

**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 MOTION FOR PARTIAL SUMMARY JUDGMENT ON ISSUE OF  
SINGULAR OVERRIDING INTEREST IN THIS CASE, NAMELY, THE  
APPLICABILITY OF HOME POLICY NO. LPL-F871578 TO COVER BOWLES'  
MALPRACTICE LAWSUIT**

Foreword

1. Comes Claimant Harry L. Bowles to motion this Referee and this Court for a summary judgment pursuant to Section 491:8-a of the New Hampshire Rules of Court governing proceedings in the Superior Courts.
2. The statute states: "A party seeking to recover upon a claim . . . may, at any time after the defendant has appeared, move for summary judgment in his favor upon all or any part thereof".

History

3. In August 1995 Claimant Bowles filed a legal malpractice lawsuit in the 151st District Court in Houston, Texas against Bishop, Peterson & Sharp, P.C. ("BPS") and against its three

attorney - shareholders individually, George M. Bishop, Charles Peterson and David E. Sharp. Also named in the suit was George M. Bishop & Associates, a solo law practice of George M. Bishop not registered in the records of the Texas Secretary of State as a multi-member law firm.

4. Service on BPS, George M. Bishop & Associates was perfected on December 28, 1995 by serving George M. Bishop, president of BPS and principal of the solo law practice.

5. Answers to Bowles' lawsuit for BPS, George M. Bishop & Associates and by George M. Bishop individually were transmitted to the 151st District Court on January 26, 1996 by George M. Bishop on George M. Bishop & Associates letterhead. BPS employed no outside defense counsel to submit answers in January 1996 nor at any time thereafter.

6. Bowles proceeded to prosecute the action in 2002 with discovery requests to Bishop per T.R.C.P., including requests for admission and requests for disclosure of any applicable insurance coverage. Bishop refused to answer the request for insurance coverage then, as he refused to do in subsequent request in the following years, even when held in contempt of court for discovery rule violations.

7. In August 2005, without a motion for substitution of counsel, the Houston law firm Marshall & McCracken, P.C. ("M&M") made appearance as defense counsel to represent BPS solely in an "original answer" and declared its right to compensation by the Texas Property and Casualty Insurance Guaranty Association ("TPCIGA").

8. In June 2006, M&M was successful in obtaining a summary judgment for BPS against Bowles in the 151st Court on an **unsworn** motion signed only by an M&M attorney. This judgment was immediately severed from the main suit over Bowles' objections. Bowles' own sworn motions for summary judgment were refused consideration. Meanwhile, M&M refused to produce a copy of an insurance policy authorizing its intervention in the suit, and Bowles' filed a

motion per Rule 14, T.R.C.P. challenging the firm's authority to appear in defense of an alleged insurance policy purportedly being administered by TPCIGA.

9. It was not until September 2006 that Bowles was able to force M&M and TPCIGA to produce a copy of the insurance contract that M&M and TPCIGA stated as applicable to authorize TPCIGA's employment of M& M to represent BPS in defense of said policy. The policy produced was Home Insurance Policy No. LPL-F871578-1.

10. The 151st Court, ignoring Bowles objections and refusing to recognize that the Home policy had lapsed in February 1994 (seventeen month prior to when Bowles' lawsuit was filed) proceeded to rule that M&M was authorized to defend the policy, thus affirming the Court's summary judgment issued against Bowles in June 2006.

11. Bowles reacted to this injustice by filing two successive actions in the Federal Court in Austin, Texas against Home Insurance Company in Liquidation ("HICIL") and TPCIGA, charging damaging abuse of process, conspiracy and tortious interference. Employing Texas defense counsel, these defendants were able to obtain dismissal of the suits based on their argument that they were immune from suit under the Order of Liquidation issued on June 13, 2003 by the Merrimack County Superior Court. They invoked Section (n) (2) of the Order, which permanently enjoins all persons from commencing or continuing any judicial, administrative, or other action against The Home or the Liquidator after June 13, 2003, other than by filing a Proof of Claim with the Liquidator. (See copy of Order of Liquidation attached as **EXHIBIT A**).

12. But the Order of Liquidation is self-contradictory. Section (e) of the Order cancelled all Home insurance contracts effective 30 days after June 13, 2003, including Policy No. LPL-

F871578. If, for the sake of argument, it were assumed that the policy was in force on June 13, 2003 (which Bowles denies) then it was certainly no longer in force after July 13, 2003.

13. Section (j) of said Order of Liquidation prohibited (prohibits) Home officials from proceeding with Home business, except upon the express written authorization of the Liquidator.

14. Section (m) of said Order of Liquidation abated all actions and all proceedings against Home, whether in New Hampshire or elsewhere, in accordance with statute RSA 402-C:28 and RSA 402-C:5, except to the extent the Liquidator saw fit to intervene in and obtained leave of the Superior Court to do so.

15. RSA 402-C:28 established a 2-year statute of limitation (after June 13, 2003) on the Liquidator for the institution of an action or proceeding on behalf of the estate of the insurer in any cause of action.

16. Bowles' federal court actions against HICIL and TPCIGA resulted in opposing affidavits from HICIL and TPCIGA officials stating that Home "undertook" to defend Policy No. LPL-F871578-1 immediately after Bowles' lawsuit was filed in August 1995.

17. Bowles denied (and denies) the allegation that the Home "undertook" to defend the policy at any time before June 13, 2003, on the basis of (a) the record in the Texas court showing that there was no abatement of the action due to the liquidation and no request from the Liquidator for leave to intervene, (b) by the admitted fact that BPS never filed a Proof of Claim with the Liquidator after June 13, 2003, and (c) by information received from the Daniels-Head Insurance Agency stating it had no obligation (per RSA 402-6:26) to give notice of the withdrawal of the insurer from the defense of any case in which Home was interested

18. The April 2, 2009 Order by the federal court in Austin states on page 11 thereof:

As for HICIL, the Order of Liquidation entered by the New Hampshire court unambiguously enjoins commencing any actions against HICIL except through the

liquidation process in New Hampshire. Bowles himself recognizes the existence of the provision, although he challenges “its hypocrisy in permanently banning actions against” HICIL. He contends the Court should not extend comity to the New Hampshire court’s order simply because the order “works to protect tortfeasors from protection for fraud and deceit while preventing victims from seeking and obtaining relief”. But Bowles is not prevented from obtaining relief against HICIL under the Order of Liquidation, he simply has to do it through the liquidation process in New Hampshire (which he is presently doing, and is the basis of his request for suspension). [See Exhibit W to Liquidator’s Section 15 submission dated 11-5-09].

19. The federal court fails to explain how this Superior Court can dispose of Bowles’ complaint against co-tortfeasor TPCIGA without filing a new federal court action or a separate state court action. But it is obvious that the court recognized the inherent contradiction in the HICIL and TPCIGA argumentation that Bowles was permanently enjoined by Section (n) the Order of Liquidation while they were free to openly violate Sections (e), (j) and (m) of the same Order.

20. In his recent Rule 15 Submission in this court, the Liquidator (having assumed the identity of HICIL in New York) has abandoned the “I can sue you, but you can’t sue me” tactic used successfully in the federal court. In this new filing the Liquidator argues that Bowles’ “improper provision of a defense claim” would be classified as a “pre-liquidation tort claim” with a very low payment priority by the Liquidator. This pre-liquidation argument is quaint to say the least, considering that Home and TPCIGA never appeared in the Texas court before August 2005, 27 months after the date of liquidation. This argument also dismisses the fact that the Liquidator (aka HICIL) and TPCIGA bear joint and several damage liability for fraudulently and tortiously providing a defense of an inapplicable insurance contract in violation of the terms of the policy and in violation of the Order of Liquidation.

21. The Referee in this case has agreed to adjudicate the issue of whether or not Bowles has a valid claim against the Liquidator and TPCIGA for improperly providing a defense of Policy No.

LPL-F871578 for BPS against Bowles in Cause No. 1995-43235 in the Texas 151st District Court. This is in accordance with the federal court's ruling that this is an issue resolvable in New Hampshire by and through the liquidation process in accordance with the Order of Liquidation and the Restated and Revised Order Establishing Procedures Regarding Claims Filed with The Home Insurance Company in Liquidation.

22. The primary and overriding issues in this regard are whether or not:

(1) Policy No. LPL-F871578 was ever applicable to cover Bowles' lawsuit Cause No. 1995-43235 pursuant to the provisions of the policy, and

(2) whether or not the Liquidator and TPCIGA were authorized to initiate a defense of the policy in August 2005, twenty six months after the June 13, 2003 date of liquidation.

**Summary Judgment Proof That Policy LPL-F871578  
Was Never Applicable to Cover Bowles' Lawsuit**

23. Bowles' lawsuit filed in the Texas 151st District Court on August 25, 1995. Its styling is Harry L. Bowles, Plaintiff versus George M. Bishop, Charles K. Peterson and David E. Sharp, each in their individual capacities, and George Bishop and Associates, and Bishop, Peterson and Sharp, P.C., each a professional law corporation and/or an assumed name of the named individuals as a law firm, et al. A copy of the lawsuit is attached as **EXHIBIT B**.

24. Home Insurance Policy No. LPL-F871578 states in pertinent part in Section C- Exclusions as follows:

I. This policy does not apply:

(a)

(b) to any claim made by **or against** any business enterprise not named in the Declarations which is owned by the insured or in which the insured is a partner or employee, or which is controlled, operated or managed by the insured, either individually or in a fiduciary capacity, including the ownership, maintenance or use of any property therewith, or to any claim made against the insured solely because the insured is a partner, officer, director, stockholder employee or employee of any firm or corporation not named in the Declarations.

(c), (d), (e), (f), (g),

(h) to any claim based upon or arising out of the work performed by the insured, with or without compensation, with respect to any corporation, fund, trust, association, partnership, limited partnership, business enterprise or other venture, be it charitable or otherwise, of any kind or nature in which any insured has any pecuniary or beneficial interest, irrespective of whether or not an attorney-client relationship exists, unless such entity is named in the Declarations.

25. By the letter dated December 29, 1993 to Home Insurance Company from George M. Bishop & Associates, Home was informed that BPS had been dissolved that summer, and that all work performed after the dissolution was performed by George M. Bishop & Associates as the legal representative for BPS in the underlying action, Cause No. 1991-25939 in the Texas 190th District Court. (Copy attached hereto as **EXHIBIT C** and also attached as Liquidator's EXHIBIT C in the Rule 15 Submission filed 11-5-09).

26. The December 29, 1993 letter to Home from Bishop & Associates (aka George M. Bishop) is in the nature of a future claim by Bishop against Home Policy No. LPL-F871578-1 consisting of a malpractice lawsuit expected to be filed against BPS at some future date.

27. EXHIBIT B, Bowles' August 1995 legal malpractice lawsuit, on its title page and in its text, shows beyond doubt that the lawsuit was primarily a complaint against George M. Bishop & Associates (aka George M. Bishop) for work done by George M. Bishop.

28. Bowles would show the Referee that in 2006 in the Texas 151st District Court, George M. Bishop gave a sworn statement that BPS ceased representing Bowles in underlying Cause No. 1991-25939 prior to October 23, 1993, the date of a hearing and Settlement Agreement in the Texas 190th District Court.

29. Bowles asserts that at no time prior to July 2009 did he know that BPS had ceased to exist in the summer of 1993 and that all representation in Cause No. 1991 thereafter was by George M. Bishop & Associates.

30. The title page of EXHIBIT B, Bowles' malpractice lawsuit, is proof beyond doubt that Policy No. LPL-F871578 was not applicable to cover Bowles' lawsuit for claimant Bishop, due to the operation of **Section C (I) (b) of the EXCLUSION CLAUSE** quoted above. Bowles suit is obviously a claim against George M. Bishop & Associates, a law firm not named in the Declarations. (See copy of Declarations page of Policy No. LPL-F871578-1 issued 1-21-1993 attached as EXHIBIT C). Obviously, the policy was not applicable to cover Bowles suit.

31. Further, Policy No. LPL-F871578-1 is doubly rendered inapplicable to cover Bowles' lawsuit by operation of **Section C (I) (h) of the EXCLUSION CLAUSE** quoted above. Clearly, Bowles' suit is a complaint based upon and arising out of work performed by George M. Bishop with respect to George M. Bishop & Associates, an entity not named in the declarations, in which work all of the insureds had a pecuniary or beneficial interest. That pecuniary and beneficial interest is evidenced in the two suits in intervention filed by Bishop in Cause No. 1991-25939, one against Bowles in April 1994, and the other against Charles N. Schwartz on November 2, 1995. This is proof that the policy could not be applied to cover Bowles' suit.

**Summary Judgment Proof That Neither Home Nor TPCIGA Home Were Authorized to  
Initiate a Defense of Policy No. LPL-F871578-1 to BPS in August 2005**

32. As stated in the federal court order of April 2, 2009, the controlling law regarding the issue of a wrongful and unauthorized defense of Policy No. LPL-f871578 provided by Home and TPCIGA is the New Hampshire Revised and Restated Order Establishing Procedures Regarding Claims Filed With the Home Insurance Company In Liquidation.

33. Under that Order Establishing Procedures, RSA 402-C:28 required the Liquidator to abate all actions involving an impaired insurer to be abated, unless, in the Liquidator's judgment,



in an action outside New Hampshire, protection of the estate of the insurer necessitates an intervention in an action, he may intervene with the approval of the court (presumably the court in the foreign state). No other person or party is authorized to intervene in lawsuits ongoing outside the State of New Hampshire. Furthermore, the Liquidator is bound under RSA 402-C:28 by a Statute of Limitations which states that the Liquidator may, within 2 years subsequent to an order of liquidation, institute an action or proceeding in behalf of the estate of the insurer.

34. There is absolutely no evidence that the Liquidator made a judgment that the estate of Home Insurance required protection in the ongoing action in Texas. There was no request to the 151st District Court for leave to intervene, otherwise Bowles would have been given notice and the court record would contain the request and approval.

35. Furthermore, the 2-year Statute of Limitations had run when, in August 1995, the Liquidator and TPCIGA employed defense counsel for BPS in the Texas case and initiated a summary judgment proceeding against Bowles.

36. Bowles contends on sworn motion that there is no genuine issue of material fact regarding the Liquidator's alleged intervention in Cause No. 1995-43235 in the Texas 151st District Court in defense of Policy No. LPL-F871578-1. It is clear that RSA 402-C:28 could not be, and was not, invoked by Liquidator. Therefore, the Referee cannot render a judgment that Home, by and through TPCIGA, properly provided a defense of Home Policy No. LPL-F871578 in Cause No. 1995-43235 in Texas. Home and TPCIGA were unauthorized officious intermeddlers in the case.

Conclusion – Request for Relief

37. Above considered, Bowles requests this Motion for Partial Summary Judgment be granted on the issue of the applicability of Home Policy No. LPL-F871578-1 to provide coverage of Bishop's claim against the policy allegedly submitted on December 29, 1993.

38. Bowles also requests grant of this Motion for Summary Judgment on the issue of the alleged intervention by the Liquidator in defense of Policy No. LPL-F871578-1 pursuant to RSA 402-C:28. Bowles asserts that the Liquidator cannot show proof that Home provided a defense of the policy prior to the date of liquidation, or that he acted to provide a defense of the policy after the date of liquidation on June 13, 2003 and within two years following that date.

39. Bowles requests a judgment by the Referee that the Liquidator (aka HICIL) transmitted to TPCIGA a claim that it at all times knew had no validity, and that the Liquidator is therefore liable for the damage resulting from the unauthorized application of the policy as a defense against Bowles' malpractice lawsuit against BPS and George M. Bishop & Associates.

40. Bowles requests all other and further relief to which this Court may deem him justly entitled.

Respectfully submitted,

  
Harry L. Bowles, Claimant

306 Big Hollow Lane

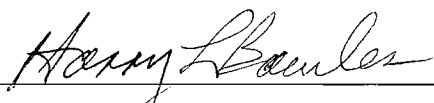
Houston, Texas 77042

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

Attachments - Affidavit

**CERTIFICATE OF SERVICE**

Harry L. Bowles, certify that on this 18TH DAY OF NOVEMBER, 2009 a true and correct copy of the foregoing was sent by priority mail 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; and to the Liquidation Clerk, HICIL, Merrimack Co. Superior Court, P O Box 2880, Concord, NH 02110-2880.

  
\_\_\_\_\_  
Harry L. Bowles

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

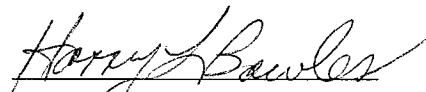
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STATE OF TEXAS § VERIFICATION  
COUNTY OF HARRIS §

Comes Claimant Harry L. Bowles to make this affidavit of truth:

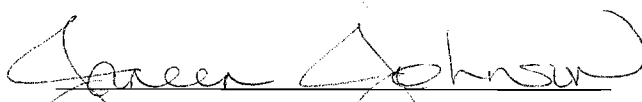
I am Harry L. Bowles, a resident of Harris County, Texas. I am over the age of 18 years and am fully qualified, capable and competent to make the following declaration concerning litigation of the subject claim before the Superior Court in Merrimack County, New Hampshire.

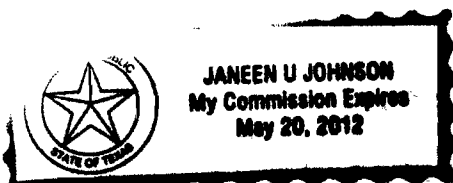
I attest and affirm that I prepared the attached Motion for Summary Judgment, and that I have personal knowledge of the matters contained therein. I certify that supporting exhibits are authentic copies of original documents and that all statements and information in the motion are true and correct.

  
Harry L. Bowles

ATTESTATION

SWORN AND SUBSCRIBED BEFORE ME, the undersigned authority, on this 18 day of November, 2009 in Harris County, Texas.

  
Notary Public, State of Texas



THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Docket No. 03-E-0106

In the Matter of the Rehabilitation of  
The Home Insurance Company

ORDER OF LIQUIDATION

This proceeding was commenced on March 4, 2003, upon the Verified Petition for Rehabilitation of Paula T. Rogers, Commissioner of Insurance for the State of New Hampshire (the "Commissioner"). The Commissioner filed the Verified Petition for Rehabilitation pursuant to RSA 402-C:15, seeking appointment as receiver of The Home Insurance Company ("The Home") for the purpose of rehabilitating and conserving the assets of The Home. On March 5, 2003, this Court entered an Order Appointing Rehabilitator, in which the Commissioner was appointed Rehabilitator of The Home. The Commissioner, as Rehabilitator, has now determined pursuant to RSA 402-C:19 that further attempts to rehabilitate The Home would be futile, that The Home is insolvent within the meaning of RSA 402-C:3 and RSA 402-C:20, II, and that it should be liquidated. On May 8, 2003, the Commissioner, as Rehabilitator, filed a Verified Petition for Order of Liquidation pursuant to RSA 402-C:5, RSA 402-C:19 and RSA 402-C:20 (the "Petition"), in which she has sought an order of liquidation for The Home, her appointment as Liquidator, and the requested permanent injunctions. After having heard and considered the facts set forth in the Petition, the Court finds that the law and facts are

**EXHIBIT A**

as the Commissioner has alleged in the Petition and that there exists a present necessity for the entry of this order.

WHEREFORE, it is hereby ordered, adjudged and decreed that:

- (a) The proceeding for the rehabilitation of The Home is hereby terminated pursuant to RSA 402-C:19;
- (b) The Home is declared to be insolvent;
- (c) Sufficient cause exists for an order to liquidate The Home;
- (d) Paula T. Rogers, Commissioner of Insurance for the State of New Hampshire, and her successors in office, is hereby appointed Liquidator of The Home;
- (e) The Liquidator shall cancel all in-force contracts of insurance and bonds effective as of 30 days after the date of this Order;
- (f) The Liquidator is directed forthwith to take possession of the assets of The Home wherever located and administer them under the orders of the Court. The Liquidator is vested with title to all of the property, contracts and rights of action and all of the books and records of The Home, wherever located, and in whomever's possession they may be found;
- (g) The Liquidator is directed to secure all of the assets, property, books, records, accounts and other documents of The Home (including, without limitation, all data processing information and records comprised of all types of electronically stored information, master tapes, source codes, passwords, or any other recorded information relating to The Home);
- (h) The Liquidator is authorized to transfer, invest, re-invest and otherwise deal with the assets and property of The Home so as to effectuate its liquidation;

*William S. McShane*

(i) The Liquidator is authorized to acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon or otherwise dispose of or deal with any property of the insurer at its market value or upon such terms and conditions as are fair and reasonable without prior permission of the Court in the ordinary course of business;

(j) The Home and its directors, officers, employees, agents, and representatives are prohibited from proceeding with the business of The Home, except upon the express written authorization of the Liquidator;

(k) The Home and its directors, officers, employees, agents, and representatives, and any persons acting in concert with The Home, are prohibited from disposing, using, transferring or removing any property of The Home, without the express written authorization of the Liquidator, or in any way (i) interfering with the conduct of the Liquidator or (ii) interfering with the Liquidator's possession and rights to the assets and property of The Home;

(l) Any bank, savings and loan association or other financial institution or other legal entity is prohibited from disposing of or allowing to be withdrawn in any manner property or assets of The Home, except under the express written authorization of the Liquidator or by further order of this Court.

(m) All actions and all proceedings against The Home whether in this state or elsewhere shall be abated in accordance with RSA 402-C:28 and RSA 402-C:5, except to the extent the Liquidator sees fit and obtains leave to intervene;

(n) To the full extent of the jurisdiction of the Court and the comity to which the orders of the Court are entitled, all persons are hereby permanently enjoined and restrained from any of the following actions:



(1) commencing or continuing any judicial, administrative, or other action or proceeding against The Home or the Liquidator;

(2) commencing or continuing any judicial, administrative, or other action or proceeding against The Home's, the Rehabilitator's or the Liquidator's present or former directors, officers, employees, agents, representatives, or consultants, including, without limitation, Risk Enterprise Management Limited and each of its officers, directors and employees, arising from their actions on behalf of The Home, the Rehabilitator or the Liquidator;

(3) enforcing any judgment against The Home or its property;

(4) any act to obtain possession of property of The Home or to exercise control over property of The Home;

(5) any act to create, perfect, or enforce any lien against property of The Home;

(6) any act to collect, assess, or recover a claim against The Home, other than the filing of a proof of claim with the Liquidator; and

(7) the setoff of any debt owing to The Home; provided, however, that notwithstanding anything in this Order to the contrary, nothing herein is intended nor shall it be deemed to stay any right of setoff of mutual debts or mutual credits by reinsurers as provided in and in accordance with RSA 402-C:34;

(o) The Court hereby seeks and requests the aid and recognition of any Court or administrative body in any State or Territory of the United States and any Federal Court or administrative body of the United States, any Court or administrative body in any Province or Territory of Canada and any Canadian Federal Court or



administrative body, and any Court or administrative body in the United Kingdom or elsewhere to act in aid of and to be complementary to this Court in carrying out the terms of the Order;

(p) All persons doing business with The Home on the date of the Liquidation Order are permanently enjoined and restrained from terminating or attempting to terminate such relationship for cause under contractual provisions on the basis of the filing of the petition to rehabilitate The Home, The Home's assent to the entry of the Rehabilitation Order, the entry of the Rehabilitation Order, the filing of this Petition, the entry of the Liquidation Order, the rehabilitation or liquidation proceedings for The Home, or The Home's financial condition during the rehabilitation or liquidation proceedings;

(q) All persons in custody or possession of any property of The Home are hereby directed and ordered to turn over any such property to the Liquidator;

(r) The Liquidator is authorized, in her discretion, to pay expenses incurred in the course of liquidating The Home, including the actual, reasonable, and necessary costs of preserving or recovering the assets of The Home, wherever located, and the costs of goods and services provided to The Home estate in this and other jurisdictions. Such costs shall include, but not be limited to: (1) reasonable professional fees for accountants, actuaries, attorneys and consultants with other expertise retained by the Department, the Commissioner or the Liquidator to perform services relating to the liquidation of The Home or the feasibility, preparation, implementation, or operation of a liquidation plan; (2) compensation and other costs related to representatives, employees or agents of The Home or its affiliates who perform services for The Home in liquidation;

and (3) the costs and expenses of and a reasonable allocation of costs and expenses associated with time spent by New Hampshire Insurance Department personnel and New Hampshire Department of Justice personnel in connection with the rehabilitation and the liquidation of The Home;

(s) The Liquidator is authorized to employ or continue to employ, to delegate authority to and fix the compensation of such appropriate personnel, including actuaries, accountants, consultants, special counsel, and counsel in this and other jurisdictions, as she deems necessary to carry out the liquidation of The Home and its worldwide operations, subject to compliance with the provisions of RSA 402-C, the supervision of the Liquidator, and of this Court. The Liquidator is authorized to continue at her sole discretion to retain the services of Risk Enterprise Management Limited, subject to court approval;

(t) The Liquidator is authorized to appoint, and determine the compensation and terms of engagement of, a special deputy to act for her pursuant to RSA 402-C:25, I.

(u) The actual, reasonable and necessary costs of preserving, recovering, distributing or otherwise dealing with the assets of The Home, wherever located, and the costs of goods or services provided to The Home estate under paragraph (i) of the Rehabilitation Order, during the Rehabilitation proceeding, and under paragraphs (r)-(t) and (v) of the Liquidation Order, during the Liquidation proceeding, shall be treated as "costs and expenses of administration," pursuant to RSA 402-C:44, I;

(v) The Liquidator is authorized and directed to work with any joint provisional liquidator or other person of comparable position appointed by a foreign

tribunal with respect to all or any portion of the estate of The Home located outside the United States (the "foreign estates") for the purpose of preserving, recovering and incorporating into the domiciliary estate all assets of The Home located outside the United States. The Liquidator is authorized to fund from the domiciliary estate the costs and expenses of administering the foreign estates;

(w) The Liquidator is directed to administer and make payments on all claims against The Home estate filed with the Liquidator in the domiciliary proceeding, including the claims of claimants residing in foreign countries (provided the assets of such foreign estate are transferred to the Liquidator), in accordance with New Hampshire's priority statute, RSA 402-C:44;

(x) The amounts recoverable by the Liquidator from any reinsurer of The Home shall not be reduced as a result of the prior rehabilitation proceeding or this liquidation proceeding or by reason of any partial payment or distribution on a reinsured policy, contract or claim, and each reinsurer of The Home is, without first obtaining leave of this Court, hereby enjoined and restrained from terminating, canceling, failing to extend or renew, or reducing or changing coverage under any reinsurance policy or contract with The Home. The Liquidator may, in her discretion, commute any contract with a reinsurer or reinsurers;

(y) To the full extent of the jurisdiction of the Court and the comity to which the orders of the Court are entitled, all actions or proceedings against an insured of The Home in which The Home has an obligation to defend the insured are hereby stayed for a period of six months from the date of the Order and such additional time as the Court may determine pursuant to RSA 404-B:18;

(z) Within one year of the entry of this Order, and then annually thereafter, the Liquidator shall file with the Court a financial report, as of the preceding December 31, in accordance with RSA 402-C:21, V, which shall include, at a minimum, the assets and liabilities of The Home and all funds received or disbursed by the Liquidator during the period;

(aa) The Liquidator shall have full powers and authority given the Liquidator under RSA 402-C of Title XXXVII, and under provisions of all other applicable laws, as are reasonable and necessary to fulfill the duties and responsibilities of the Liquidator under RSA 402-C of Title XXXVII, and under the Order, specifically including, but not limited to, each and every power and authority bestowed upon the Liquidator under RSA 402-C:25, I-XXII, the provisions of which are incorporated by reference in their entirety into this Order, and the common law of New Hampshire; and

(bb) The deadline for the filing of claims pursuant to RSA 402-C:26, II, RSA 402-C:37, I, and RSA 402-C:40, II, shall be one year from the date of this Order.

Date: 6/13/03  
Time: \_\_\_\_\_

By: *William A. M. Quie*  
Presiding Justice



## PARTIES

Plaintiff is a resident citizen of Harris County, Texas. Defendants, George M. Bishop, Charles K. Peterson and David E. Sharp are attorney's at law for the State of Texas; agents, employees, shareholders, partners, and/or independent contractors, engaged in a relationship with George M. Bishop & Associates, P.C., a Professional Corporation, and/or Bishop, Peterson & Sharp, P.C., a Professional Corporation, in the practice of law. Defendants have his/it's principal place of business at Houston, Harris County, Texas.

Defendants, BISHOP, are Professional Corporations, in the practice of law. Defendant's principal place of business is in the town of Houston, Harris County, Texas, and may be served with citation by serving its agent, George M. Bishop at 3000 Smith, Houston, Harris County, Texas 77006. The individual named Defendants may be served at their homes or respective places of business shown as 4314 Osby Drive, Houston, 7709 for Peterson and 3000 Smith for Bishop and Sharp.

## STATEMENT OF FACTS

1. On November 6, 1992, Plaintiff and Defendant signed a Contingency Fee Contract. BISHOP agreed to represent Plaintiff in Cause No. 91-025939 until termination of the case through settlement, trial, appeal or otherwise. Defendant also agreed to put forth his best effort on behalf of Plaintiff in Cause No. 91-025939.

In consideration, Plaintiff agreed to assign to BISHOP 40% interest in all recovery Plaintiff may receive in Cause No. 91-025939, including attorneys' fees.

2. On October 25, 1993, on the day of trial in that lawsuit, Defendants in Cause No. 91-025939 offered to settle the suit. Defendant, in an oral modification of the prior agreement, offered the following:

- a) to lower his percentage of the recovery to 33 1/3%
- b) assured Plaintiff that an injunction dating from July 1991 would be lifted as part of the settlement
- c) assured Plaintiff he would not have to sign a non-compete in order to sell his company, National Parts Systems (NPS)
- d) urged Plaintiff's acceptance of the nomination of Joe H. Reynolds as receiver for NPS without allowing Plaintiff investigation of Reynolds's background.

3. In a letter, dated November 19, 1993, BISHOP affirmed that the fee agreement had been reduced to 33 1/3%.

4. On December 7, 1993, Plaintiff submitted a bid for NPS.

5. In a letter, dated December 12, 1993, Plaintiff offered to settle with BISHOP for a total amount paid in hand and additional funds to be paid for a total of \$100,000.00 in attorney's fees in the event that Plaintiff's bid was accepted as the high bid and there was little or no recovery of proceeds to Plaintiff and therefore less proceeds to BISHOP.

6. On December 14, 1993, BISHOP sent to Reynolds, a fax from Plaintiff addressed to BISHOP.

7. In summary, the correspondence between Plaintiff and BISHOP could be characterized in the following fashion:

a. Plaintiff wrote many letters to BISHOP desperately pleading for information as to the status of the sale of his company, the identity of the high bidder, copies of the records of his company and increasingly critical of the receivers actions. Plaintiff asked BISHOP to advocate his rights by taking various types of action including asking the court for the removal of the receiver.

b. BISHOP's letters from December 15, 1993 until April 8, 1994 were overwhelmingly concerned with BISHOP's fees and did not address concerns of Plaintiff, his client. BISHOP refused to present a motion to remove the receiver.



13. BISHOP called Saturday, April 9, 1994, and told Plaintiff's wife that Plaintiff was not to come to court without his new lawyer.

14. On April 11, 1994, without Plaintiff's being present, visiting judge of the trial court heard and granted BISHOP's motion to withdraw as counsel. At the same hearing, the receiver made a motion of his own to enjoin Plaintiff from contacting any of the parties or counsel in this suit. The receiver alleged threats to his life made by Plaintiff, and testimony was offered against Plaintiff by BISHOP. Another witness, Robert Blaine was mentioned, but the record is unclear if he actually testified.

15. On April 15, 1994, BISHOP filed Third Party Intervention in suit to enforce the fee agreement or in the alternative recover \$300,000.00. In his motion to intervene, BISHOP also asked that receiver's fees and other expenses be taken out of Plaintiff's 60% of recovery.

16. On April 18, 1994, the visiting trial court judge signed order enjoining Plaintiff from contacting the parties and counsel in the lawsuit.

17. On April 18, 1994, visiting trial court, granted summary judgment in favor of BISHOP against Plaintiff, his former client.

18. On June 9, 1994, BISHOP attempted to interfere with witness, Robert Blaine, at deposition.

19. On July 6, 1994, Plaintiff sent notice of violations of Texas Deceptive Trade Practice-Consumer Protection Act to BISHOP.

20. In August, 1994, BISHOP wrote Plaintiff advising him that he had heard from counsel that Schwarz, the buyer of NPS, had no intention of funding the sale. BISHOP asked Plaintiff to join with him in making a motion to enforce the funding the sale of NPS. Plaintiff declined to join BISHOP in his motion.

21. BISHOP made a motion to the court to force the funding of the sale of NPS and the award of fees to him in the amount of 40% of Plaintiff's recovery. To date that motion has not been ruled on and the sale of NPS has not been funded.

#### **CAUSES OF ACTION**

#### **CLAIMS UPON WHICH RELIEF MAY BE GRANTED**

22. Plaintiff will show that he and BISHOP had an attorney client relationship as evidenced by the contingency fee agreement. It has been long established that the "relationship between attorney and client is highly fiduciary in nature and their dealings with each other are subject to the same scrutiny as a transaction between an ordinary trustee and his 'cestui que

trust.'" The burden of establishing its perfect fairness, adequacy and equity is thrown upon the attorney...." Archer v. Griffith, 390 SW2d 735 (1964). Also see State v. Baker, 539 SW2d 367 (1976) and Avila v. Havana Painting Co., Inc, 761 SW2d 398.

23. Plaintiff will show that BISHOP holds himself out to be a board certified specialist in civil litigation and civil appeals. Plaintiff relied on BISHOP's special expertise in engaging him to represent Plaintiff. In King v. Flamm, 442 SW2d 679, 681 (Tex 1969) it was held that "One who holds himself out as a specialist is generally expected to possess a higher degree of skill and learning than a general practitioner." Also see Baker v. Story, 621 SW2d 639 (Tex App-San Antonio 1981).

24. Plaintiff asserts that BISHOP owed duties of care to Plaintiff pursuant to Texas Rules of Professional Conduct and Texas Disciplinary Rules in the following areas:

- a. fee arrangements
- b. confidentiality of client information
- c. conflict of interest
- d. advocacy
- e. terminating representation
- f. misconduct

25. Plaintiff will show that BISHOP willfully, knowingly, maliciously and treacherously breached those duties owed to Plaintiff and that Plaintiff suffered damages which are ongoing and cumulative as a proximate result of BISHOP's breach of his duties to his client.

26. Plaintiff will show that BISHOP's breaches of duty constitute legal malpractice consisting of the following elements: Breach of Fiduciary Duty, Breach of Contract, Negligence, Fraud, and Conspiracy. Plaintiff will also show that BISHOP's actions violated Plaintiff's rights as a consumer of legal services as protected by the Texas Deceptive Trade Practices-Consumer Protection Act (DTPA).

#### **MALPRACTICE-NEGLIGENCE**

27. Plaintiff will show that BISHOP was negligent in that:

a) BISHOP made errors in counseling his client on the effect of releases. Defendant did not counsel his client on the effects of not putting their oral agreements into writing. Defendant made oral agreements with Plaintiff concerning the lowering of fee agreements, using that modification of the contingency fee agreement to induce Plaintiff to agree to the settlement of his lawsuit, Cause No. 91-025939. BISHOP then breached that agreement by unilaterally asserting the original terms of the contingency fee contract without agreement of Plaintiff.

b) BISHOP abruptly withdrew his representation of Plaintiff, leaving Plaintiff without assistance of counsel and without time to prepare for trial.

c) BISHOP made errors at time of settlement in inducing Plaintiff to accept a hastily conceived settlement by ostensibly

lowering his fees, and by nominating a receiver who was not impartial and who BISHOP knew had close relationships with Schwarz, the defendant in Cause No. 91-025939 and Schwarz's counsel Grant Cook (COOK). Plaintiff was required to come up to opposing counsels office at 8:00 P.M. and sign off on an agreement that Plaintiff discovered had many errors in the light of day, having more time to digest the exact agreement terms. When Plaintiff called BISHOP's attention to the error made in a \$ 20,000.00 deduction to come from Plaintiffs proceeds payable to Schwarz rather than NPS, BISHOP refused to notice opposing counsel of the typographical error. The amount should have been noted as to NPS rather than Schwarz with Plaintiff owning 50% of the amount and would have returned \$ 10,000.00 directly to Plaintiff. BISHOP refused to call the error to opposing Counsel attention for correction, thereby costing Plaintiff \$ 10,000.00 from his proceeds of any sale. This was gross negligence on the part of BISHOP and a total violation of ethics and duty to his client.

d) BISHOP induced Plaintiff to sign the late night settlement agreement on producing a signed copy of a release to/from Quality Seal Company stating that the Injunction would be removed against Plaintiff. Plaintiff understood that the sale of NPS was imminent to a buyer and the injunction would be removed immediately. BISHOP knew that Plaintiff would never sign the settlement agreement without BISHOP's personal guarantee that the injunction would immediately be removed in order to allow Plaintiff to obtain a job. This was one of the most important aspects of the

settlement agreement to Plaintiff. BISHOP himself deceived his own client into signing the settlement agreement with the proffered Quality Seal release stating the injunction was to be released immediately on sale of NPS, thought to be just a matter of days. BISHOP as it turned out was desperate to convince his client to sign on the dotted line in order to guarantee funds for himself. It was later discovered that BISHOP had numerous liens including tax liens against him that had to be dealt with, hence the need for assurance of funds forthcoming for his own personal debts.

e) BISHOP made representations to Plaintiff at the time of settlement that an injunction not to compete that had been against Plaintiff since July, 1991, would be lifted if he settled the lawsuit instead of going to trial. In January of 1994, while still representing Plaintiff in this lawsuit, BISHOP in an unsolicited attempt did sabotage Plaintiff's business plans by voluntarily mentioning the injunction against Plaintiff in a letter to Plaintiff's banker. BISHOP's actions in that matter tortiously interfered with Plaintiff's business relationship with his banker as he was not able to obtain a loan to start a new business. The tortious interference was a deliberate attempt to prevent Plaintiff from starting his own business.

28. Plaintiff will show that BISHOP failed to exercise reasonable and ordinary care and diligence in applying the skill and knowledge at hand in the prosecution of the lawsuit, Cause No.

91-025939, even though he is held to a higher standard of care because he is board certified in civil litigation.

29. Plaintiff will show that BISHOP's negligence and malicious conduct was the proximate cause of damages suffered by Plaintiff. Plaintiff will show that BISHOP had only his own monetary interest in mind at all times with the aforementioned plan to deceive Plaintiff into signing the settlement agreement, then afterward deceiving Plaintiff into thinking a sale of NPS was imminent, then later sabotaging a loan from Plaintiffs bank in order to keep Plaintiff helpless and financially destitute to facilitate BISHOP obtaining his own funds. Plaintiff would have prevailed at trial if not for the settlement induced by BISHOP's misrepresentations and would have prevailed on appeal if BISHOP had prosecuted the suit through appeals as promised in the contingency fee contract.

Defendants in Cause No. 91-025939 which BISHOP was employed to prosecute were solvent and with proper prosecution the claim against them could have been recovered and collected. BISHOP's nomination of a receiver who was not impartial and who mishandled the receivership along with BISHOP's refusal to take steps to advocate Plaintiff's position in regard to the receiver, have caused needless delay, expense and mental anguish to Plaintiff.

30. In Cosgrove v. Grimes, 774 SW2d 662 (Tex 1989) it was held, "There is no subjective good faith excuse for attorney negligence. A lawyer in Texas is held to the standard of care which

would be exercised by a reasonably prudent attorney....However, allowing the attorney to assert his subjective good faith, when the acts he pursues are unreasonable as measured by the reasonably competent practitioner standard, creates too great a burden for wronged clients to overcome."

31. Plaintiff is entitled to damages in an amount to adequately compensate him for his losses; loss of property, loss of earning capacity and mental anguish.

#### **MALPRACTICE-BREACH OF FIDUCIARY DUTY**

32. Plaintiff will show that BISHOP breached his fiduciary duty owed to Plaintiff in regard to fees. The parties signed a contingent fee contract on November 6, 1992 at the beginning of BISHOP's representation of Plaintiff.

33. On October 25, 1993, on the day of trial, BISHOP offered to lower his percentage of the recovery to 33 1/3% from 40% of Plaintiff's recovery in order to induce Plaintiff to accept a settlement in the case.

34. Defendant did not reduce the oral agreement to a formal writing and did not advise Plaintiff of the consequences of not doing so. In Burgin v. Godwin, 167 SW2d 614, 619, "attorneys had written agreement with client for compensation, which parties



subsequently modified by an oral agreement. The attorneys later attempted to avoid the oral agreement by asserting the statute of frauds. In holding attorneys not entitled to protection of statute of frauds, Amarillo Court of Appeals reasoned that attorneys are under a duty to act with the most scrupulous fidelity and reveal to client exact status brought about by the contractual relationship and the need to reduce the oral modification to writing."

35. Defendant subsequently referred to reduction in fees in letters to Plaintiff, dated November 19, 1993, December 15, 1993, December 16, 1993, December 28, 1993, January 6, 1994, January 7, 1994, and January 10, 1994.

36. On February 22, 1994, BISHOP unilaterally restored his fees to the original 40% without agreement of Plaintiff.

37. Plaintiff will show that BISHOP's fees were his primary concern in his representation of Plaintiff. BISHOP induced Plaintiff to settle in order to more quickly recover his percentage of the proceeds of the sale of Plaintiff's corporation.

38. When Plaintiff submitted the second high bid for the corporation, reflecting true value of the inventory, in order to insure fair market value paid for the corporation, BISHOP began to realize that if Plaintiff bought the company there would be smaller proceeds to divide.

39. Plaintiff offered to settle with BISHOP for a total of \$100,000.00 in the event that Plaintiff was awarded the sale of the company. BISHOP, knowing a bigger payoff was guaranteed if NPS sold to someone else, declined Plaintiff's offer.

40. In order to insure that the company was sold to anyone other than Plaintiff, BISHOP joined with Reynolds, the receiver and Schwarz, the defendant in Cause No. 91-025939, and with the aid of the trial court judge, a close friend of BISHOP, successfully shut Plaintiff out of the sale process entirely.

41. Plaintiff had real concerns about the conduct of the receiver, the true value of the inventory, a potential huge IRS tax liability and the sale of NPS to other than the highest bidder for less than fair market value. Those concerns were not addressed by BISHOP except to encourage Plaintiff to let Reynolds handle everything as he was doing a good job.

42. BISHOP actually assisted the Receiver in closing a sale of NPS to Schwarz, the low bidder with the caveat in the sale contract that the temporary injunction would be converted to an implied permanent injunction by the language of the sale contract. BISHOP actually participated in a plan against his own client for the express purpose of being promised his legal fees to be paid by the Receiver immediately to BISHOP. BISHOP, in effect, paved the way for the receiver and Schwarz to steal Plaintiff's equity at a

reduced price, hide the true inventory value and cover up the tax liability to Schwarz/s advantage over Plaintiff, in order to get a substantial quick fee.

43. Plaintiff will show that the correspondence between Plaintiff and BISHOP between December of 1993 and April of 1994 was characterized by Plaintiff's desperate attempts to communicate his concerns, through his counsel, BISHOP, to the receiver and the court, BISHOP's exclusive concern was with his own fees in the matter.

44. In April, 1994, BISHOP was allowed by the trial court visiting judge to abruptly withdraw from his representation of Plaintiff, leaving Plaintiff without assistance of counsel and without time to prepare for trial.

45. BISHOP filed for Third Party Intervention to enforce payment of his fees at the rate of 40% recovery of Plaintiff's proceeds or in the alternative to be awarded \$300,000.00 in an outrageous display of malice towards his client as evidenced by BISHOP's further request that all receiver's fees and expenses be taken out of Plaintiff's 60% share of the proceeds. The amount requested by BISHOP would have been at least FOUR TO AS MUCH AS SIX TIMES MORE than Plaintiff would have received from the sale of Plaintiff's own stock.

46. Plaintiff will show that as a further effrontery to Plaintiff, BISHOP contacted Plaintiff in August, 1994 and advised Plaintiff that Schwarz had no intention of funding the sale of NPS. BISHOP brazenly asked Plaintiff to join with him in asking the court to force the funding of the sale of NPS, with BISHOP receiving his beloved 40% or \$300,000.00 of Plaintiff's proceeds. Plaintiff refused to join BISHOP in his self-serving motion to the court. BISHOP's motion has yet to be ruled on and the sale has yet to be funded.

47. Plaintiff will show that BISHOP breached his fiduciary duty to his client in other ways as well.

a) BISHOP released confidential attorney/client communications to the receiver.

b) BISHOP had a conflict of interest with his client and chose to serve his own interests over that of his client by shutting Plaintiff out of the manipulations of the receiver and by urging Plaintiff to be conciliatory to the receiver. BISHOP's sole goal in this litigation was to maximize his own recovery at the cost of Plaintiff's rights that he had contracted to represent. Plaintiff's concerns and pleas were never properly addressed by BISHOP and were certainly never advocated to the receiver.

c) BISHOP further breached his fiduciary duty to Plaintiff by terminating his representation in an abrupt and unwarranted fashion, leaving Plaintiff unrepresented and unprepared at a crucial point in the litigation, at a hearing for temporary

injunction against Plaintiff brought improperly by receiver, at BISHOP's own urging and planning.

d) The ultimate misconduct by BISHOP occurred immediately after withdrawing as Plaintiff's counsel. In the same hearing of April 11, 1994, BISHOP falsely testified against Plaintiff concerning an alleged threat made by Plaintiff against the receiver's life.

48. Plaintiff will show that BISHOP knew that there was no threat against receiver's life, there was no police report filed as alleged at the hearing, and that BISHOP's corroborating witness, Robert Blaine, did not really hear a threat by Plaintiff against receiver's life as alleged at the hearing.

49. Plaintiff will show that BISHOP compounded his misconduct at a later deposition of Robert Blaine on June 9, 1994, by attempting to interfere with the witness. BISHOP knew that Blaine would testify that he had not heard a threat made by Plaintiff and, in fact, did not know Plaintiff at all. Plaintiff will show that Blaine did so testify.

50. Plaintiff asserts that BISHOP's lies in open court and tampering with a witness at deposition constitutes outrageous misconduct and breach of fiduciary duty to Plaintiff.

51. Plaintiff will show that BISHOP's breach of fiduciary duty and misconduct had damaged Plaintiff. BISHOP's actions have interfered with the sale and funding of the sale of NPS and the resultant loss of funds to Plaintiff. BISHOP's flagrant breaches of duty have trampled on Plaintiff's rights to due process, property rights and adequacy of counsel. BISHOP's breaches of duty have subjected Plaintiff to public humiliation and resultant mental anguish.

#### **MALPRACTICE-BREACH OF CONTRACT**

52. Plaintiff will show that an element of BISHOP's malpractice is breach of contract. Plaintiff will show that on November 6, 1992, Plaintiff and Defendant entered into a contingency fee contract for legal services.

53. Defendant promised to "represent Plaintiff in Cause No. 91-025939 until termination of the case through settlement, trial, appeal or otherwise." Defendant also promised to "put forth his best effort on behalf" of Plaintiff in Cause No. 91-025939.

54. In consideration, Plaintiff agreed to assign to BISHOP 40% interest in all recovery Plaintiff may receive in Cause No. 91-025939, including attorneys' fees.

55. Plaintiff will show that BISHOP breached the contingency fee contract by:

a) his actions at the time of settlement, including nominating a receiver for NPS who was not impartial and making misrepresentations to Plaintiff concerning the lifting of a temporary injunction.

b) his abrupt withdrawal of his representation of Plaintiff in April, 1994.

c) his subsequent false testimony against Plaintiff at the hearing of April 11, 1994.

d) his deplorable failure to put forth his best efforts on behalf of Plaintiff, his client, while to the contrary, working with Plaintiff's adversaries to Plaintiff's detriment.

56. Plaintiff has at all times been ready and willing to fulfill his part of the contract. Plaintiff offered a lump sum of \$100,000.00 to BISHOP to settle the contract in the event that there were no proceeds of the sale to NPS if he were named high bidder.

57. Plaintiff will show that Defendant's failure to meet the terms of the contingency fee contract has caused severe damage and loss to Plaintiff. Plaintiff is entitled to an award of damages which will compensate him for his losses of property, earning capacity and mental anguish.

## MALPRACTICE-FRAUD

58. Plaintiff will show that another element of Defendant's malpractice is fraud and misrepresentation.

59. At the time of settlement of the lawsuit on October 25, 1993, BISHOP made the following oral representations to Plaintiff to induce Plaintiff to settle the lawsuit.

a) BISHOP would lower his fees from 40% of Plaintiff's recovery to 33 1/3%.

b) The temporary injunction of July, 1991, would be lifted at the time of settlement.

c) Plaintiff would not have to sign a non-compete in order to close the sale of NPS.

d) BISHOP nominated and endorsed Joe Reynolds as receiver. BISHOP urged Plaintiff to accept the receiver even though Plaintiff knew nothing about Reynolds.

60. At the time of settlement, BISHOP neglected to mention the following facts:

a) Reynolds, the receiver for NPS and Schwarz, the defendant in Cause No. 91-025939 were life-long friends and also had an attorney/client relationship.

b) Reynolds, the receiver for NPS and Schwarz's defense counsel, Grant Cook (COOK) are partners in Reynolds, White, Allen



and Cook, a legal partnership which is an active Corporation as certified by the Texas Secretary of State.

c) Reynolds, the receiver for NPS and Charles Peterson, BISHOP's partner in BISHOP, Peterson, and Sharp, are partners in the firm, Reynolds, Cunningham, Cordell and Peterson, a legal partnership which is an active corporation as certified by the Texas Secretary of State.

61. Plaintiff relied to his detriment on BISHOP's oral representations in accepting Joe Reynolds as receiver and in settling the suit instead of going to trial where Plaintiff would most likely have prevailed, in all matters of law and on all claims. This is evidenced by the Settlement agreement itself in favor of Plaintiff.

62. Plaintiff would never have agreed to the appointment of Reynolds as receiver for NPS if he had known about the incestuous relationships among REYNOLDS/SCHWARZ/COOK/BISHOP.

63. Plaintiff will show that BISHOP's misrepresentations constitute fraud and resulted in damage to Plaintiff by receiver's refusal to communicate with Plaintiff, receiver's manipulating the sale of NPS to accommodate Schwarz's interests, receiver's selling NPS to Schwarz, who was not the high bidder, at below market value, receiver's allowing Schwarz not to fund the sale while enjoying the benefits of ownership, BISHOP's changing his offer to lower fees,

and the refusal of the trial court to lift the temporary injunction of July, 1991.

64. Plaintiff's damages as a result of BISHOP's fraudulent misrepresentations are ongoing and cumulative and Plaintiff is entitled to money damages in an amount that will adequately compensate him for his monetary losses, loss of earning capacity and mental anguish.

#### **MALPRACTICE-CONSPIRACY**

65. Plaintiff will show that as another element of BISHOP's malpractice BISHOP engaged in conspiracy with Reynolds, Schwarz, Cook and the trial court to deprive Plaintiff of his rights, to maximize BISHOP's fees in this matter, and to allow the co-conspirators to more easily reach their goal of enabling Schwarz to purchase NPS for the least amount of money, decreasing Plaintiff's equity share, allowing receiver to milk the corporation for hefty receiver's fees to be paid out of Plaintiff's share of the proceeds and the manipulation of the inventory of NPS in order to avoid a huge tax liability incurred by Schwarz as chairman of the board of NPS.

66. The original objective of Schwarz and Cook was to get NPS away from Plaintiff for the least amount of money.

67. BISHOP's nomination of Reynolds, and endorsement of Reynolds by the trial court, provided the tool to accomplish the objective. The close relationship among Reynolds, Schwarz, Cook and BISHOP and subsequent actions is evidence of a meeting of the minds. All the conspirators knew that pursuant the Texas Receivers Act of 1899, Reynolds could not be the receiver for NPS and all five kept quiet regarding Schwarz's being a client of Reynolds and Cook's being a current partner of Reynolds.

68. BISHOP's job was to keep Plaintiff out of the way When Plaintiff became frustrated with the lack of response from BISHOP and Reynolds and no closing of the sale of NPS as promised, BISHOP saw his chance and concocted a story, with Reynolds, Schwarz and Cook, to accuse Plaintiff of making threats against the receiver's life. Reynolds used the contrived threat to file an improper motion for permanent injunction with the trial court to enjoin Plaintiff from communicating with all the other parties and counsel involved in the lawsuit. BISHOP withdrew as counsel to Plaintiff and then falsely testified against his newly former client.

69. The trial court granted the injunction based on false testimony of Reynolds, a false police report supposedly filed by Reynolds, testimony by Reynolds secretary, false testimony by BISHOP, and testimony by Robert Blaine who allegedly overheard Plaintiff's threat.

70. Plaintiff will show that with Plaintiff out of the way, the trial court authorized the sale of NPS to Schwarz, who was not the highest bidder. The trial court authorized all of the receiver's actions including his breach of the settlement agreement of October, 1993. The trial court also authorized receiver's fees including \$50,000.00 extra in order to defend himself against Plaintiff if necessary.

71. Everyone of the conspirators got something out of the conspiracy at the expense of the Plaintiff. Schwarz bought NPS at a price below fair market value and decreased Plaintiff's equity share by falsifying inventory with the blessing of the receiver. Receiver received fees for himself and his attorney as well as \$50,000.00 extra to defend himself. BISHOP received summary judgment from the trial court to enforce his fees. Cook received his attorney fees from NPS in violation of the settlement agreement.

72. Plaintiff will show that, to date, the sale of NPS has not been funded; Schwarz continues to enjoy the benefits of ownership of NPS without paying; Cook, Reynolds and his counsel were paid by NPS; and Plaintiff has not received any proceeds of the sale.

73. It was held in Great National Life Ins. Co v. Chapa, 377 SW2d 632, 635 (Tex 1964) that "A civil action for conspiracy will lie if the acts of the conspirators are not only malicious but

without legal justification and are performed with the intent of injuring another or if the natural and necessary consequences of the acts is the oppression of an individual."

74. Plaintiff will show that there can be no doubt that the actions taken by BISHOP and his co-conspirators meet the test of civil conspiracy as set forth in Great National Life. BISHOP participated in the conspiracy with ill will, bad or evil motive and with such gross indifference to the rights of his client as to amount to a malicious, wanton and willful act with intent to injure.

75. Plaintiff will show that BISHOP has collusively with Plaintiff's adversaries, willfully and treacherously, failed to prosecute the case in good faith with proper care to the best of his ordinary skill and ability when he could and should have done so.

76. Plaintiff will show that BISHOP's part in the conspiracy did serious disservice and damage to Plaintiff, his client. Plaintiff is entitled to money damages in an amount necessary to compensate him for the losses he has suffered to his property, earning capacity and mental anguish.

CAUSE OF ACTION-DTPA

77. Plaintiff will show that on July 6, 1994, Plaintiff served Defendant with notice of complaint as required under the Texas Deceptive Trade Practice-Consumer Protection Act (DTPA).

78. In that notice Plaintiff alleged that BISHOP had perpetrated one or more of the false, misleading, or deceptive acts or practices prohibited and declared unlawful under §17.46(b) of the DTPA including the following subsections: (3), (7), (9), (11), (12), and (23).

79. Plaintiff demanded compensation for all actual damages he suffered as a result of BISHOP's violations of the DTPA.

80. Plaintiff will show that BISHOP declined to cure the damages to Plaintiff resulting from BISHOP's violations of the DTPA and furthermore declined to respond to Plaintiff's notice in any way.

81. The two requirements to establish consumer status under DTPA are that the plaintiff has sought or acquired goods or services by purchase or lease and that the goods or services purchased or leased form the basis of the complaint.

82. For purposes of filing a claim pursuant to §17.46 of DTPA, Plaintiff may be considered a consumer of legal services as described in Debakey v. Staggs, 612 SW2d 924, where respondents were "'consumers' as defined by DTPA § 17.45(4) in connection with a contract to furnish legal services."

83. Plaintiff will show that he is a consumer of legal services protected by the DTPA.

84. Plaintiff will show that BISHOP is a seller of legal services and owes a duty to Plaintiff as described in Texas Disciplinary Rules of Professional Conduct. The standard of care required of Defendant in his professional capacity is an implied warranty of workmanlike conduct.

85. In Melody Home Manufacturing Co. v. Barnes, 741 SW2d 349 (Tex 1987), the court recognized the implied warranty of workmanlike conduct as applied to professionals "...implied warranties are created by operation of law and are grounded more in tort than in contract." The court acknowledged that services are just as important as products in the eyes of the consuming public.

86. The court in Melody Home also held that "the legislature's rejection in 1973 of proposals that would have exempted insurance agents, brokers and licensed professionals indicated that the ACT was intended to apply to all service providers and supported

recognizing an implied warranty of good and workmanlike performance."

87. The Melody Home court defined "good and workmanlike" as "that quality of work performed by one who has the knowledge, training, or experience necessary for the successful practice of a trade or occupation and performed in a manner generally considered proficient by those capable of judging such work."

88. Plaintiff will show that BISHOP breached that implied warranty by violating the following DTPA subsections:

- a) §17.46(b)(3)-causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another;
- b) §17.46(b)(7)-representing that goods or services are of a particular standard, quality or grade;
- c) §17.46(b)(9)- advertising goods or services with intent not to sell them as advertised;
- d) §17.46(b)(11)-making false or misleading statements of fact concerning the reasons for, existence of, or amount of price reductions;
- e) §17.46(b)(19)-representing that a guarantee or warranty confers or involves rights or remedies which it does not have or involve;
- f) §17.46(b)(23)-the failure to disclose information concerning goods or services which was known at the time of the transaction into which the consumer would not have entered had the information been disclosed;

89. Plaintiff incorporates Paragraphs 1-88 above as if set forth in their entirety. Plaintiff will show that the causes of



action for malpractice enumerated in Paragraphs 1-88 above serve as the basis for a complaint pursuant to DTPA.

90. Plaintiff will show that BISHOP's actions constituting malpractice are breaches of an implied warranty of good and workmanlike performance. Defendant's breaches are violations of Plaintiff's consumer rights that are protected under DTPA.

91. Plaintiff will show that the damages resulting from Defendant's malpractice and DTPA violations are ongoing and cumulative. Plaintiff is entitled to monetary damages in an amount that will compensate him for the losses suffered to his property, earning capacity and mental anguish.

#### **SUMMARY**

Plaintiff complains that Defendant signed an agreement with Plaintiff accepting 40% of Plaintiff recovery as attorney's fees without giving or intending to give value received. Plaintiff has willfully, negligently, recklessly and fraudulently committed a breach of contract in that he has, collusively with Plaintiff's adversaries, willfully and treacherously and wholly failed to prosecute the case in good faith with proper care to the best of his extraordinary skill and ability in the 190th District Court of Harris County, when he could have done so.

Defendant has failed to make good use of all law and principles of law known to him and pointed out to him, and relied on by Plaintiff as applicable to and controlling in said lawsuit. Plaintiff has wholly failed to carry and prosecute this lawsuit to final termination to the appellate courts as originally intended and agreed by and between Plaintiff and Defendant when he could and should have done so.

And by reason of BISHOP's breach of contract, conspiracy, fraud, treachery and gross negligence and BISHOP's failure and refusal to urge and apply all law applicable to the case, and by reason of undue influence and reversible error of trial court, the case in the 190th District Court was unjustly, erroneously and egregiously decided against Plaintiff in selling NPS to low bidder in order to strip Plaintiff of the entire worth of his 50% shares.

Defendants in Cause No. 91-025939, the suit BISHOP was employed to prosecute, were solvent and with proper prosecution the claim against them could have been recovered and collected by Plaintiff.

#### PRAYER FOR RELIEF

Plaintiff respectfully requests the following damages based on Texas applicable Rules and statutory law:

a) Actual damages from loss of entire equity in NPS of Plaintiffs 50% shareholder value in the amount as established by prospective purchasers and sales brokers in amount of at least \$750,000.00

b) Loss of earnings due to injunction prohibiting Plaintiff from working in his chosen field from time BISHOP was employed in November, 1992 to date in an amount of at least \$350,000.00.

c) Loss of profits due Plaintiff from November, 1992 to date that would be due Plaintiff on his 50% shareholder value that would have normally come to plaintiff as return on equity in an amount equal to or greater than was paid to opposing counsel from Plaintiffs 50% shareholder value plus accrued profits of at least \$300,000.00.

d) Recovery of fees already paid to BISHOP from his 33% fee schedule paid to him by Receiver of at least \$20,000.00.

e) Recovery of costs of court and appeals bonds paid by Plaintiff since June 1991 in the amount of at least \$25,000.00.

f) Loss of company benefits due Plaintiff from injunction which would include fully paid company automobile, vacation and sick leave pay and miscellaneous expenses of at least \$100,000.00.

g) Sustainable actual damages of at least \$1,545,000.00 to date of this petition, however ongoing and cumulative to date of trial.

h) Emotional damages as allowed from trauma, distress forced onto plaintiff and shared by his wife and family due to intentional infliction of emotional distress by malicious, reckless and wanton behavior of BISHOP of at least \$1,000,000.00 to date of this petition, however ongoing to date of trial.


i) Treble the amount of actual and emotional damages as provided for in the Deceptive Trade Practices Act for failure to provide the services contracted for, lacking requisite skills, misrepresentation, false advertising which induced Plaintiff to contract with BISHOP, in the amount of at least \$7,635,000.00.

j) Punitive and exemplary damages from malpractice that was done with malicious intent in the amount of at least \$3,000,000.00.

Plaintiff respectfully requests the court to evaluate the malicious intent of an attorney betraying his own client in order to gain as much financial benefit for himself as possible at the expense of his client and his client's family and award all actual damages, punitive and exemplary damages commensurate with

applicable law and the full amount provided for in the D.T.P.A. statutes. Plaintiff reserves the right to amend his damage claims as actual damages and further suffering are incurred to time of trial.

Respectfully submitted,

  
HARRY L. BOWLES, Attorney ProSe  
306 Big Hollow Lane  
Houston, Texas 77042  
(713) 784-8966

ATTORNEY OF RECORD:  
Harry L. Bowles for Plaintiff,  
Harry L. Bowles

STATE OF TEXAS

NOTARY PUBLIC

VERIFICATION

COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared HARRY L. BOWLES who, being by me duly sworn, did depose and state as follows:

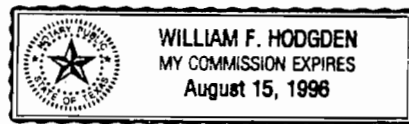
"My name is Harry L. Bowles. I have read and understand the foregoing, Original Petition filed against Bishop et al, have personal knowledge of the contents of the foregoing, and the statements made therein are true and correct to the best of my knowledge, information and belief."

*Harry L. Bowles*  
Harry L. Bowles

SWORN TO AND SUBSCRIBED before me, the undersigned authority, on this 31st day of August, 1995, to which witness my hand and official seal.

*William F. Hodgden*  
WILLIAM F. HODGEN, Notary Public  
for the STATE OF TEXAS.

Notary's Commission expires: 8-15-96



GEORGE M. BISHOP & ASSOCIATES

ATTORNEYS AT LAW

3000 SMITH

HOUSTON, TEXAS 77006

(713) 521-9797

FAX: (713) 521-3125

December 29, 1993

GEORGE M. BISHOP  
BOARD CERTIFIED - CIVIL TRIAL LAW  
BOARD CERTIFIED - CIVIL APPELLATE LAW  
TEXAS BOARD OF LEGAL SPECIALIZATION

Home Insurance Company  
Claim Department  
13th Floor  
10 Exchange Place  
Jersey City, NJ 07302

085-600764-174  
DRWP

JAN 04 1993

RE: Lawyer's Professional Liability Policy No. LPL-F871578-1  
insuring Bishop Peterson & Sharp, P.C.

RE: No. 91-025939; Harry L. Bowles and Quality Seal Company  
v. Charles N. Schwarz, Jr., Rosalie Schwarz and JoAnn  
Lana; In the 190th District Court of Harris County, Texas

Gentlemen:

Harry Bowles is a client of Bishop Peterson & Sharp, P.C. and whom I have been representing since the firm of Bishop Peterson & Sharp, P.C. was dissolved this past summer. We reached a settlement concerning Mr. Bowles' case and he is apparently now expressing some dissatisfaction with the settlement. The settlement has not yet been funded since the company involved in the settlement was turned over to a receiver so that it might be sold and the proceeds split pursuant to the settlement.

I enclose copies of letters I have received from Mr. Bowles recently concerning his demands that certain deductions be made from the fees due to either me or to Bishop Peterson & Sharp, P.C. I am not inclined to accept any of these offsets and intend to contest them. Mr. Bowles may file a claim for malpractice and I thought you should be on notice of this matter immediately.

Please call me at your convenience should you wish any further details concerning this matter. I will look forward to hearing from you in the near future.

Very truly yours,

*George M. Bishop*  
George M. Bishop *tr*

GMB:tr  
enclosure

EXHIBIT C

08/07/2007 04:18 PM BE063\_474