles from the Liquidator and from the Daniels-Head Insurance Agency has expanded the need for further discovery in this case, particularly of matters concerning an alleged Discovery Clause Notice received by Home.

26. It is vitally important that Bowles know the basis of the Liquidator's (aka Ronald F. Barta's) claim that Home Insurance lost all direct involvement in matters concerning Bowles' lawsuit after the Bishop file was transmitted to TPCIGA in June 2003.

27. Apparently Barta's claim has some connection to the alleged Discovery Clause Notice received by Home from Bishop, and Homes' apparent refusal to give Bishop an unconditional commitment of coverage of Bowles "prospective lawsuit".

28. Until a copy of the alleged Discovery Clause Notice is made available, Bowles has no basis for submission of a brief addressing all the matters the Referee states should be addressed in a brief by September 14, 2009.

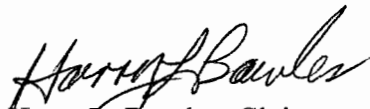
#### IV

#### Request for Relief

29. Based on very recent new discoveries, Bowles requests the Referee abate the August 19, 2009 Order to allow time for additional discovery, with particular regard to (a) the alleged Discovery Clause Notice and (b) Homes' unconditional commitment to the insured parties under Policy No. LPL-F871578 that coverage of Bowles' lawsuit would be provided, both prior to the date of liquidation and after the date of liquidation.

30. Bowles requests all other and further relief to which the Referee and the Court may deem him justly entitled.

Respectfully submitted,

  
Harry L. Bowles, Claimant

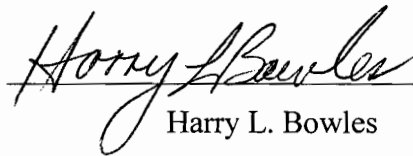
306 Big Hollow Lane

Houston, Texas 77042

Tel 713-983-6779 Fax 713-983-6722

**CERTIFICATE OF SERVICE**

Harry L. Bowles, certify that on this FOURTH DAY OF SEPTEMBER, 2009 a true and correct copy of the foregoing was sent by FAX to Mr. Eric A. Smith, Rackemann, Sawyer & Brewster, 160 Federal Street, Boston, MA 02110-1700; to Mr. J. Christopher Marshall, Civil Bureau, NH Dept. Of Justice, 33 Capitol Street, Concord, New Hampshire 03301-6397; to Ms. Melinda S. Gehris, 501 Hall Street, Bow, New Hampshire 03304; and to Daniel Jordan, Law Office of Daniel Jordan, 4807 Spicewood Springs Road, Building One, Suite 1220, Austin, Texas 78759. Copies of all documents were also transmitted to the Liquidation Clerk, HICIL, Merrimack County Superior Court, P.O. Box 2880, Concord, NH 03302-2880.

  
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Harry L. Bowles

DANIELS-HEAD  
MANAGEMENT  
CORP., INC.

Since 1978



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September 2, 2009

Mr. Harry L. Bowles  
306 Big Hollow Lane  
Houston, TX 77042

Dear Mr. Bowles,

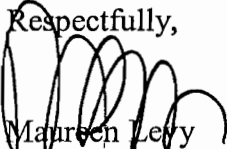
The purpose of this letter is to respond to your letter of September 1, 2009. Please note that I have made a good faith effort to answer your questions and the accusatory tone of your letter is completely inappropriate.

Subject to the limitation (described in my previous letter to you) that we no longer have the underlying files:

1. The best information available to Daniels-Head is that no extended reporting period coverage was purchased with respect to the Bishop, Peterson & Sharp, P.C. policy with The Home Insurance Company which expired in 1994;
2. The best information available to Daniels-Head is that no notice was given to Bishop, Peterson & Sharp, P.C. by this agency when the Order of Liquidation of The Home Insurance Company was entered in June 2003; and
3. Daniels-Head did not handle claims on behalf of The Home Insurance Company, and the best information available to Daniels-Head is that we were not aware that there was an unresolved covered claim on the Bishop, Peterson & Sharp, P.C. policy with The Home Insurance Company at the time of The Home Insurance Company's liquidation.

We believe that we have no further information for you relative to this matter and this inquiry is closed.

Respectfully,



Maureen Levy

Corporate Administration and Communication.