

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

**BEFORE THE COURT APPOINTED REFEREE
IN THE LIQUIDATION OF THE HOME INSURANCE COMPANY
DISPUTED CLAIM DOCKET**

In Re Liquidator Number:	2009-HICIL-44
Proof of Claim Number:	CLMN711647
Claimant's Name:	Adebowale O. Osijo
Claimant's Number:	CDV-2007-745
Policy or Contract Number:	GL-1692617
Insureds' Names:	Housing Resources Management, Inc., Acorn I, Ltd., & Acorn II, Ltd.
Date of Loss:	October 7, 1988

**CLAIMANT'S OPENING BRIEF REGARDING CLAIM AND
ISSUE PRECLUSION PER ORDER OF 7/21/09**

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CLAIMANT'S OPENING BRIEF REGARDING CLAIM AND ISSUE PRECLUSION PER ORDER OF 7/7/09

I
INTRODUCTION

**California Case Law On Attorney's Authority To Cash A Restricted Settlement Check & Dispose Of The
Check Proceeds To Herself For her Own Use & Purposes**

The California Court of Appeal, Third District, held in *Johnson v California Department of
Correction* (1995) 38 Cal.App.4th 1700, at page 1710, that:

"Whitfield, Plaintiff's attorney, sought a Court order authorizing him to negotiate the Check on behalf of Plaintiff, deduct fees in the amount of \$30,104.266, and place the remaining proceed in a client's trust account. The Court entered an order authorizing Whitfield to negotiate and endorse Plaintiff's name to the settlement draft on Plaintiff's behalf 'due to Plaintiff refusal to cooperate.' However, the Court did not permit Whitfield to withdraw his fees. Instead, the Court ordered that Whitfield was 'authorized to deposit the said settlement check into his client's trust account, until the said dispute between Plaintiff and Attorney Whitfield is resolved through arbitration or otherwise.'"

II
Issues Presented

1. Whether there is a decision of any Court in the entire State of California, be it in the form of an order or a final judgment on the merit, which authorized Attorney Georgia Ann Michell-Langsam to cashed a check, issued by the Home Insurance Company, in the amount of Two Hundred and Fifty Thousand Dollars (\$250,000), made payable into the "Trust Account of Ganong & Michell, as Trustees for Wale O. Osijo, in Full Payment and Final Settlement," without the Claimant's knowledge or consent, on Tuesday, July 30, 1991, in the Liquidator's Case File?

2. Whether there is a decision of any Court in the entire State of California, be it in the form of an order or a final judgment on its merits, which authorized Attorney Georgia Ann Michell-Langsam, to dispose of the proceeds of the aforementioned settlement check, to herself, for her own immediate use and purposes, on Tuesday, July 30, 1991, without the Claimant's knowledge or consent, in the Liquidator's Case File?

3. Whether there is a decision of any Court in the entire State of California, which is res judicata, or collaterally estopped the Claimant from asserting, in this Insurance Liquidation Proceeding that, Attorney Georgia Ann Michell-Langsam settled his personal injury action in the Superior Court of California, Alameda County, titled: Osijo v Housing Resources Management, Inc., Prostaff Security Service, Inc., Acorn I, Ltd., and Acorn II, Ltd., Case No. C-649881, on Tuesday, July 30, 1991, without his knowledge or consent, or an express authorization on the record, in the Liquidator's Case File?

III

Standards Of Review Of Issues of Res Juridicata & Collateral Estoppel In The State Of California

a. Holding Of The United States Supreme Court On The Issue Of Collateral Estoppel

“Collateral estoppel cannot apply when a party did not have a full and fair opportunity to litigate an issue.” *Allen v McCurry*, 499 U.S. 90, 95 (1980). Thus, the issue before this Insurance Liquidation Proceeding is whether the Claimant ever had a full and fair opportunity to litigate the issue of Attorney Georgia Ann Michell-Langsam’s authority to settle of his personal injury case, in the Superior Court of California, Alameda County, without his knowledge or consent, on Tuesday, July 30, 1991?

b. Holding Of The California Supreme Court On The Issue Of Collateral Estoppel

The California Supreme Court held in *Hernandez v City of Pomona* (May 28, 2009) ___ Cal.4th ___ that: “Collateral estoppel precludes relitigation of issues argued and decided in prior proceedings. Traditionally, we have applied the doctrine only if several thresholds are fulfilled. First, the issue sought to be precluded from litigation must be identical to that decided in the former proceeding. Second, this issue must have been actually litigated in the former proceeding. Third, it must have been necessarily decided in the former proceeding. Fourth, the decision in the former proceeding must be final and on the merits. Finally, the party against whom preclusion is sought must be the same as, or in privity with, the party to the former proceeding. For purposes of collateral estoppel, an issue was actually litigated, if it was properly raised, submitted for determination, and determined in that proceeding. In considering whether these criteria has been met, Courts look at the entire record from the prior proceeding, including the pleadings, the evidence, the jury instructions, and the special jury finds or verdicts. The identical issue requirement addresses whether ‘identical factual allegations’ are at stake in the two proceedings, not whether issues or disposition are at same.”

c. Holding Of The California Appellate Court The Issue That Was Actually Litigated

The California Court of Appeals, Second District, Division VII, held in *Schaefer/Karpf Productions v CNA Insurance Companies* (1998) 64 Cal.App.4th 1306, 1314 that: "To determine whether an issue was actually litigated, 'the court in the subsequent action cannot rely exclusively on the findings in the underlying action but must carefully scrutinize the pleading and proof. This scrutiny includes looking behind the findings at the evidence presented to determine what was actually decided. The party asserting collateral estoppel must prove the issue was raised, actually submitted for determination and determined and that contrary evidence on the issue was not restricted."

d. Decisions Where The Court Lacked Jurisdiction

There is a difference between a dismissal on the merit and a dismissal where the Court lacked jurisdiction. The California Court of Appeal, Second District, Division IV, held in *Lockwood v Sheppard, Mullin, Richter & Hampton, et al* (April 30, 2009) _____ Cal.App.4th _____, that: "A dismissal on the merit has res judicata effect (*Goddard v Security Title Insurance & Guarantee Company* (1939) 14 Cal.2d 47); a dismissal for lack of subject matter jurisdiction does not (*Nichols v Canoga Industries*, (1978) 83 Cal.App.3d 956, 967). Moreover, a dismissal on the merits cannot be affirmed on appeal if the Trial Court did not have jurisdiction over the subject matter of the action; instead, the judgment of dismissal must be vacated. *Chromy v Lawrence* (1991) 233 Cal.App.3d 1521. The dismissal of the instant action was on the merit. Hence, if Lockwood is correct that his claims should have been dismissed for lack of jurisdiction, he was prejudiced by the dismissal on the merit, and we must vacate that dismissal, and direct the Trial Court to enter a dismissal for lack of subject matter jurisdiction."

e. Restatement (Second) of Judgment, Section 28(5) (c)

The State of California and all other jurisdictions in the United States of America, subscribe to the Restatement (Second) of Judgment, 1982. Section 28(5) (b) stated that preclusion will not apply if "The party sought to be precluded was deprived of the due process of law"; Section 28(5) (c) stated that

preclusion does not apply if “The party sought to be precluded, as a result of the conduct of his adversary or other special circumstances, did not have an adequate opportunity or incentive to obtain a full and fair adjudication in the initial action.”

f. What Constitute A Violation of Due Process?

The United States Court of Appeals for the Ninth Circuit, held in *Torres-Chavez v Holder* (9th Cir. June 5, 2009) ____ F.3d. _____ that a client’s right to the due process of law is violated by an attorney’s egregious, which threatened the fairness of the proceeding. The proper focus of the Court’s inquiry is whether the proceeding was so fundamentally unfair that it prevented the client from reasonably presenting his or her claim. “To establish due process violation, the petitioner must make two showings: 1) the proceeding was so fundamentally unfair that he or she was reasonably prevented from presenting his or her claim, and 2) substantial prejudices, which is essentially a demonstration that the alleged violation affected the outcome of the proceeding.” *Lata v INS* (9th Circuit, 2000) 204 F.3d 1241, 1246.

IV.

Statement Of The Case

A. Procedural Status

i. The Proof of Claim in this Insurance Liquidation Proceeding was filed on January 15, 2007, and assigned Claim Number: CLMN 711647. Please see the Liquidator’s Case File, Page CF2. It is noteworthy that Claimant was not served with a notice, and provided with a Claim Form, by the Home Insurance Company in Liquidation.

ii. On October 29, 2008, one George Ertle, an attorney, for and on behalf of the Home Insurance Company in Liquidation, called the Claimant, with suggestions that he (Claimant) should withdraw his claim in this Insurance Liquidation Proceeding, on the ground that he has exhausted his appellate rights in vain, and that the Home Insurance Company has satisfied the judgment of the personal injury action. (Please see the Liquidator’s Case file, page CF 16).

iii. On October 30, 2008, Claimant responded to the foregoing requests and suggestions, that if he (Mr. Ertle) can: "(a) Produce a copy of the check or checks, issued by The Home Insurance Company to satisfy the judgment of the action, with my signature on it; or (b) produce a copy of any document, in which I authorized Georgia Ann Michell-Langsam to cash the aforementioned check, and dispose of the settlement check proceeds to herself, for her own immediate use and purposes, without my knowledge or consent, or; (c) produce a copy of an Order, issued by the Alameda County Superior Court, which authorized Georgia Ann Michell-Langsam to cash the settlement check and dispose of the settlement check proceeds to herself for her own use and purposes, without my knowledge or consent, or; (d) produce a copy of a lien, filed in the aforementioned personal injury action by Georgia Ann Michell-Langsam, and adjudicated by the Alameda County Superior Court, in a separate and independent action, I will gladly withdraw the above entitled claim, and walk out of this claim, without looking back." There is no response to the Claimant's offer, by the Liquidator, up till today. (Please see the Liquidator's Case File, CF16).

iv. On February 28, 2009, Claimant requested that the Liquidator provide him with the following itemized documents: d) "The Liquidator's copy of any document, wherein I, Adebowale O. Osijo, as the Plaintiff in the aforementioned personal injury action, authorized Georgia Ann Michell to negotiate and cash on my behalf, any check, particularly the aforementioned Bank of America check, issued by the Home Insurance Companies for \$250,000, in 'Full and Final Settlement of the aforementioned personal injury action"; e) The Liquidator's copy of any Order issued by the Superior Court of California, Alameda County, in the aforementioned personal injury action, which authorized Georgia Michell to negotiate and cash the aforementioned check, and dispose of the proceeds of the check to herself, for her own use and purposes, without my knowledge or consent"; and f) "The Liquidator's copy of any document filed as a lien by Georgia Ann Michell in the aforementioned personal injury action, at any time, and adjudicated by the Superior Court of California, Alameda County,

in any action.” Please see a copy of this request in the Claimant’s Motion to Compel, Exhibit 2, page 2. This request remained unanswered, up till today, despite the motion to compel. Please see the Claimant’s Motion to Compel, filed on March 30, 2009, Exhibit 2.

v. The Liquidator served and filed the Notice of Decision, on March 25, 2009, wherein he denied Claimant’s claim in this Insurance Liquidation Proceeding, on the ground that “Home paid \$250,000 into the trust account of your then attorney,” to settle the action. (Please see the Liquidator Case File, Page CF18).

vi. The “Notice of Disputed Claim” was filed on April 8, 2009. (Please see the Liquidator’s Case File, page CF1).

vii. On May 13, 2009, the Court Appointed Referee in this matter ordered the production of very limited documents, by the Liquidator.

viii. On July 7, 2009, the Court Appointed Referee ordered briefing on the issue of whether the decision(s) of any Court in the entire State of California precludes the Claimant’s claim in this Liquidation Proceeding, with a later clarification on July 21, 2009, that the issue to be briefed is either on res judicata and/or collateral estoppel.

B. Statement of Facts

i. The Claimant is and was the Plaintiff, in the aforementioned personal injury action, filed in the Superior Court of California, Alameda County, titled: Osijo v Housing Resources Management, Inc., Prostaff Security Service, Inc., Acorn I, Ltd., and Acorn II, Ltd., Case No. C-649881. (Please see the Liquidator’s Case File, page CF49). He sought damages for the injuries he sustained from sixteen rounds of gunshots in his lower abdomen, and lower extremities. He was shot repeatedly with high velocity rifles by assailants, who were residents, and/or friends of residents of the Acorn Apartments, a low income housing project, in the City of Oakland, Alameda County, California. The Second Amended Complaint alleged causes of action for Negligence and Conscious Disregard for Claimant’s Safety, in the

course of his employment as a security guard, at Acorn Apartments. The shooting incident happened on Friday, October 7, 1988. The personal injury action was filed on April 6, 1989.

ii. Defendants Acorn I, Ltd., and Acorn II, Ltd., owned the Acorn Apartments. They created and formed Defendant Housing Resources Management, Inc., to manage the Acorn Apartments. Housing Resources Management, Inc., hired Defendant Prostaff Security Service, Inc., to provide security guard services at Acorn Apartments. Prostaff Security Service, Inc., hired Claimant as a security guard in July or August, 1988.

iii. The Home Insurance Company insured Housing Resources Management, Inc., Acorn I, Ltd., and Acorn II, Ltd., for liabilities arising out of their ownership and management of Acorn Apartments. The Home Insurance Company hired the then law firm of Larson & Burnham to represent Housing Resources Management, Inc., Acorn I, Ltd., and Acorn II, Ltd. The law firm assigned the defense of the case to: Gregory D. Brown, David Raymond Pinelli (now deceased) and Nancy McDonald. (Please see the Liquidator's Case File, page CF25 and CF58).

iv. Claimant hired Georgia Ann Michell-Langsam, on April 12, 1990, to represent him as the personal injury Plaintiff's attorney. (Please see Exhibit 7, of the Amended Claimant's Mandatory Disclosure, in its entirety). Claimant was not informed by Georgia Ann Michell-Langsam, as of this date, and throughout the course of the said personal injury action that the Home Insurance Company was her insurer for her malpractice and malfeasance of the said personal injury action, nor did she obtain Claimant's informed written consent. Claimant was not informed by Georgia Ann Michell-Langsam, as of April 12, 1990, and at all times thereafter, that the personal injury Defendants' attorneys, the then law firm of Larson & Burnham, were her legal malpractice attorneys, hired by the Home Insurance Company.

v. On Thursday, July 25, 1991, Claimant signed a settlement agreement with the personal injury Defendants' attorneys. (Please see the Liquidator's Case File, page CF65).

vi. On Friday, July 26, 1991, and at all times thereafter, Claimant called and wrote Georgia Ann Michell-Langsam, stating his wish to disavow the settlement agreement. This letter was copied to all the parties, through their attorneys of record; most important of all was David Pinelli, by certified mails. The letter stated in relevant part, on page 1, paragraph 1, last sentence, that: "I am putting a stop order on the payment of the cheque you thought you have." (Please see Exhibit 3, of Amended Claimant's Mandatory Disclosure, and the Stipulation in Lieu of Discipline of the California State Bar, pages 8 through 10, attached to the Supplement to Amended Claimant's Mandatory Disclosure).

vii. On Monday, July 29, 1991, David Pinelli called the then law firm of Ganong & Michell, now defunct, to confirm if the settlement agreement is still on, and to arrange the delivery of the settlement check. He was told by the secretary, Ms. Judy Stover that Claimant has disavowed the settlement agreement in writing, which was copied to him (Pinelli). Thereafter, David Pinelli asked Georgia Michell to cash the check on her own and try to give Claimant \$75,000, in cash, as part of the settlement, to "Sooth and pacify" him, with the hope that this will make Claimant ratify the disavowed settlement agreement. Georgia Michell, in turn, sent an African-American attorney, Charles Samuel Baker, to Claimant in Fresno, California, sometime in early August, 1991, to try and persuade the Claimant into recanting his wish to disavow the settlement agreement. Charles Baker failed, and he went back, empty handed, without ever disclosing that Georgia Ann Michell-Langsam had cashed a settlement check, issued by the Home Insurance Company, to settle the personal injury action, and had disposed of the settlement proceeds to herself, for her own use and purposes, without the Claimant's knowledge or consent. (Please see Exhibit 4 of the Amended Claimant's Mandatory Disclosure).

viii. On Tuesday, July 30, 1991, David Pinelli caused the followings to be hand-delivered to Georgia Ann Michell-Langsam: a) a Bank of America check, No.: 521990219, issued by the Home Insurance Companies, in the amount of \$250,000, and made payable into the rust Account of Ganong & Michell, as Trustees for Wale O. Osigo, in Full Payment and Final Settlement." (Please see Exhibit 1 of

the Amended Claimant's Mandatory Disclosure, and the Liquidator's Case File, page CF68); b) a covering letter, authored by David Pinelli, dated July 29, 1991. (Please see Exhibit 2 of the Amended Claimant's Mandatory Disclosure, in its entirety); c) a document titled: "Request for Dismissal with Prejudice"; and d) a document titled: "Full Release and Satisfaction of All Claims and Demand."

ix. The said covering letter stated in relevant part that: "Please be advised that you and Mr. Osijo are authorized to negotiate this check only after you have deposited in the U. S. Mail the fully-executed Release and Dismissal."

x. On the same day and date of delivery, Tuesday, July 30, 1991, with the ink on the settlement check hardly dry, Georgia Michell cashed the settlement check, on her own, without the Claimant's knowledge or consent, or an express authorization on the record, to effect the conclusion of the aforementioned personal injury action. (Please see Exhibit 1 of the Amended Claimant's Mandatory Disclosure). She instantly disposed of the check proceeds to herself, for her own immediate use and purposes, without the Claimant's knowledge or consent, despite the Claimant's written instruction that she should not collect any money on his behalf from the personal injury Defendants' attorneys, and despite David Pinelli's written restrictions on the negotiation of the settlement check. (Please see Exhibit 2, page 1, last sentence; and Exhibit 3, of the Amended Claimant's Mandatory Disclosure).

xi. On August 15, 1991, David Pinelli filed and served the Defendants' Motion to Enforce Settlement Agreement on Georgia Ann Michell-Langsam, as the personal injury Plaintiff's attorney, with a full knowledge, and awareness that she had settled the aforementioned personal injury action on July 30, 1991, in collaboration with him, and on his advice. Georgia Ann Michell-Langsam not only did not oppose the motion, she filed two declarations in support of the motion, without ever disclosing that she had cashed a settlement check to conclude the case, and had disposed of the check proceeds to herself and for her own use and purposes, without the Claimant's knowledge or consent. (Please see the Stipulation in Lieu of Discipline, filed in the State Bar Court, pages 8 through 10, attached to the

Supplement to the Amended Claimant's Mandatory Disclosure). The enforcement order did not state a word in it that Georgia Ann Michell-Langsam had settled the personal injury action on July 30, 1991. The Liquidator has failed to provide a copy of the Transcript of Hearing, to prove what was discussed and decided. (Please see the Liquidator's Case File, page CF69). The appellate decision which affirmed the enforcement order did not state a word, either that Georgia Ann Michell-Langsam had settled the personal injury action, to effect the conclusion of the case on July 30, 1991. (Please see the Liquidator's Case File, page CF71, in the entirety).

xii. Attorney Georgia Ann Michell-Langsam was terminated as the Claimant's personal injury attorney, effective September 5, 1991, when it became obvious, in the open Courtroom of the Alameda County Superior Court that she was siding with personal injury the Defendants' attorneys, and against him, the Claimant. Claimant had no knowledge that Attorney Georgia Ann Michell-Langsam had cashed a settlement check issued by the Home Insurance, to settle the case, and had disposed of the proceeds to herself, for her own use and purposes, until after he had exhausted his appellate rights, in March 1993. (Please see Exhibit 5 of the Amended Mandatory Disclosure; and page 10 of the Stipulation in Lieu of Discipline attached the Supplement to Amended Claimant's Mandatory Disclosure).

xiii. Attorney Georgia Ann Michell-Langsam signed the Alameda County Superior Court's enforcement order, approving it as to form and content, on September 23, 1991, despite her termination as the Plaintiff's attorney, on September 5, 1991, and on the advice of David Raymond Pinelli. (Please see the Liquidator's Case File, page CF70).

**V.
Arguments**

A. Where Is The Decision Of Any Court In The Entire State Of California That Authorized Georgia Ann Michell-Langsam To Cash The Settlement Check And Disposed Of The Proceeds To Herself, For Her Own Use And Purposes, Without The Claimant's Knowledge Or Consent, On July 30, 1991, From The Litany Of Decisions In The Liquidator's Case File?

The tests for the application of the doctrine of collateral estoppel are as follow:

- 1) The issue presented is identical to the one decided in the former proceeding;
- 2) The issue was actually litigated in the prior proceeding;
- 3) The issue was necessarily decided in the prior proceeding;
- 4) The decision in the prior proceeding was final and on the merit; and
- 5) The person subject to preclusion was a party to the prior proceeding. Please see *People v*

Garcia (2006) 39 Cal.4th 1070, 1077.

For the purpose of collateral estoppel, an issue was actually litigated in a prior proceeding, if it was properly raised, submitted for determination, and determined in that proceeding. Please see *People v Sims* (1982) 32 Cal.3d. 468, 484.

All the five prerequisites for the application of res judicata or collateral estoppel were not satisfied because:

a. There is simply no decision in the Liquidator's Case File, in this Insurance Liquidation Proceeding, be it in the form of an order or a judgment on the merit, issued by any Court in the entire State of California, which authorized Attorney Georgia Ann Michell-Langsam to settle the aforementioned personal injury action on July 30, 1991, without the Claimant's knowledge or consent. She settled Claimant's personal injury action by cashing the aforementioned settlement draft on July 30, 1991, without his knowledge or consent, or an express authorization on the record, in collaboration with David Raymond Pinelli, and at a time when Claimant was disputing the validity of the purported

settlement agreement. (Please see Exhibits 1 through 3 of the Amended Claimant's Mandatory Disclosure).

2. There is no decision in the Liquidator's Case File in this Insurance Liquidation Proceeding, be it in the form of an order or a judgment on the merit, issued by any Court in the entire State of California, which authorized Attorney Georgia Ann Michell-Langsam to dispose of the settlement check proceeds to herself, for her own immediate use and purposes, on July 30, 1991, without the Claimant's knowledge or consent, on the advise of, and in collaboration with David Pinelli, and at a time when the Claimant was disputing the validity of the purported settlement agreement. (Please see Exhibit 4 of the Amended Claimant's Mandatory Disclosure).

3. Claimant does not have any agreement with Attorney Georgia Ann Michell-Langsam, either by implication or expression that granted her special power of attorney, which authorized her to execute any document on his behalf, to effect the conclusion of the aforementioned personal injury action, more specifically, checks and drafts, issued by the Home Insurance Company. Claimant did not, has not, and, will not ratify Georgia Ann Michell-Langsam's settlement of his personal injury action, in collaboration with the personal injury Defendants' attorneys. (Please see Exhibit G, of the Amended Claimant's Mandatory Disclosure; and the Liquidator's Case File, pages CF61 & CF71). The Settlement Agreement did not authorize her to cash the settlement check and dispose of the proceeds to herself, for her own use and purposes, without the Claimant's knowledge or consent.

B. Attorney Georgia Ann Michell-Langsam's Egregious Conduct Of Settling The Personal Injury Action On July 30, 1991, Without The Claimant's Knowledge Or Consent Rendered The Enforcement Proceeding Fundamentally Unfair, Which Precludes The Application Of Res Juridicata & Res Juridicata

The due process of law is a federal right that is guaranteed by the *Fourteenth Amendment to the Constitution of The United States of America*. The due process of law is also a state right in the State of California that is guaranteed by the *California Constitution, Article 1, Section 7(a)*. Please see *Blonder-Tongue Laboratories, Inc. v University of Illinois Foundation* 402 U.S. 313.

The United States Court of Appeal for the Ninth Circuit, held in *Torres-Chavez v Holder* (9th Cir. June 5, 2009) _____ F.3d. _____ that in any civil proceeding, an attorney's egregious conduct, which rendered the proceeding so fundamentally unfair, such that a party was prevented from reasonably presenting his or her case, is a due process violation.

The findings of facts and conclusion of law of The State Bar of California, is a prime facie evidence of attorney's egregious conduct, which undermined the fairness of the entire personal injury proceeding.

An attorney's settlement of an action, without an express authorization of the client on the record, is an egregious conduct, which prejudiced the client's rights in the proceeding, and violates the client's to the due process of law. Please see *Johnson v California Department of Corrections* (1995) 38 Cal.App.4th 1700, 1710

Attorney Georgia Ann Michell-Langsam stipulated with The State Bar of California, based on the Claimant's complaint that she did not oppose the personal injury Defendants' Motion to Enforce Settlement Agreement, which is a conflict of interest, in violation of the California Rules of Professional Conduct, Rule 3-310(a). She not only did not oppose the Defendants' Motion to Enforce Settlement Agreement, she filed two declarations in support of the motion. She even went to the California Court of Appeals, First District, Division II, to challenge Claimant's appeal of the enforcement order, purporting to file a Friend of the Court brief. (Please see the Stipulation in Lieu of Discipline, pages 8 through 10, attached to the Supplement to the Amended Claimant's Amended Mandatory Disclosure).

Furthermore, she signed the Order Enforcing Settlement Agreement, approving it as to form and content, on July 23, 1991, with a full knowledge and awareness that she had been terminated as the Claimant's attorney on September 5, 1991. (Please see the Liquidator's Case File, page CF70).

Claimant was prejudiced by the outcome of the personal injury Defendants' Motion to Enforce Settlement Agreement because, it was not disclose to the Claimant that Attorney Georgia Ann Michell-

Langsam has settled the personal injury action on July 30, 1991, until after the Supreme Court had denied the Petition for Review, in October 1992. A disclosure to the Claimant, the Trial Court, Appellate Court and the California Supreme Court that Georgia Ann Michell-Langsam had settled the personal injury action, on July 30, 1991, will make a difference. Claimant was irreparably prejudice, and prevented from defending the Defendants' Motion to Enforce Settlement Agreement.

The Liquidator argued at the hearing of Claimant's Motion to Compel Responses to Interrogatories and Production of Documents, held on May 13, 2009, that all that is required to satisfy the due process requirement is a notice. So, where is the entire record of the personal injury Defendants' Motion to Enforce Settlement Agreement, in the Liquidator's Case File? The burden is on the Liquidator to provide a copy of the entire case file, to prove that it met the minimum notice requirement. The Liquidator has not satisfied the requirements for the application of res judicata or collateral estoppel, in this Insurance Liquidation Proceeding.

The law in the State of California is that to determine whether an issue was actually litigated, "The Court in the subsequent action cannot rely exclusively on the findings in the underlying action but must carefully scrutinize the pleading and proof. This scrutiny includes looking behind the findings at the evidence presented to determine what was actually decided. The party asserting collateral estoppel must prove the issue was raised, actually submitted for determination and determined and that contrary evidence on the issue was not restricted." Please *Schafer/Karpf Productions v CAN Insurance Company* (1998) 64 Cal.App.4th 1306, 1314

There is still no decision of any Court, in the entire State of California, be it in the form of an order or a final judgment on its merit, which authorized Attorney Georgia Ann Michell-Langsam to cash the aforementioned check, and disposed of the check proceeds to herself, for her own use and purposes, on July 30, 1991, without the Claimant's knowledge or consent, come to talk of satisfying the minimum notice requirement of the due process of law that is guaranteed by the *Fourteenth*

Amendment to the Constitution of The United States of America, and the California Constitution, Article 1, Section 7(a). Please see *Ross v Red* (2005) 130 Cal.App.4th 870.

C. Decision Of A Court In Want Of Subject Matter Jurisdiction Has No Res Juridicata Or Collateral Estoppel Effect.

On June 11, 2003, the Superior Court in the State of New Hampshire, Merrimack County, issued an order, which abates all pending lawsuits against the Home Insurance Company, its insureds and the Liquidator, in any and all Courts in The United States of America, in favor of such proceedings to be adjudicated in this Insurance Liquidation Proceeding, in the State of New Hampshire, Merrimack County Superior Court. Please see The Matter of the Rehabilitation of The Home Insurance Company, Case No.: 03-E-0106.

Thus, effective July 11, 2003, the Merrimack County Superior Court's order, simply and practically stripped all Courts in the United States of America, of subject matter jurisdiction to hear and adjudicate any lawsuit against the Home Insurance Company, Risk Enterprise Management, Inc., insureds of the Home Insurance and the Liquidator.

The dismissal of an action for lack of subject matter jurisdiction is not res juridicata. Please see *Lockwood v Sheppard, Mullin, Richter & Hampton, et al* (2009) _____ Cal.App.4th _____ and *Nichols v Canoga Industries* (1978) 83 Cal.App.3d 956, 967.

The subject matter jurisdiction of any Court in the State of California cannot be conferred by the parties' consent, or by waiver. The parties can raise the Court's lack of subject matter jurisdiction, anywhere, and at any time, including the appellate proceedings, and this Insurance Liquidation Proceeding. Please see *Lockwood v Sheppard, Mullin, Richter & Hampton, et al* (2009) _____ Cal.App.4th _____

Claimant's actions against the Home Insurance Company, Risk Enterprise Management, Inc., and Roger Sevigney, the Liquidator, in the Superior Court of California, Fresno County, were dismissed by the California Court of Appeals, Fifth District, for want of subject matter jurisdiction based on the

aforementioned Merrimack County Superior Court's order. (Please see the Liquidator's Claim File, pages CF104 to CF144). Thus, these decisions have no res judicata or collateral estoppel effect.

If the California Court of Appeal, Fifth District, ruled in 2004 and 2006 that, California Courts have no subject matter jurisdiction to hear and decide any issue against the Home Insurance and its insured, based on the aforementioned Merrimack County Superior Court's order, where did the Superior Court of California, Alameda County, and California Court of Appeal, First District, Division II, obtain their subject matter jurisdiction to rule on the Claimant's Motion to Set Aside Judgment, and affirm the Trial Court's decision on appeal, in 2007 and 2008, respectively? (Please see the Liquidator's Case File, pages CF145 to 163).

These Courts have no subject matter jurisdiction to decide any claim against the Home Insurance and its insureds, namely: Housing Resources Management, Inc., Acorn I, Ltd and Acorn II, Ltd, effective June 11, 2003, based on comity. A decision based on the merits, when the Court is in want of subject-matter jurisdiction is of no consequence, and prejudicial. Please see *Chromy v Lawrence* (1991) 233 Cal.App.3d 1521. It has no res judicata or collateral estoppel effect. Moreover the decisions did not authorize Georgia Michell to settle Claimant's personal injury action, on July 30, 1991.

Finally, the United States Supreme Court held in *Blonder-Tongue v University of Illinois Foundation* (1971) 402 U.S. 313, 333, and *Parklane Hosiery Company v Shaw* (1979) 439 U.S. 322, 331 that, res judicata and collateral estoppel are inapplicable, when the procedure employed in the two actions between the same parties are not the same, more so where it gave the party asserting res judicata and collateral estoppel a procedural advantage. The action in the Superior Court of California, Alameda County is and was for personal injury. The action in the Superior Court of California, Contra Costa County, is and was for legal malpractice. Georgia Ann Michell-Langsam was not a party in the personal injury action. She was in fact terminated as the Claimant's attorney. Personal injury action and

legal malpractice action, require different facts and procedures. More importantly, Contra Costa County Superior Court is not even the forum court for the personal injury action.

The decisions of the Superior Court of California, Contra Costa County, and the California Court of Appeal, First District, Division V, did not, and cannot authorized Georgia Ann Michell-Langsam to settle the personal injury action on July 30, 1991, because Contra Costa County Superior Court is not the forum Court, with an exclusive subject matter jurisdiction over the aforementioned personal injury action. (Please see the Liquidator's Case File, pages CF81 through CF96).

There is still no decision, issued by any Court in the entire State of California, which authorized Georgia Ann Michell-Langsam to cash a check issued by the Home Insurance Company, in the amount of \$250,000, and made payable into the Trust Account of Ganong & Michell, as Trustees for Wale O. Osijo, in Full Payment and Final Settlement of the personal injury action, on Tuesday, July 30, 1991. There is still no decision, issued by any Court in the entire State of California, which authorized Georgia Ann Michell-Langsam to dispose of the proceeds of settlement check to herself, for her own use and purposes, without the Claimant's knowledge or consent.

D. The Restatement (Second) of Judgment (1982), Sections 28(5)(c) Provides That Res Juridicata & Collateral Estoppel Are Inapplicable When There Is A Due Process Violation & When The Conduct of The Adversaries Prevented A Party From Obtaining A Full & Fair Proceeding.

The State of California subscribes to the Restatement 2nd of Judgment, (1982). Please see California Supreme Court's holding in *People v Barragan* (2004) 32 Cal.4th 236, 253, and *Lucido v Superior Court* (1990) 51 Cal.3d. 335,341.

The Restatement 2nd of Judgment, Section 28(5) (c), states that issue preclusion does not apply if "The party sought to be precluded, as a result of the conduct of his adversary or other special circumstances did not have an adequate opportunity or incentive to obtain a full and fair adjudication in the initial action." Specifically, there are various factors which should enter into a determination of

whether a party has had his day in Court. Please see *Smith v ExxonMobil Oil Corporation* (2007) 153 Cal.App.4th 1407.

It is a tradition in the insurance industries, and a common knowledge in the State of California that insurance companies' checks issued to pay judgments and settlements, are never issued into the trust account of an attorney, without an express authorization of the client on the record. Their checks are issued in the names of the client and the attorney, for joint negotiation. The purpose is to make it impossible for either the client or the attorney to cash the check, without each other, and to avoid the possibility of prejudice to either party in the action, at the peril of the insurer.

The law in the State of California is that an attorney must ask for the Court's permission, before he or she can cash a settlement check, in the absence of the client's consent. A Court cannot make such decision, without a notice to the client by the attorney. Please see *Johnson v California Department of Corrections* (1995) 38 Cal.App.4th 1700, 1710.

In this case, the Home Insurance Company issued its check, on July 26, 1991, made payable into the "Trust Account of Ganong & Michell, as Trustees for Wale O. Osigo, in Full Payment and Final Settlement" of the aforementioned personal injury action." (Please see Amended Claimant's Mandatory Disclosure, Exhibit 1) Thereafter, David Pinelli authored a covering letter on July 29, 1991, which reads in relevant part that: "Please be advised that only you and Mr. Osijo are authorized to negotiate this check, only after you have deposited in the U. S. Mail the fully-executed Release and Dismissal." (Please see Amended Claimant's Mandatory Disclosure, Exhibit 2, page 1, last sentence.)

So, where is a copy of the "Full Release & Satisfaction of All Claims & Demand," with Mr. Osijo's executing signature on it, in the Liquidator's Case File?

So, where is Mr. Osijo's authorizing signature on the settlement check, in the Liquidator's Case File, per the instructions of David Pinelli, in the aforementioned covering letter of July 29, 1991? (Please see the Amended Claimant's Mandatory Disclosure, Exhibit 1 and Liquidator's Case File, pageCF68).

“A nigger will accept \$50,000 in cash, before he will ever accept a \$2.5 million check,” from the movie, “Made in America,” by Don King. It was the personal injury Defendants’ attorney David Pinelli who collaborated with, and advised the personal injury Plaintiff’s attorney Georgia Ann Michell-Langsam, to cash the settlement check, so that she can have \$75,000, in cash to give the Claimant, as part of the settlement, with the hope that Claimant will be gullible to the large amount of cash. Georgia Ann Michell-Langsam, in turn sent an African American attorney, Charles Samuel Baker to deliver the cash to Claimant in Fresno, California. If Claimant had collected the cash, without asking for the source, they would have claimed that Claimant waived his rights to challenge the validity of the settlement agreement. (Please see the Amended Claimant’s Mandatory Disclosure, Exhibit 4, in its entirety).

When this strategy did not work, they (Georgia Ann Michell-Langsam and David Raymond Pinelli), motioned the Alameda County Superior Court to enforce the settlement agreement, on August 15, 1991, without ever disclosing to the Claimant and the Court that the case had been settled by Georgia Ann Michell-Langsam on Tuesday, July 30, 1991. They did not disclose in the subsequent appellate proceeding that Georgia Michell had settled the personal injury action. She did not even disclose in her purported “Petition to File Amicus Curea Brief,” in support of the personal injury Defendants that she had settled the personal injury action on July 30, 1991. (Please see Supplement to Amended Claimant’s Mandatory Disclosure, Exhibit 1, pages 8 through 10).

“The horse goes before the cart.” A decision must come before Attorney Georgia Ann Michell-Langsam can do anything with the settlement check, not after she had squandered the moneys to herself, for her own use and purposes, without the Claimant’s knowledge or consent, to avoid prejudice to either party. Please see *Johnson v California Department of Correction* (1995) 38 Cal.App.4th 1700, 1710. Where is the decision issued on or before July 30, 1991, in the Liquidator’s Case File?

**VI.
Conclusion**

This Court has now asked for any order or judgment on the merit, which is res judicata, or collaterally estopped the Claimant from asserting, in this Insurance Liquidation Proceeding that, Attorney Georgia Ann Michell-Langsam, settled his personal injury action, on Tuesday, July 30, 1991 without his knowledge or consent, or an express authorization on the record, and in collaboration with the personal injury Defendants' attorney, David Raymond Pinelli.

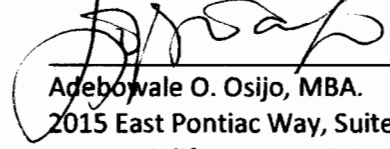
Claimant has asked for the same thing from the Liquidator, before the Notice of Decision was issued, on March 25, 2009. He even motioned this Court to compel the Liquidator to provide this document, if it exists. He has offered to walk away from this Insurance Liquidation Proceeding, without looking back, if the Liquidator can produce a copy of an order or a judgment on the merit, which authorized Attorney Georgia Ann Michell-Langsam to cash the settlement check, and dispose of the proceeds of settlement to herself, for her own use and purposes, without the Claimant's knowledge or consent.

In his response to the Claimant's Motion for Clarification of the Referee's July 7th Order, the Liquidator simply referred Claimant to the "Liquidator's Consolidated Responses to Claimant's Motions to Compel and for Production of Documents," for the order that authorized Attorney Georgia Ann Michell-Langsam to settle the aforementioned personal injury action

Well, where is the decision of any Court in the entire State of California, be it in the form of an order or a judgment on its merits, which authorized Attorney Georgia Ann Michell-Langsam to settle Claimant's personal injury action in the Superior Court of California, Alameda County, on July 30, 1991, from the litany of decisions in the Liquidator's Case File? Where is it?

Dated this 3rd day of August in the year 2009.

Respectfully Submitted By:

A handwritten signature in black ink, appearing to read 'Adebowale O. Osijo', is written over a horizontal line.

Adebowale O. Osijo, MBA.
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Fresno, California 93726-3978
Telephone: (559) 273-5765
Facsimile: (559) 221-0585
Email: adebowaleosijo@att.net
Claimant Pro Se

Proof Of Service By Regular Mail

I, Jhoe F. Ajayi declare the following:

1. I am not a party in this action, nor do I have any interest in its outcome. I am over the age of eighteen years. I am a resident of the City and County of Fresno, California. On August 3, 2009, I served the following document:

'Claimant's Opening Brief Regarding Claim & Issue Preclusion Per Order Of July 7, 2009'

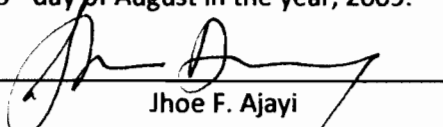
On the following persons:

Ms. Raelynn Armstrong
The Home Insurance Company in Liquidation
C/O Merrimack County Superior Court
163 North Main Street
Post Office Box 2880
Concord, New Hampshire 03310-2880
help@hicilclerk.org

Mr. Eric A. Smith
Rackemann, Sawyer & Brewster
A Professional Corporation
160 Federal Street
Boston, Massachusetts 02110-1700
Attorneys for the Liquidator
esmith@rackemann.com

by placing these documents in envelopes addressed as above, with first class stamps affixed on them. I thereafter sealed the envelopes and deposited them with the United States Postal Service for delivery at the respective addresses.

2. I declare under the penalty of perjury, and according to the laws in the State of California that the foregoing is true and correct. This Declaration of Oath is executed in the City and County of Fresno, California, this 3rd day of August in the year, 2009.



Jhoe F. Ajayi
2015 East Pontiac Way, Suite 203
Fresno, California 93726