

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

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

In Re Liquidator Number: 2008-HICIL-41  
Proof of Claim Number: CLMN712396-01  
Claimant Name: Harry L. Bowles  
Claimant Number: VEND700093-01  
Policy or Contract Number: \_\_\_\_\_  
Date of Loss: \_\_\_\_\_

**Exhibits to Liquidator's Section 15 Submission**

ROGER A. SEVIGNY, COMMISSIONER OF  
INSURANCE OF THE STATE OF NEW  
HAMPSHIRE, SOLELY AS LIQUIDATOR OF  
THE HOME INSURANCE COMPANY,  
By his attorneys,  
MICHAEL A. DELANEY  
ATTORNEY GENERAL

J. Christopher Marshall  
NH Bar ID No. 1619  
Civil Bureau  
New Hampshire Department of Justice  
33 Capitol Street  
Concord, NH 03301-6397  
(603) 271-3650

Eric A. Smith  
NH Bar ID No. 16952  
Rackemann, Sawyer & Brewster P.C.  
160 Federal Street  
Boston, MA 02110-1700  
(617) 542-2300

## INDEX OF EXHIBITS

- A. Claimant's POC, dated February 4, 2008.
- B. Home Insurance Company of Indiana policy LPL-F871578-1.
- C. Letter from Bishop to Home, dated December 29, 1993 (with enclosures) and response letter from Home dated January 10, 1994.
- D. *Motion to Withdraw* filed in the District Court of Harris County, Texas, Cause No. 1991-25939, dated April 8, 1994.
- E. *Order* of the District Court of Harris County, Texas, Cause No. 1991-25939, dated April 11, 1994.
- F. *Third Party Intervention* filed in the District Court of Harris County, Texas, Cause No. 1991-25939, dated April 18, 1994.
- G. *Plaintiff's Petition in Intervention* filed in the District Court of Harris County, Texas, Cause No. 1991-25939, dated May 5, 1994.
- H. *Order Granting Intervenors' Motion for Summary Judgment* of the District Court of Harris County, Texas, Cause No. 1991-25939, dated July 18, 1994.
- I. *Order Granting Severance Requested by Bishop Peterson & Sharp, P.C. and George M. Bishop* of the District Court of Harris County, Texas, Cause No. 1991-25939, dated April 10, 1995
- J. *Order* of the District Court of Harris County, Texas, Cause No. 1991-25939 dated April 26, 1996.
- K. *Amended Order* of the District Court of Harris County, Texas, Cause No. 1995-43235 dated June 27, 2006.
- L. *Order for Disbursement of Funds* of the District Court of Harris County, Texas, Cause No. 1991-25939 and 1991-25939-A, dated August 30, 1996.
- M. *Order of Permanent Injunction* of the District Court of Harris County, Texas, Cause No. 1991-25939 date March 21, 2005.
- N. *Order* of the District Court of Harris County, Texas, Cause No. 1995-43235 dated August 30, 2006.
- O. *Order Granting Defendant Bishop, Peterson & Sharp, P.C.'s Motion to Sever* of the District Court of Harris County, Texas, Cause No. 1995-43235 dated August 30, 2006.
- P. *Order* of the District Court for Harris County, Texas, Cause No. 1995-43235 dated April 12, 2007.
- Q. *Defendant David E. Sharp's Motion for Summary Judgment* filed in the District Court of Harris County, Texas, Cause No. 1995-43235 dated June 19, 2009.
- R. *Order Granting Defendant David E. Sharp's Motion for Summary Judgment* of the District Court of Harris County, Texas, Cause No. 1995-43235 dated July 21, 2009.

- S. *Order Granting Motion for Severance* of the District Court of Harris County, Texas, Cause No. 1995-43235 dated September 29, 2009.
- T. *Plaintiff's Sworn Motion per Rule 12, T.R.C.P. Challenging Authority of Attorney(s) Representing Defendant Sharp to Appear in Defense of a Purported Professional Malpractice Insurance Policy Under the Administration of the Texas Property and Casualty Insurance Guaranty Association* filed in the District Court of Harris County, Texas, Cause No. 1995-43235, dated October 1, 2009.
- U. *Order* of the United States District Court for the Western District of Texas, Cause No. 07-cv-00740, dated January 2, 2008.
- V. *Order of Dismissal* of the United States District Court for the Western District of Texas, Cause No. 08-cv-00808, dated April 22, 2009.
- W. *Order* of the United States District Court for the Western District of Texas, Cause No. 08-cv-00808, dated April 2, 2009.
- X. *Official Order of the Commissioner of Insurance of the State of Texas*, dated June 26, 2003.
- Y. Liquidator's Second Report, dated August 14, 2003.
- Z. Packing Slip dated June 20, 2003 (provided by TPCIGA).

PROOF OF CLAIM

The Home Insurance Company,

Merrimack County Superior Court, State of New Hampshire 03-E-0106

Read Carefully Before Completing This Form

Please print or type

FOR LIQUIDATOR'S USE ONLY

DATE PROOF OF CLAIM RECEIVED

RECEIVED

FEB - 7 2008

HICIL

CLMN 712396

The Deadline for Filing this Form is June 13, 2004.

You should file this Proof of Claim form if you have an actual or potential claim against The Home Insurance Company of any of its former subsidiaries\* ("The Home") even if the amount of the claim is presently uncertain. To have your claim considered by the Liquidator, this Proof of Claim must be postmarked no later than June 13, 2004. Failure to timely return this completed form will likely result in the DENIAL OF YOUR CLAIM. You are advised to retain a copy of this completed form for your records.

1. Claimant's Name: HARRY L. BOWLES
2. Claimant's Address: 306 BIG HOLLOW LANE  
HOUSTON TEXAS 77042
3. Claimant's Telephone Number: (713) 983-6779  
Fax Number: (713) 983-6722  
Email address: harry.bowles@separh1b.com
4. Claimant's Social Security Number, Tax ID Number or Employer ID Number: \_\_\_\_\_
5. Claim is submitted by (check one):
  - a)  Policyholder or former policyholder
  - b)  Third Party Claimant making a claim against a person insured by The Home
  - c)  Employee or former employee
  - d)  Broker or Agent
  - e)  General Creditor, Reinsurer, or Reinsured
  - f)  State or Local Government Entity
  - g)  Other; describe: \_\_\_\_\_

If your name, address, e-mail address, or telephone number set forth above are incorrect, or if they change, you must notify the Liquidator so she can advise you of new information.

Describe in detail the nature of your claim. You may attach a separate page if desired. Attach relevant documentation in support of your claim, such as copies of outstanding invoices, contracts, or other supporting documentation.

Claim against Home Ins Co Legal Liability Pol #LPL E871578  
see attached

6. Indicate the total dollar amount of your claim. If the amount of your claim is unknown, write the word "unknown", BUT be sure to attach sufficient documentation to allow for determination of the claim amount.

\$ \_\_\_\_\_ (if amount is unknown, write the word "unknown"). see attached

7. If you have any security backing up your claim, describe the nature and amount of such security. Attach relevant documentation.

Not Applicable

8. If The Home has made any payments towards the amount of the claim, describe the amount of such payments and the dates paid:

NONE

9. Is there any setoff, counterclaim, or other defense which should be deducted by The Home from your claim?

NONE

10. Do you claim a priority for your claim? If so, why: Yes, claim should have been acknowledged and resolved seen after 1-1-1996

11. Print the name, address and telephone number of the person who has completed this form.

Name: Harry L. Bowles, Claimant

Address: \_\_\_\_\_

Phone Number (\_\_\_\_\_) \_\_\_\_\_

Email address: \_\_\_\_\_

\* The Home Indemnity Company, The Home Insurance Company of Indiana, City Insurance Company, Home Lloyds Insurance Company of Texas, The Home Insurance Company of Illinois, and The Home Insurance Company of Wisconsin.

12. If represented by legal counsel, please supply the following information:
- a. Name of attorney: \_\_\_\_\_
  - b. Name of law firm: \_\_\_\_\_
  - c. Address of law firm: \_\_\_\_\_  

None Presently
  - d. Attorney's telephone: \_\_\_\_\_
  - e. Attorney's fax number: \_\_\_\_\_
  - f. Attorney's email address: \_\_\_\_\_

13. If using a judgment against The Home as the basis for this claim:
- a. Amount of judgment \_\_\_\_\_
  - b. Date of judgment \_\_\_\_\_
  - c. Name of case \_\_\_\_\_  

None
  - d. Name and location of court \_\_\_\_\_
  - e. Court docket or index number (if any) \_\_\_\_\_

14. If you are completing this Proof of Claim as a Third Party Claimant against an insured of The Home, you must conditionally release your claim against the insured by signing the following, as required by N.H. Rev. Stat. Ann. § 402-C:40 I:

I, Harry L. Bowles (insert claimant's name), in consideration of the right to bring a claim against The Home, on behalf of myself, my officers, directors, employees, successors, heirs, assigns, administrators, executors, and personal representatives hereby release and discharge George M. Bishop (insert name of defendant(s) insured by The Home), and his/her/its officers, directors, employees, successors, heirs, assigns, administrators, executors, and personal representatives, from liability on the cause(s) of action that forms the basis for my claim against The Home in the amount of the limit of the applicable policy provided by The Home; provided, however, that this release shall be void if the insurance coverage provided by The Home is avoided by the Liquidator.

Harry L. Bowles \_\_\_\_\_ Feb. 4, 2008  
 Claimant's signature Date

15. All claimants must complete the following:

I, Harry L. Bowles (insert individual claimant's name or name of person completing this form for a legal entity) subscribe and affirm as true, under the penalty of perjury as follows: that I have read the foregoing proof of claim and know the contents thereof, that this claim in the amount of \$3,100,000 dollars (\$ \_\_\_\_\_) against The Home is justly owed, except as stated in item 9 above, and that the matters set forth in this Proof of Claim are true to the best of my knowledge and belief. I also certify that no part of this claim has been sold or assigned to a third party.

Harry L. Bowles \_\_\_\_\_ Feb. 4, 2008  
 Claimant's signature Date

*Any person who knowingly files a statement of claim containing any false or misleading information is subject to criminal and civil penalties.*

16. Send this completed Proof of Claim Form, postmarked by June 13, 2004, to:

The Home Insurance Company in Liquidation  
 P.O. Box 1720  
 Manchester, New Hampshire 03105-1720

**You should complete and send this form if you believe you have an actual or potential claim against The Home even if the amount of the claim is presently uncertain.**

## Section 5 - PROOF OF CLAIM

Describe in detail the nature of your claim:

1. This claim is based on breach of contract and legal malpractice by attorney George M. Bishop that occurred in the period 1992 to 1996 while Bishop undertook to provide Bowles with legal services under a contingency fee employment contract dated November 2, 1992.
2. The underlying action is styled Bowles et al. vs. Schwarz et al, Cause No. 1991-25939 in the Harris County District courts.
3. On October 25, 1993, Bowles, on Bishop's advice, entered into a Settlement Agreement with Schwarz to settle the litigation by sale of their jointly owned company, National Parts Systems, Inc. through an auction by a court-appointed and supervised receiver. Net funds were to be evenly divided.
4. It was Bowles understanding that the receivership proceeding would strictly follow Texas receivership law as it is set forth in Chapter 64 of the Texas Civil Practices and Remedies Code. It was Bowles' presumption that that Bishop would represent Bowles's interest to insure that the appointed receiver was properly qualified and that the receiver followed the letter of the law in his execution of his duties as spelled out in the Settlement Agreement and in the Order Appointing Receiver.
5. From its very inception the receivership was a scheme designed to defraud Bowles of his 50% ownership in NPS. Long after October 1993, Bowles learned that Bishop had entered into an agreement in 1992 with Schwarz's attorney to betray Bowles. With Bishop's consent and without Bowles' knowledge, the appointed receiver was both a law partner of Schwarz's attorney and a lawyer who had represented Schwarz in previous litigation. As a result, the receivership was carried out in total disregard and in violation of the provisions of Chapter 64, Texas C.P.& R. Code. Bishop voluntarily withdrew his representation in March 1994 and reentered the case as a purported Intervenor although without legal standing to do so.
6. Due to the blatant conspiratorial fraud, in which Bishop fully participated, Bowles withdrew from the Settlement Agreement on March 31, 1995. Bishop agreed that Bowles had a legal right to do so. However, the conspirators disenfranchised Bowles and refused to recognize Bowles' withdrawal; they proceeded to carry out kangaroo court actions over Bowles' objections and in violation of a decision by a Texas appeal court in Bowles' favor. End result: Cause No. 1991-25939 was declared terminated without Bowles' consent. Bowles' was given the sum of \$65,000 as his share of the "sale" to Schwarz of a company for which a bid of 1.8 million dollars had been received and rejected by the receiver. END

## Section 6 – PROOF OF CLAIM

Indicate the total dollar amount of your claim:

1. The actual damages suffered by Bowles may be simply stated to have occurred on March 31, 1995 when Bowles withdrew from the Settlement Agreement and when the conspirators, including Bishop, refused to recognize the withdrawal. At that point, the status of the case was that existing immediately prior to the Settlement Agreement with Bowles the legal owner of a 50% interest in a company the market value of which had been established as 1.8 million dollars by public auction.. Bowles' loss on March 31, 1995 was \$900,000.
2. The present value of Bowles' loss of \$900,000 on March 31, 1995 calculated at 10 percent annual interest is approximately \$3,100,000 (13 years – 3.452271 multiplier).

**HARRY L. BOWLES, CLAIMANT**

**306 BIG HOLLOW LANE**

**HOUSTON TX 77042**

**Tel: 713-983-6779 Fax 713-983-6722**

**E-mail : [harry.bowles@separhlb.com](mailto:harry.bowles@separhlb.com)**

**To: The Home Insurance Company in Liquidation  
P.O. Box 1720  
Manchester, New Hampshire 03105-1720**

**Subject: Proof of Claim Against Home Insurance Policy No. LPL-F871578**

**CLAIMANT'S EXPLANATION OF LATE FILING OF  
CLAIM WITH LIQUIDATOR**

Harry L. Bowles herewith files the attached claim against Home Insurance Policy No. LPL-F871578 ("the policy") with the Liquidator knowing that the deadline for filing was June 13, 2004. The reason that this claim is late-filed is as follows:

1. The insureds under the professional malpractice policy were the three shareholders and principals of the law firm Bishop, Peterson & Sharp, P.C. ("BPS") of Houston, Texas. The president of the professional corporation was George M. Bishop. Only Mr. Bishop was the provider of services rendered to Bowles for which Bowles now files a claim for damages caused by Bishop's professional misconduct.
2. The policy was first issued on January 24, 1992 for a one-year period and was extended for another year on January 24, 1993. On December 18, 1993 Home notified the insureds that the policy would not be extended and would be cancelled effective February 6, 1994.
3. Bowles filed suit against BPS and its individual shareholders in August 1995, alleging legal malpractice, breach of contract and other causes of action.
4. After long delay, Bowles filed discovery requests to Bishop in 2002 requesting he provided copies of any insurance policies covering a prospective damage award in Bowles' favor. Mr. Bishop at all times refused to furnish any information. Bowles assumed that Bishop and BPS had no legal malpractice coverage.
5. Bowles discovery initiative continued into 2005 without revelation of an insurance contract. In August 2005 there appeared in the litigation in defense of BPS the Houston law firm of Marshall & McCracken, P.C. ("M&M").



- This firm also refused to produce a policy in response to Bowles discovery requests, but was forced to do so in September 2006.
6. At that time it was revealed that the Texas Property and Casualty Insurance Guaranty Association ("TPCIGA") had employed M&M to defend the Home Insurance Policy No. LPL-F871578.
  7. The policy tendered was found by Bowles to have been cancelled and that TPCIGA (nominally a state agency under the Insurance Department) had no authority to intrude and interfere in the malpractice action.
  8. In September 2006 Bowles still had no knowledge regarding whether or not Home Insurance Company or Home Insurance Company in Liquidation had officially requested TPCIGA to defend the policy as a covered claim.
  9. This information was revealed only when Bowles filed a suit in a Texas federal court against Home and against TPCIGA based on tortious interference and fraud.
  10. Bowles was knowingly deceived by Home and TPCIGA by not being given notice in 2003 that there was a claim against the policy transmitted to TPCIGA and that Bowles had the option of either making a claim with the Liquidator or with TPCIGA. In fact, Bowles did neither and was victimized by TPCIGA's intrusion into the malpractice action in defense of an alleged insurance policy that they refused to produce. Bowles has never previously submitted a claim against the policy to either TPCIGA or to the Liquidator because of his doubt that the policy covered his malpractice action against Bishop.
  11. That doubt has now been erased as a result of an affidavit by Home Senior Manager Ronald F. Barta received on or about November 16, 2007 in response to Bowles' lawsuit against Home and TPCIGA in the federal court in Austin, Texas. In that affidavit Mr. Barta declares that Home considered Bowles' lawsuit to be a "covered claim" and "voluntarily" decided to provide a defense against the claim. A copy of said affidavit is attached hereto.
  12. Mr. Barta states that the only remedy for Bowles under the Order of Liquidation is to file a Proof of Claim. Having been denied for twelve years the knowledge that Home always been aware of Bowles' August 1995 malpractice action and had elected to provide coverage under the policy, Bowles now proceeds to file the Proof of Claim with the Liquidator and requests it be determined to be wholly allowed.

Date: 2/04/08

By: Harry Bowles

**Renewal Certificate**  
 Professional Liability Insurance Policy  
 Attach to your expiring declarations.

Policy Number: LPL-FB7157B-1



**This is a claims made Policy. Please review the Policy carefully.**  
 The Policy is limited to liability for only those claims that are first made against the Insured during the policy period.

Insured by the stock company below and hereinafter called the company

**THE HOME INSURANCE COMPANY OF INDIANA INDIANAPOLIS, INDIANA**

Item 1. Named Insured and Address (Number, Street, Town or City, County, State, Zip Code)

**BISHOP, PETERSON & SHARP,  
 P. C.  
 3000 SMITH  
 HOUSTON  
 TX 77006**

**HARRIS**

Producer Name

**DANIELS-HEAD INSURANCE AGENCY INC.**

Item 2. Policy Period

From (Day-Mon-Yr)

**24-Jan-1993**

To (Day-Mon-Yr)

**24-Jan-1994**

12:01 A.M. Standard Time at the address of the Named Insured as stated herein.

Item 3. Form of Named Insured's Business

Insured is **CORPORATION**

And Those Professionals Listed on the Application.

Item 4. Limit of Liability

Each Claim \$ **2,000,000**

Aggregate \$ **2,000,000**

Item 5. Deductible

Per Claim \$ **10,000**

Item 6. Premium

**PREMIUM \$12,244.00**

**NO. OF PROFESSIONALS 3**

Item 7. Policy Changes and Endorsements (The endorsements noted below are part of this policy and either became effective at the inception of or during the preceding Policy Period(s), or will become effective at the inception of the Renewal Period.)

- H36581 05/86 LPL POLICY JACKET
- H37530 07/92 CANCEL/NONRENEW
- H37683 10/88 ARBITRATION ENDST
- H37973 07/91 REG ENDORSEMENT
- H40552 05/92 POLICYHOLDER NOTICE
- H35385 01/89 SPEC CLAIM EXCL
- H35497 03/87 PRIOR ACTS EXCLUSION

Do Not Write in This Box

Remarks

Countersigned at

**AUSTIN, TX**

Authorized Representative

Issue Date

**21-Jan-1993**

Countersign Date

**1-21-93**

**NOTICE OF CANCELLATION OR NON-RENEWAL**



POLICY NUMBER	TYPE OF POLICY	TERMINATION EFFECTIVE	PRODUCER NO.-OPC	DATE OF MAILING
LPL F871578-1	Lawyers Prof. Liab.	February 6, 1994 12:01 AM	39754 - 351	12/3/93

**INSURED'S NAME AND ADDRESS**

**PRODUCER**

THIS  
NOTICE  
MAILED  
TO  
Bishop, Peterson, & Sharp, P. C.  
3000 Smith  
Houston, Texas 77006

Daniels-Head Insurance  
Agency, Inc.  
P. O. Box 160730  
Austin, Texas 78716-0730

Applicable item marked with an "X"

HOME Insurance Co. of Indiana

**CANCELLATION**

You are hereby notified in accordance with the terms and conditions of the above mentioned policy that your insurance will cease at and from the hour and date mentioned above.

If the premium has been paid, premium adjustment will be made as soon as practicable after cancellation becomes effective.  
If the premium has not been paid, a bill for the premium earned to the time of cancellation will be forwarded in due course.

You are hereby notified in accordance with the terms and conditions of the above mentioned policy that your insurance will cease at and from the hour and date mentioned above due to nonpayment of premium.  
A bill for the premium earned to the time of cancellation will be forwarded in due course.

**X NON-RENEWAL**

You are hereby notified in accordance with the terms and conditions of the above mentioned policy that the above mentioned policy will expire effective at and from the hour and date mentioned above and the policy will NOT be renewed.

activity and past claim frequency.

Due to recent claim

**To LIENHOLDER OR LOSS PAYEE**

You are hereby notified that the agreement under the Loss Payment Clause to you, as Lienholder, which is part of the above policy, issued to the above insured, is hereby cancelled (or terminated) in accordance with the conditions of the policy, said cancellation (or termination) to be effective on and after the hour and date mentioned above.

**To MORTGAGEE**

You are hereby notified that the above mentioned policy and the Mortgagee Agreement is hereby cancelled. Your interest under the said policy is cancelled on (a) the termination date shown above or (b) 13 days from "Date of Mailing", whichever is later.

NAME AND  
ADDRESS OF  
LIENHOLDER,  
LOSS PAYEE  
OR  
MORTGAGEE

GNI 6630F (C) 6/91

*Ronda Ceramini*  
AUTHORIZED REPRESENTATIVE

CANCELLATION			EFFECTIVE DATE:
FLAT _____	MAJOR LINE	AMOUNT	FACTOR
P/R _____			REASON
S/R _____			CASH RETURN
SUBJECT TO AUDIT _____	TOTAL \$		FUTURE INSTALLMENTS

GNI 6630F (C) 6/91

COMPANY COPY

**CERTIFICATION**

I hereby certify that I personally mailed to the insured, and if named above, to the lienholder, loss payee or mortgagee, on the date hereon a notice of cancellation or non-renewal, an exact carbon of which appears above.

Date 12-3-93

Signature

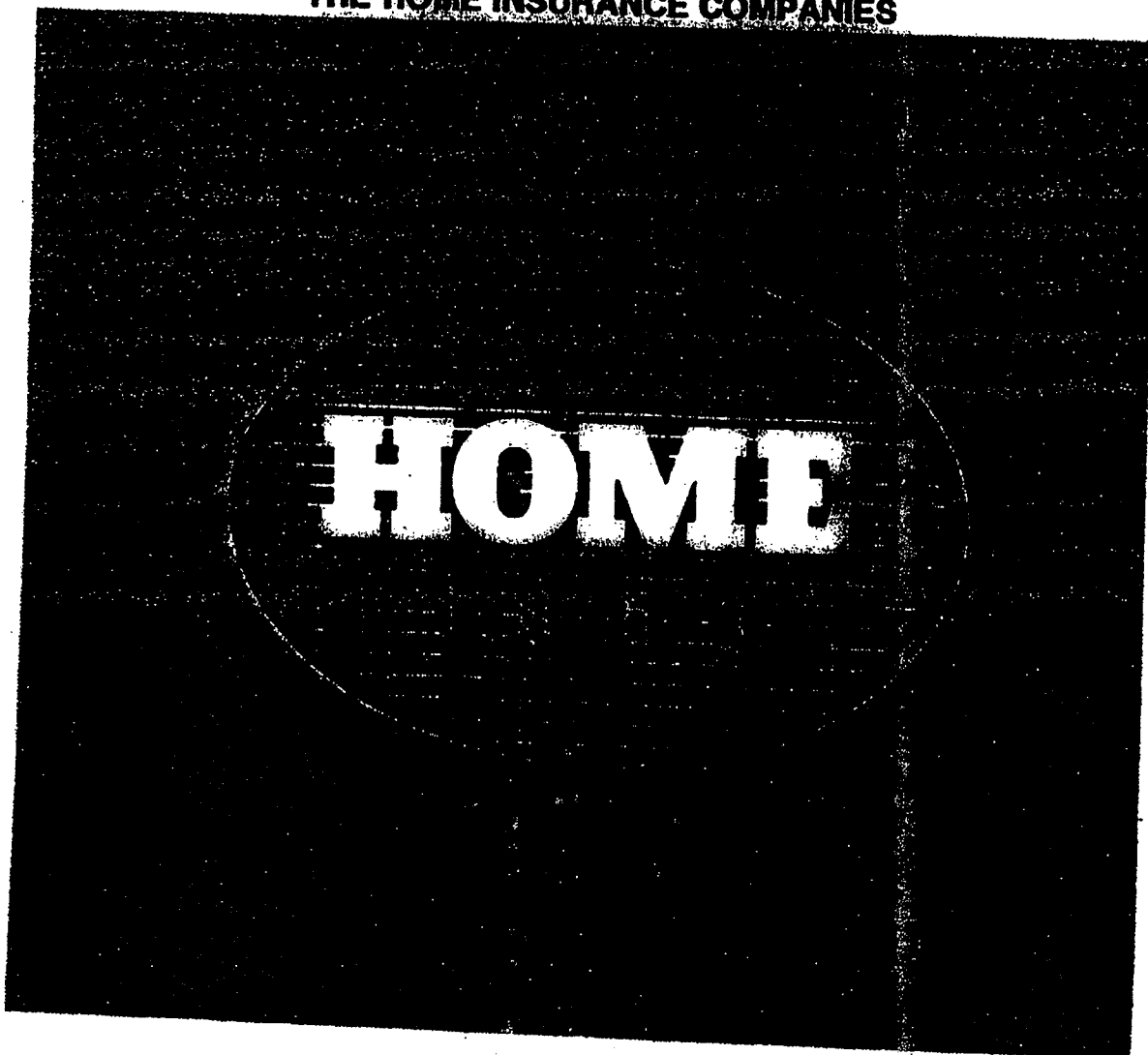
*[Signature]*

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**Professional Liability Insurance Policy**  
**Lawyers**

**THE HOME INSURANCE COMPANIES**



H96681F Ed. 6-88

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## Provisions

(A stock insurance company, hereinafter called the Company)

In consideration of the undertaking of the Named Insured to pay, when due, the premium and the deductible as described herein and in the amounts stated in the Declarations, and in reliance upon the statements in the application attached hereto and made a part hereof, and subject to the limits of liability shown in the Declarations, and subject to all of the terms of this insurance, the company agrees with the Named Insured as follows:

### This is a Claims Made Policy — Please Read Carefully

#### Section A — Insured

I. The Insured: The word "Insured," whenever used in this policy, means:

- (a) The Named Insured firm or persons named in the Declarations, or any lawyer or professional legal corporation who during the policy period becomes a partner, officer, director or employee of the firm;
- (b) any lawyer or professional legal corporation who was a former partner, officer, director or employee of the firm or predecessor firm(s) solely while acting in a professional capacity on behalf of such firms;
- (c) any lawyer or professional legal corporation who was a partner, officer, director or employee of the firm or predecessor firm(s) who has retired from the practice of law, but only for those professional services rendered prior to the date of retirement from the Insured firm;
- (d) any non-lawyer who was, is now, or hereinafter becomes an employee of the firm or predecessor firm(s) solely while acting within the scope of such person's duties as an employee;
- (e) as respects to the liability of each Insured as is otherwise covered herein, the heirs, executors, administrators, assigns and legal representatives of each Insured in the event of death, incapacity or bankruptcy;
- (f) any lawyer acting as "of counsel," but only while performing services on behalf of the Insured, any employed lawyer or any other employee.

II. Firm Changes: Any material change among the partners or stockholders of the Named Insured during the policy period should be reported to the Company immediately, and the Company given the right to decline to continue coverage or to charge an additional premium therefor.

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#### Section B — Coverage

I. Professional Liability and Claims Made Clause: To pay on behalf of the Insured all sums in excess of the deductible amount stated in the Declarations which the Insured shall become legally obligated to pay as damages as a result of CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD AND REPORTED TO THE COMPANY DURING THE POLICY PERIOD caused by any act, error or omission for which the Insured is legally responsible, and arising out of the rendering or failure to render professional services for others in the Insured's capacity as a lawyer or notary public.

It is a condition precedent to coverage under this policy that all claims be reported in compliance with the Section F CLAIMS I. NOTICE OF CLAIMS.

PROVIDED ALWAYS THAT such act, error or omission happens:

- (a) during the policy period, or,
- (b) prior to the policy period, provided that prior to the effective date of the first Lawyers Professional Liability Insurance Policy issued by this Company to the Named Insured or predecessor law firm and continuously renewed and maintained in effect to the inception of this policy period:

- 1) The Insured did not give notice to any prior insurer of any such act or error, and
- 2) the Named Insured, any partner, shareholder, employee, or where appropriate the Named Insured's management committee or any member thereof, had no reasonable basis to believe that the Insured had breached a professional duty or to foresee that a claim would be made against the Insured; and
- 3) there is no prior policy or policies which provide insurance for such liability or claim, unless the available limits of liability of such prior policy or policies are insufficient to pay any liability or claim, in which event this

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policy will be excess over any such prior coverage, subject to this policy's terms, limits of liability, exclusions and conditions.

When the Insured renders or fails to render services as an administrator, conservator, receiver, executor, guardian, trustee, or in any similar fiduciary capacity, the Insured's acts and omissions in such capacity shall be deemed for the purpose of this section to be the performance of professional services for others in the Insured's capacity as a lawyer, provided that this coverage shall not apply to any loss sustained by the Insured as the beneficiary or distributee of any trust or estate.

Services performed by the Insured in a lawyer-client relationship on behalf of one or more clients shall be deemed for the purpose of this section to be the performance of professional services for others in the Insured's capacity as a lawyer, although such services could be performed wholly or in part by non-lawyers.

It is a condition precedent to coverage under this policy that all claims be reported in compliance with the Section F CLAIMS I. NOTICE OF CLAIMS.

Claim, whenever used in this policy, means a demand received by the Insured for money or services, including the service of suit or institution of arbitration proceedings against the Insured.

Damages, whenever used in this policy, means a monetary judgement or settlement, including any such judgement or settlement for personal injury, and does not include fines or statutory penalties, or sanctions whether imposed by law or otherwise, nor the return of or restitution of legal fees, costs and expenses.

Predecessor Firms, whenever used in this policy, means any lawyer, law firm or professional legal corporation engaged in the practice of law to whose financial assets and liabilities the firm listed as Named Insured in the Declarations is the majority successor in interest.

Policy Period, whenever used in this policy, means the period from the inception date of this policy to the policy expiration date as set forth in the Declarations or its earlier termination date, if any.

II. **Consent to Settle, Defense:** With respect to the insurance afforded by this policy, the Company shall defend any claim against the Insured including the appeal thereof seeking damages to which this insurance applies even if any of the allegations of the suit are groundless, false, or fraudulent. The Company shall not settle any claim without the consent of the Insured unless otherwise agreed between the Insured and the

Company. If the Insured shall refuse to consent to any settlement or compromise recommended by the Company and acceptable to the claimant and shall elect to contest the claim or proceeding, then the Company's liability under this policy shall not exceed and shall be limited to the amount for which the claim or proceedings could have been settled or compromised. It is further agreed that the Company may make such investigation of any claim as it deems expedient, but the Company shall not be obligated to pay any claim or judgement or to defend or to continue to defend any claim after the limits of the Company's liability have been exhausted. Thus, when the claims expenses equal the amount for which the case could have been settled or compromised, the Company shall have the right to withdraw from the further investigation and/or defense thereof by tendering control of such investigation or defense to the Insured, and the Insured agrees, as a condition of the issuance of this policy, to accept such tender.

III. **Discovery Clause:** If, during the policy or any optional Reporting Period purchased hereunder, the Insured first becomes aware that an Insured has committed a specific act, error or omission in professional services for which coverage is otherwise provided hereunder, and if the Insured shall during the policy period or the optional Reporting Period purchased hereunder give notice to the Company of:

(a) the specific act, error or omission; and

(b) the injury or damage which has or may result from such act, error or omission; and

(c) the circumstances by which the Insured first becomes aware of such act, error or omission

then any claim that may subsequently be made against the Insured arising out of such act, error or omission shall be deemed for the purposes of this insurance to have been made during the policy period or the optional Reporting Period purchased hereunder. The Insured shall cooperate fully with the Company as provided in Section F CLAIMS I. and II. and any investigation conducted by the Company or its representatives shall be subject to the terms set forth in this policy.

IV. **Options to Extend Claims Reporting Period:** If the Named Insured does not renew this policy after complying with all the terms and conditions thereof, including the payment of all premiums and/or deductibles when due, or if the Company shall cancel or refuse to renew the policy for reasons other than the Named Insured's non-payment of premiums and/or deductibles or non-compliance with the terms and conditions of

this policy, then the Named Insured upon payment of an additional premium as set forth herein shall have the option to extend the insurance afforded by this policy subject otherwise to its terms, limit of liability, exclusions and conditions, to apply to CLAIMS FIRST MADE AGAINST THE INSURED DURING (a) 12 MONTHS, (b) 24 MONTHS, or (c) 36 MONTHS, as elected by the Named Insured, following immediately upon the effective date of such termination, but only by reason of any act, error or omission in professional services rendered before such effective termination date and otherwise covered by this insurance.

The extension of coverage for claims made subsequent to termination of the policy shall be endorsed hereto, if purchased, and shall hereinafter be referred to as the OPTIONAL REPORTING PERIOD.

The premium for the optional Reporting Period elected by the Named Insured shall be (a) 100% for 12 MONTHS, (b) 150% for 24 MONTHS, or (c) 185% for 36 MONTHS, of the full annual premium for this policy.

This coverage will be renewable annually at the expiration of the optional Reporting Period at the option of the Insured upon payment of an additional premium determined by the Company in accordance with the rates in effect at each annual renewal date.

At the commencement of any optional Reporting Period, the entire premium therefor shall be deemed earned, and in the event the Insured terminates the optional Reporting Period before its term for any reason, the Company shall not be liable to return to the Insured any portion of the premium for the optional Reporting Period.

The fact that the period during which claims must be first made against the Insured under this policy is extended by virtue of the optional Reporting Period shall not in any way increase the limits of liability of this policy.

**V. Option to Purchase Non-Practicing Reporting Period:** If any Insured retires or otherwise ceases the private practice of law during the policy period, then upon payment of an additional premium as set forth herein, the Insured shall have the option to extend the insurance afforded by this policy to apply to CLAIMS FIRST MADE AGAINST THE INSURED AND REPORTED TO THE COMPANY DURING (a) 12 MONTHS, (b) 24 MONTHS, (c) 36 MONTHS or (d) an unlimited period immediately following the expiration date of this policy as stated in the Declarations, but only by reason of any act, error or omission in professional services

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rendered before the Insured's date of retirement or termination of private practice and otherwise covered by the insurance, PROVIDED there is no other insurance procured on or after the Insured's date of retirement or termination of practice which covers the Insured for such liability or claim. Such other insurance shall render this coverage inapplicable, even though the limits of liability of such other insurance may be inadequate to pay all losses and claim expenses and/or the deductible amount and deductible provisions of such other insurance may be different from those of this policy.

The extension of coverage elected by the Insured for claims made subsequent to the Insured's date of retirement or termination of private practice shall be endorsed hereto, if purchased, and shall hereinafter be referred to as the NON-PRACTICING REPORTING PERIOD.

The premium for the Non-Practicing Reporting Period elected by the Insured shall be (a) 100% for 12 MONTHS, (b) 150% for 24 MONTHS, (c) 185% for 36 MONTHS, or (d) 225% for an unlimited period of the full annual premium for this policy.

The deductible amount and deductible provisions of this policy will be waived with respect to claims first made against the Insured during the Non-Practicing Reporting Period purchased by the Insured.

The limits of liability stated in the Declarations and described in Section E LIMITS OF LIABILITY I. and II. shall not apply to the optional reporting period available herein. The limits of liability stated in the following schedule shall apply to claims first made against the Insured during the Non-Practicing Reporting Period, if purchased and shall apply as described in said schedule.

The limits of liability in effect at the inception of this policy as stated in the Declarations shall be used to compute the limits of liability provided during the Non-Practicing Reporting Period if purchased.

In the event of the death of an Insured or for those Insureds with three consecutive full years of coverage by the Company who become permanently, totally disabled preventing further practice of an Insured as defined by Item (a) in Section A INSURED I. THE INSURED, such Insured shall be entitled, at no additional premium, to a Non-Practicing Reporting Period for all claims first made after the termination of the policy period arising out of any act, error or omission occurring prior to the termination of the policy period and otherwise covered by this policy. However, those

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Identified by Items (b) thru (f) of Section A INSURED I. THE INSURED are specifically excluded from exercising this option.

"Totally and permanently disabled" means that the Insured has become so disabled as to be wholly prevented from rendering professional services for others in the capacity as a lawyer or notary public provided that such disability:

- A. has existed continuously for not less than 6 months; and
- B. is expected to be continuous and permanent.

"Totally and permanently disabled" shall not include any condition which:

- A. is a result of war or acts of war, whether or not declared;
- B. occurred during active service in the armed forces of any country; or
- C. results from:
  - 1. intentionally self-inflicted injuries;
  - 2. actual or attempted suicide, whether or not sane; or

- 3. the abuse or misuse of addictive chemical compounds or alcohol.

If the Insured exercises the Non-Practicing Reporting Period option:

(a) The liability of the Company for each claim FIRST MADE AGAINST THE INSURED DURING THE NON-PRACTICING REPORTING PERIOD purchased by the Insured shall not exceed the amount(s) stated in the applicable schedule for "each claim"; and

(b) Subject to the limits of liability for "each claim," the liability of the Company for all claims FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD INCLUDING THE NON-PRACTICING REPORTING PERIOD shall not exceed the amount(s) stated in the schedule below as "policy aggregate."

If any "aggregate" or "policy aggregate" limit of liability becomes exhausted by payment of claims expenses, judgments and/or settlements, this policy, including the Non-Practicing Reporting Period, may be cancelled by the Company. The Company also shall not be obligated to defend or continue to defend any claim for which the applicable "aggregate" or "policy aggregate" has been exhausted by payment of claims expenses, judgments or settlements.

**V (SCHEDULE)**

1. \$100,000 each claim/\$300,000 aggregate, then Column I of the following schedule applies.
2. \$200,000 each claim/\$600,000 aggregate, then Column II of the following schedule applies.
3. Other than those indicated in I or II, then such limits as shown in the Declarations shall also apply during the total Non-Practicing Reporting Period purchased and the "aggregate" limit shall be deemed the "policy aggregate" as referred to in subparagraph (b) above.

	I	II
A. Each Claim:	\$100,000	\$ 200,000
Policy Aggregate:	300,000	600,000
B. Each Claim:	110,000	220,000
Policy Aggregate:	350,000	600,000
C. Each Claim:	120,000	240,000
Policy Aggregate:	400,000	600,000
D. Each Claim:	130,000	260,000
Policy Aggregate:	500,000	600,000
Each Claim:	140,000	280,000
Policy Aggregate:	500,000	600,000

Effective as of  
and applicable to  
**CLAIMS FIRST MADE  
AGAINST THE INSURED DURING**

First 12 month period immediately following expiration, if a 12 month extension is purchased;

Second 12 month period immediately following expiration, if a 24 month extension is purchased (Also subject to A);

Third 12 month period immediately following expiration, if a 36 month extension is purchased (Also subject to A and B);

Fourth 12 month period immediately following expiration;

and thereafter, if the unlimited extension is purchased (Also subject to A, B and C).



**VI. Exercising The Options:** As a condition precedent to the Insured's right to exercise these options, the full annual premium of this policy and any deductibles that are due must have been paid. Neither the Optional Reporting Period nor the Non-Practicing Reporting Period shall be available when any Insured's license or right to practice his profession is revoked, suspended by or surrendered at the request of any regulatory authority.

The Insured's right to purchase any extension option must be exercised by notice in writing not later than thirty (30) days after the cancellation or termination date of this policy. Effective notice must indicate the total extension period desired **AND MUST INCLUDE PAYMENT OF PREMIUM FOR SUCH EXTENSION PERIOD** as well as all deductibles due the Company.

If such notice, premium and deductible payment are not so given to the Company, the Insured shall not at a later date be able to exercise such rights.

#### **Section C -- Exclusions**

**I. This policy does not apply:**

(a) to any judgement or final adjudication based upon or arising out of any dishonest, deliberately fraudulent, criminal, maliciously or deliberately wrongful acts or omissions committed by the Insured;

(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 in connection 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) to liability arising out of the Insured's services and/or capacity as:

1) an officer, director, partner, trustee, or employee of a business enterprise or charitable organization or pension, welfare, profit sharing, mutual or investment fund or trust;

2) a public official, or an employee of a governmental body, subdivision, or agency;

3) a fiduciary under the Employee Retirement Income Security Act of 1974 and its amendments or any regulation or order issued pursuant thereto, except if an Insured is deemed to be a fiduciary solely by reason of legal advice rendered with respect to an employee benefit plan;

(d) to any liability for bodily injury, sickness, disease or death of any person, or injury to or destruction of any tangible property or loss of use resulting therefrom;

(e) to any claims arising out of notarized certification or acknowledgement of a signature without the physical appearance before such notary public as Insured hereunder of the person who is or claims to be the person signing said instrument;

(f) to any claim made by a present, former or prospective partner, officer, director, stockholder employee or employee of the Insured unless such claim arises out of the professional services of the Insured in a lawyer-client relationship except as otherwise excluded under Exclusion (h);

(g) to any claim based upon or arising out of discrimination by the Insured on the basis of race, creed, age, sex or marital status;

(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. For purposes of this policy, ownership or shares in a corporation shall not be considered a "pecuniary or beneficial interest" unless one Named Insured or members of the immediate family of the Named Insured own(s) 10% of the issued and outstanding shares of such corporation;

(i) to any claim for property damage arising out of Insured's act, error or omission while acting as attorney, officer, director, partner, trustee or employee of a business enterprise which is liable or may be held liable for the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon

land, the atmosphere or any water course or body of water.

**II. Waiver of Exclusion and Breach of Conditions:** Whenever coverage under any provision of this policy would be excluded, suspended or lost

(a) because of exclusion (a) relating to any judgment or final adjudication based upon or arising out of any dishonest, deliberately fraudulent, criminal, malicious or deliberately wrongful acts or omissions by any insured, or

(b) because of noncompliance with Section F CLAIMS I. NOTICE OF CLAIMS relating to the giving of notice to the Company with respect to which any other insured shall be in default solely because of the default or concealment of such default by one or more partners or employees responsible for the loss or damage otherwise insured hereunder,

the Company agrees that such insurance as would otherwise be afforded under this policy shall apply with respect to each and every insured who did not personally commit or personally participate in committing one or more of the acts, errors or omissions described in any such exclusion or condition; provided that if the condition be one with which such insured can comply, after receiving knowledge thereof, the insured entitled to the benefit of the Waiver of Exclusions and Breach of Conditions shall comply with such condition promptly after obtaining knowledge of the failure of any other insured or employee to comply therewith. However, related acts, errors or omissions shall be treated as a single claim, and suits brought by more than one person or organization shall not operate to increase the Company's limit of liability.

With respect to provision II. (a) above, the Company's obligation to pay in the event of such waiver shall be in excess of the deductible and in the excess of the full extent of any assets in the firm of any insured who is not a beneficiary to the waiver.

#### Section D — Territory

The insurance afforded applies worldwide.

#### Section E — Limits of Liability

**I. Limits of Liability — Each Claim:** The liability of the Company for each claim FIRST MADE AGAINST THE INSURED AND REPORTED TO THE COMPANY DURING THE POLICY PERIOD, including the Optional Reporting Period, if such is purchased, shall not exceed the amount stated in the Declaration for each claim, and shall include

all claim expenses. If the limits of liability are exhausted prior to settlement or judgment of any pending claim or suit, the Company shall have the right to withdraw from the further investigation or defense thereof by tendering control of such investigation or defense to the insured, and the insured agrees, as a condition to the issuance of this policy, to accept such tender.

**II. Limits of Liability/Aggregate:** Subject to Section E I. LIMITS OF LIABILITY — EACH CLAIM, the liability of the Company shall not exceed the amount stated in the Declarations as aggregate as a result of all claims FIRST MADE AGAINST THE INSURED AND REPORTED TO THE COMPANY DURING THE POLICY PERIOD including the Optional Reporting Period, if such is purchased.

**III. Deductible:** The deductible amount stated in the Declarations shall be paid by the Named Insured and shall be applicable to all damages and claim expenses, for each and every claim, whether or not loss payment is made for claims first made during the policy period. The deductible shall be deemed to be applied first to the damages and/or claim expenses.

If the Optional Reporting Period is purchased, the deductible will be applicable in the full amount shown in the Declarations and shall be applicable to all damages and claim expenses, for each and every claim whether or not loss payment is made, for all claims first made during the Optional Reporting Period.

Such amounts shall upon written demand by the Company be paid by the Named Insured within thirty (30) days regardless of the number of claims first made during the policy period.

The determination of the Company as to the reasonableness of the claim expenses shall be conclusive on the Named Insured.

**IV. Multiple Insureds, Claims and Claimants:** The inclusion herein of more than one insured or the making of claims or the bringing of suits by more than one person or organization shall not operate to increase the Company's limit of liability. Related acts, errors or omissions shall be treated as a single claim. All such claims, whenever made, shall be considered first made during the policy period or optional Reporting Period in which the earliest claim arising out of such act, error or omission was first made, and all such claims shall be subject to the same limits of liability.

**V. Payment and Apportionment of Claim Expenses:** All claim expenses shall first be

subtracted from the limit of liability with the remainder, if any, being the amount available to pay as damages. If the limits of liability are exhausted prior to settlement or judgment of any pending claim or suit, the Company shall have the right to withdraw from the further investigation or defense thereof by tendering control of such investigation or defense to the Insured, and the Insured agrees, as a condition to the issuance of this policy, to accept such tender.

Claim expenses, whenever used in this policy, means:

(a) fees charged by any lawyer designated by the Company;

(b) all other fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a claim, if incurred by the Company.

However, "claim expenses" does not include salary charges of regular employees or of the officials of the Company or any supervisory counsel retained by the Company.

#### Section F — Claims

**I. Notice of Claims:** As a condition precedent to the right to the protection afforded by this insurance, the Insured shall, as soon as practicable, give to the Company written notice of any claim made against the Insured.

In the event suit is brought against the Insured, the Insured shall immediately forward to the Company every demand notice, summons or other process received directly or by the Insured's representatives.

**II. Assistance and Cooperation of the Insured:** The Insured shall cooperate with the Company and upon the Company's request shall submit to examination and interrogation by a representative of the Company, under oath if required, and shall attend hearings, depositions and trials, and shall assist in effecting settlement, securing and giving evidence, obtaining the attendance of witnesses, and in the conduct of suits, as well as in the giving of a written statement or statements to the Company's representatives and meeting with such representatives for the purpose of investigation and/or defense, all without charge to the Company. The Insured shall further cooperate with the Company and do whatever is necessary to secure and effect any rights of indemnity, contribution or apportionment which the Insured may have. The Insured shall exercise the Insured's right to either reject or demand the arbitration of any claim made against the Insured in accordance with the written instructions of the

Company. The Insured shall not, except at the Insured's own cost, make any payment, admit any liability, settle any claims, assume any obligation or incur any expense without the written consent of the Company.

**III. Subrogation:** In the event of any payment under this policy, the Company shall be subrogated to all the Insured's rights of recovery therefor against any person or organization, and the Insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The Insured shall do nothing to prejudice such rights.

The Company shall not exercise any such rights against any persons, firms or corporations included in the definition of Insured. Notwithstanding the foregoing, however, the Company reserves the right to exercise any rights of subrogation against an Insured with respect to any claim brought about or contributed to by the intentional, dishonest, fraudulent, criminal or malicious act or omission of such Insured.

Any amount so recovered shall be apportioned as follows:

Any recovery shall first be used for the repayment of expenses incurred toward subrogation; second, to loss and/or claim expenses paid by the Company; third, to any loss and expense payment by the Insured in excess of any deductible(s); fourth, to any loss and expense payments by an excess carrier on behalf of the Insured; fifth, to any loss and expense payments by any primary carrier on behalf of the Insured; and last, to repayment of the Insured's deductible.

**IV. Action Against the Company:** No action shall lie against the Company unless, as a condition precedent thereto, the Insured shall have fully complied with all the terms of this policy, nor until the amount of the Insured's obligation to pay shall have been fully and finally determined either by judgment against the Insured after actual trial or by written agreement of the Insured, the Claimant and the Company.

Nothing contained in this policy shall give any person or organization the right to join the Company as a co-defendant in any action against the Insured to determine the Insured's liability. Bankruptcy or insolvency of the Insured or of the Insured's estate shall not relieve the Company of any of its obligations hereunder.

**V. False or Fraudulent Claims:** If any Insured shall commit fraud in proffering any claim as regards

amount or otherwise, this insurance shall become void as to such insured from the date such fraudulent claim is proffered.

**Section G - Conditions**

**I. Application:** By acceptance of this policy, the insured agrees that the statements in the application are personal representations, that they shall be deemed material and that this policy is issued in reliance upon the truth of such representations and that this policy embodies all agreements existing between the insured and the Company, or any of its agents, relating to this insurance.

**II. Other Insurance:** Subject to the limitation of coverage as set forth in Section B COVERAGE I, (b) for prior insurance, and Section B COVERAGE V, for insurance procured subsequent to termination of practice, this insurance shall be in excess of the amount of the applicable deductible of this policy and any other valid and collectible insurance available to the insured whether such other insurance is stated to be primary, pro rata, contributory, excess, contingent or otherwise, unless such other insurance is written only as a specific excess insurance over the limits of liability provided in the policy.

**III. Changes:** Notice to any agent or knowledge possessed by any agent or other person acting on behalf of the Company shall not affect a waiver or a change in any part of this policy or estop the Company from asserting any right under the terms of the policy, nor shall the terms of the policy be waived or changed, except by written endorsement issued to form a part of this policy.

**IV. Assignment:** Assignment of interest under this policy shall not bind the Company unless its consent is endorsed in writing hereon.

**V. Cancellations:** This policy may be cancelled by the Named Insured by surrender thereof to the

Company or by mailing to the Company written notice stating when thereafter such cancellation shall be effective. If cancelled by the Insured, the Company shall retain the customary short rate proportion of the premium.

This policy may be cancelled by the Company by mailing to the Named Insured in the Declarations written notice stating when, not less than thirty (30) days thereafter, such cancellation shall be effective. Such notice shall be conclusive on all Named Insureds.

However, if the Company cancels the policy because the Insured has failed to pay a premium or deductible when due, this policy may be cancelled by the Company by mailing a written notice of cancellation to the Insured stating when not less than ten (10) days thereafter such cancellation shall be effective. The mailing of notices as aforementioned shall be sufficient notice and the effective date of cancellation stated in any notices shall become the end of the policy period. Delivery of such written notice by the Named Insured or the Company shall be the equivalent to mailing.

If cancelled by the Company, earned premium shall be computed pro rata. Premium adjustment may be made at the time cancellation is effected or as soon as practicable thereafter.

**Definitions-Reference**

Certain words are specifically defined for the policy and the definitions are to be found in the sections set forth below:

(a) Claim, damages, policy period - see Section B COVERAGE I.

(b) Claim expenses - see Section E LIMITS OF LIABILITY V.

**IN WITNESS WHEREOF,** the Company has caused this policy to be executed and attested, but this policy shall not be valid unless countersigned by a duly authorized representative of the Company.

*James J. McLaughlin*  
President  
THE HOME INSURANCE COMPANY  
OF WISCONSIN

*William L. Shuman*  
President  
THE HOME SECURITY COMPANY

*F.A. Wingo*  
President  
CITY INSURANCE COMPANY

*Arthur Phillips*  
President  
THE HOME INSURANCE COMPANY  
OF ILLINOIS

*Raymond M. Mack*  
President  
THE HOME INSURANCE COMPANY  
OF CALIFORNIA  
THE HOME INSURANCE COMPANY  
OF ALABAMA  
THE HOME INSURANCE COMPANY  
OF MISSISSIPPI  
THE HOME INSURANCE COMPANY  
OF WISCONSIN

**Nuclear Energy Liability  
Exclusion Endorsement**

(BROAD FORM)

This endorsement modifies the provisions of this policy.

It is agreed that:

**I. This policy does not apply:**

**(A) Under any Liability Coverage, to bodily injury or property damage**

1) with respect to which an insured under this Policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or

2) resulting from the hazardous properties of nuclear material and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

**(B) Under any Medical Payments Coverage, or any Supplementary Payments provision relating to first aid, to expenses incurred with respect to bodily injury resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization.**

**(C) Under any Liability Coverage, to bodily injury or property damage resulting from the hazardous properties of nuclear material, if**

1) the nuclear material (a) is at any nuclear facility owned by, or operated by or on behalf of an insured or (b) has been discharged or dispersed therefrom;

2) the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an insured; or

3) the bodily injury or property damage arises out of the furnishing by an insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility, but if

such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (3) applies only to property damage to such nuclear facility and any property thereat.

**II. As used in this endorsement:**

"hazardous properties" include radioactive, toxic or explosive properties;

"nuclear material" means source material, special nuclear material or by-product material;

"source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;

"spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor;

"waste" means any waste material (1) containing by-product material and (2) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (a) or (b) thereof;

"nuclear facility" means

(a) any nuclear reactor,

(b) any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing spent fuel, or (3) handling, processing or packaging waste,

(c) any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than twenty-five (25) grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235,

(d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste,

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;

"nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;

"property damage" includes all forms of radioactive contamination of property.



## Texas Combined Policyholder Notice

### IMPORTANT NOTICE

To obtain information or make a complaint:

You may call the Home's toll-free telephone number for information or to make a complaint at:

1-800-877-1801

You may also write to the Home at:

P. O. Box 742348  
Dallas, Texas 75374-2348

You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at:

1-800-252-3439

You may write to the Texas Department of Insurance at:

P. O. Box 149104  
Austin, TX 78714-9104  
FAX # (512) 475-1771

#### PREMIUM OR CLAIM DISPUTES:

Should you have a dispute concerning your premium or about a claim, you should contact the Home first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

#### ATTACH THIS NOTICE TO YOUR POLICY:

This notice is for information only and does not become a part or condition of the attached document.

### AVISO IMPORTANTE

Para obtener información o para someter una queja:

Usted puede llamar al número de teléfono gratis de el Home para información o para someter una queja al

1-800-877-1801

Usted también puede escribir a el Home:

P. O. Box 742348  
Dallas, Texas 75374-2348

Puede comunicarse con el Departamento de Seguros de Texas para obtener información acerca de compañías, coberturas, derechos o quejas al

1-800-252-3439

Puede escribir al Departamento de Seguros de Texas:

P. O. Box 149104  
Austin, TX 78714-9104  
FAX # (512) 475-1771

#### DISPUTAS SOBRE PRIMAS O RECLAMOS:

Si tiene una disputa concerniente a su prima o a un reclamo, debe comunicarse con el Home primero. Si no se resuelve la disputa, puede entonces comunicarse con el departamento (TDI).

#### UNA ESTE AVISO A SU POLIZA:

Este aviso es solo para proposito de informacion y no se convierte en parte o condicion del documento adjunto.



**Prior Acts Exclusion Endorsement**

H254377  
Rev. 3-87

The following information is required only when this endorsement is issued subsequent to preparation of policy.

Named Insured	Policy Number	Endorsement Number	Effective Date
Bishop, Peterson, & Sharp, P.C.			1/24/92 <i>KEP</i>

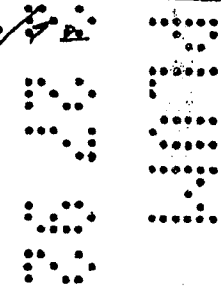
In consideration of the premium charged, it is hereby understood and agreed that this policy specifically excludes loss resulting from claims made against any insured arising from any acts, errors, omissions, or personal injuries occurring or alleged to have occurred prior to 1/24/92

DHIA - TX

FE - 4 1992

I/We hereby understand and agree to the above.

Signature of partner, officer or sole proprietor	Date
<i>[Signature]</i>	1/20/92
<i>Michael W. [Signature], Vice-President</i>	1/30/92



All other terms and conditions remain unchanged.

*[Signature]*  
Authorized Representative

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**Specific Claim Exclusion**

The following information is required only when this endorsement is issued subsequent to preparation of policy.

Named Insured	Effective Date	Endorsement Number	Policy Number
Bishop, Peterson, & Sharp, P.C			

In consideration of the premium paid, it is hereby understood and agreed that NO coverage is afforded hereunder for any claim arising out of any circumstances, acts, errors, or omissions identified in Question Number 11c of the application dated January 20, 1992.

I/We hereby understand and agree to the above:

Signature of partner, officer or sole proprietor <i>N. Cal [Signature], Vice-President</i>	Date <i>2/4/92</i>
---	-----------------------

All other terms and conditions remain unchanged.

*[Signature]*  
Authorized Representative





Limited Banking Services And Bank Regulatory Agency Exclusions Amendatory Endorsement Lawyers Professional Liability Insurance

DHIA - TX

JAN 22 1992

This Endorsement Amends The Policy. Please Read It Carefully.

The following information is required only when this endorsement is issued subsequent to preparation of the policy.

NAMED INSURED	POLICY #	EFFECTIVE DATE	ENDORSEMENT #
Bishop, Peterson, & Sharp, P.C.			

In consideration of the premium paid, it is hereby understood and agreed that the following are added to Section C Exclusion:

- (j) to any claim based upon or arising directly or indirectly from any act, error or omission in providing professional services to, for, or on behalf of any savings and loan association, savings bank, credit union or commercial banking institution, (each of the foregoing hereinafter referred to as "Bank"), if at the time such claim is presented to the Company:
  - 1) the Bank is operating pursuant to a supervisory agreement, or
  - 2) the Bank has been determined by a court of competent jurisdiction to be insolvent, or
  - 3) the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, any depository insurance organization, the Comptroller of the Currency, the Office of Thrift Supervision or any other national or state agency, or a predecessor, successor or assign, (each of the foregoing hereinafter referred to as an "Agency"), or any corporation or organization owned in whole or in part by an Agency, has been appointed receiver, conservator or liquidator of the Bank.

Notwithstanding the foregoing, this exclusion shall not apply to professional services provided to, for, or on behalf of a Bank which relate solely and exclusively to real estate closings for one to four family residences and collection activities related thereto, consumer loan collection activities and repossession activities.

- (k) to any liability whatsoever based upon or arising out of any action or proceeding made or brought either directly by, or on behalf of, the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, any other depository insurance organization, the Comptroller of the Currency, the Office of Thrift Supervision, or any other national or state agency or a predecessor, successor or assign (each of the foregoing hereinafter referred to as an "Agency"), or any corporation or organization owned in whole or in part by an Agency, against any insured including, but not limited to, any action or proceeding which such Agency, corporation or organization makes, brings or has the legal right to make or bring in its capacity as regulator, receiver, conservator, liquidator, shareholder, successor in interest, assignee or otherwise against any insured, and regardless of whether such action or proceeding is made or brought in the name of such Agency, corporation or organization, or by or on behalf of such Agency, corporation or organization in the name of any other person or entity, or solely in the name of any other person or entity.

All other terms and conditions remain the same.

*M. Charles Peterson* Vice President  
 Agreed & Understood  
*M. Charles Peterson* Vice President

1/22/92  
 Date 2/4/92

FF-23

**Declarations**  
Professional Liability Insurance Policy

Policy Number: LPL-FB7157B-0



**This is a claims made Policy. Please review the Policy carefully.**

The Policy is limited to liability for only those claims that are first made against the insured during the policy period.

Insured by the stock company below and hereinafter called the company			
The Home Insurance Company of Indiana Indianapolis, Indiana			
Item 1. Named Insured and Address (Number, Street, Town or City, County, State, Zip Code)		Producer Name	
BISHOP PETERSON & SHARP, P.C.  3000 SMITH HOUSTON TX 77006  HARRIS		DANIELS-HEAD INSURANCE AGENCY INC.	
		Item 2. Policy Period	
		From (Day-Mon-Yr)	To (Day-Mon-Yr)
		24-Jan-1992	24-Jan-1993
		12:01 A.M. Standard Time at the address of the Named Insured as stated herein.	
And Those Professionals Listed on the Application.		Item 3. Form of Named Insured's Business	
		Insured is Corporation	
Item 4. Limit of Liability			
Each Claim \$	2,000,000		
Aggregate \$	2,000,000		
Item 5. Deductible			
Per Claim \$	10,000		
Item 6. Premium			
PREMIUM	\$9,927.00		
		NO. OF PROFESSIONALS 4	
Item 7. Forms Attached at Issuance			
H36581 05/86 LPL POLICY JACKET			
H37530 09/89 CANCEL/NONRENEW			
H37683 10/88 ARBITRATION ENDST			
H37973 07/91 BANKING ENDORSEMENT			
H35385 01/89 SPEC CLAIM EXCL			
H35497 03/87 PRIOR ACTS EXCLUSION			
By acceptance of this policy the insured agrees that the statements in the Declarations and the Application and any attachment hereto are the insured's agreements and representations and that this policy embodies all agreements existing between the insured and the Company or any of its representatives relating to this insurance.			
Do Not Write In This Box	Remarks	Countersigned at AUSTIN, TX Authorized Representative	Issue Date 04-Feb-1992 Commission Date 2/4/92

H37809F (C) Ed. 6-89

003852

3/16/92 ed

COPY

FF-24

CF142

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"

085-600764-174  
DRP

JAN 04 1993

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

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  
Lane; 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

*Dill*

**H L B**

DEC 27 1993

December 22, 1993

Confidential To George Bishop.

RE: Your three (3) letters dated 12/20/93. ( 2 to me, 1 to Reynolds )

George:

Your letter to Reynolds is incorrect in that it was not for the " first time ", I told you I wanted all cash.

Your letter to me re: " all cash ". I did not indicate to you " for the first time " I wanted all cash. I repeatedly told you I like any other normal human being preferred all cash. I NEVER AT ANY TIME told you to " renegotiate " for a sale that was not all cash. I never " changed my mind." Yes, Pennington did ask me to come with the deal as a consultant which I indicated I would do on certain conditions. That is not ruled out, but completely dependent on his meeting my terms, not me meeting his. If Pennington chooses to buy NPS absent a non compete or consulting agreement, that is entirely his prerogative. I however, have no intention of signing anything with anybody not meeting my terms.

You noted in your last paragraph that the supposed " new inventory " is excess of more than \$ 500,000.00 more than on the books. You are only affirming what I have charged all along and I am glad you and I agree on that point anyway. Just as I have charged in my Court petition, Cook et al knowingly submitted falsified inventory figures deliberately in violation of the extrapolations I furnished and now verified by Cook's own accomplice in conspiracy to fraud.

RE: Your other or second letter above noted:

When I said " do battle " I meant that you were going to uphold the " Lawyers Creed " that says you are supposed to put your client's interest first. In case you do not have a copy I will be most pleased to furnish you with a complete set of the most pertinent portions dealing with the oath that you took. If in your mind means me hiring a lawyer to sue you, you have misunderstood my intent. I surely would not entertain suing someone that has as his objective " to protect his client's interest at all times." By " doing battle ", I meant that I am not going to let you take the easy way out and " go along to get along " with Cook/Reynolds. I meant that you are going to uphold my interest even if I have to drag you yelling and kicking to the table to fight for what is right.

I now call your attention to " PAROL EVIDENCE RULE ". If you do not have the means to research the case law, I can even furnish you with same that says in short that what is in the contract is the contract, period. I especially agree with the part that says " the terms of the writing may not be varied or contradicted by evidence of any prior written or oral agreement in the absence of fraud, duress, or mutual mistake." Obviously there was no fraud involved as all parties agreed pursuant to 14 a)b)c) of the agreement that was not the case, we all agreed there was duress and I most definitely will not agree to a " mutual mistake."

If there is any question whatsoever that Schwarz is to pay me the \$ 22,000.00, I fully expect you to " do battle " w/Cook/Reynolds prior to closing to retain that

page 1 of 3:

H I B

page 2

Mr. George Bishop  
12/22/93

\$ 22,000.00 in order for you and I to obtain at least part of the damages I am entitled to and to further enhance your fee. You then state you will " not pay the \$ 22,000.00 " Again, I mean for you to force the payment as called for in the settlement agreement. This is not a negotiable point George.

You say you were not a party to the settlement agreement and here you go again George, twisting things to suit your agenda. If you were not a party, you were the architect along w/Cook at a midnight hurry up contract that you induced me to sign. No one said you were a " party ", you were an architect of same.

Yes you did represent to me in the hall and verbally later in other conversations that you would represent me in the federal suit. I do not recall you ever stating to me in writing prior to the settlement agreement of 10/25/93 that I had a " Spurious " lawsuit against Cook. If you can locate something to that effect prior to 10/25/93, please forward it to me. I will agree that once I signed the settlement agreement you did in fact start a letter writing barrage' about same. But, not to worry George. I do not in fact want you to represent me in any litigation against Cook because you obviously do not want to. You have made your point very clear that you will not represent me and I accept that George. I will appreciate it if you will not make anymore backroom deals w/Cook/Reynolds that are not in my interest and I would most especially appreciate it if you do not attempt to use your influence with Judge Rosenthal to harm my position in that court. In other words, if you do not want to help me, at least do not hurt me.

You then state, " If I no longer want to go through with the settlement agreement, " I do not know what that has to do with anything in proper perspective. Schwarz, has the right to match the best offer and so be it. At the same time, If Schwarz does not match the best offer and my offer is at least as good as Pennington's, I expect to purchase NPS per my letters.

Further to my statement regarding the \$ 22,000.00, I am obtaining written opinions from legal experts on contracts re: the intent of the settlement agreement re: the \$ 22,000.00 and the stolen funds belonging  $\frac{1}{2}$  to me used to pay the bonuses. I will forward these to you to use in your arguments w/Cook/Reynolds.

Frank Svetlik called me today informing me that he had called Joe Reynolds, spoke with his secretary regarding the closing so that he can file a claim for " legal fees." Is this another deal you have made behind my back ? Do you intend to have Reynolds take money from me at closing to pay supposed legal fees to Svetlik ? If this is the case, let me know ASAP. I have never agreed with anyone as a part of any settlement agreement to allow any of my funds to be taken for any reason period. If this is just a case of Frank meddling on his own, so be it. I naturally expect you do do whatever required to protect my interest in the settlement agreement.

page 2 of 3:

FILED

page 3 of 3:  
Mr. George Bishop  
12/22/93

I do not feel I owe Svetlik anything whatsoever and I will remind you that it was your idea to depose him to get a statement to help in the claims of damages. He apparently intends to make some sort of claim and I will appreciate your assurance that none of my funds will be used at closing for any ancillary payments period. If there is anything else I am not aware of that will come up at closing I expect you to let me know as I do not like surprises. I give you my personal guarantee, that if there is any attempt to take funds from me outside of the agreement or if you, Pennington or anybody else tries to leverage me in any way, there will be no closing. I further assure you that I will most surely want to abrogate the agreement if I am not satisfied and it would do no one any good to let a buyer get to that point and let the deal fall apart.

Prior to any closing, there will be a clear understanding regarding the 14,000.00 in bonuses, the \$ 22,000.00 owed to me, Svetlik's supposed legal fee claim, any ancillary payments outside of the agreement and me not signing any agreements of any kind with anybody that I do not choose to sign.

I will not be signing anything relative to a closing until I have the exact breakdown of the \$ 14,000.00 as to who received the funds and the amount each received. I requested this breakdown in my letter of 12/21/93 to you. I will remind you also that I asked for the Xmas party notes and the copies of all signed ORDERS pertinent to the 10/25 agreement.

I wish you would change your tone towards me and get on my side to maximize the amount I receive as it is your ethical duty to me. Since I am paying your fee, I do not think it unusual to request you to work in my behalf. I will remind you that you did not "win" any exemplary damages, every penny you receive from this settlement has and will come directly from my pocket. The money you received from my \$ 50,000.00 check was my money as  $\frac{1}{2}$  owner of NPS. The money that will be retained from Schwarz legal fees is money that is rightfully mine to start with. So in every penny paid to you, it comes directly from me and I wish you would remember that.

Remember George, that I bear you no ill feelings, but you have in fact put your personal agenda in front of your client's and you need to get back on track. I hope you have a merry christmas and please give my regards to Caprice. Hopefully, this will all be resolved so as not to interfere with your planned nautical trip.

Please furnish the requested items ASAP.

Regards,





DEC 27 1993

H. L. BOWLES

December 23, 93'

Per the enclosed letter of 12/22/93, I see now where you are coming from in not wanting to fight for the \$ 22m, & why Cook insists I owe Schwarz personally. You yourself on page 15 of the Court record state " due as an offset from ...for ATTORNEY FEES is \$ 22,000.00." You of course mis-stated meaning what I owed to NPS was \$ 22M and surely you did not mean for ATTORNEY FEES, but for offsets from invoices. I myself did not pay that much attention, only concentrating on the 22m figure I owed.

Now go back to page 8/9, lines 19 thru 25 and 1-2 that clearly state paying me + \$ 26,999.54 and page 11, lines 3-10 and page 12, lines 18-25 and page 13, lines 1-11.

You will recall we went off the record for quite a while to discuss the \$ 22m and then later on page 22, David Ryan affirms while off the record that I agreed to pay what I owed to NPS as an offset, not to Schwarz. As I recall, I discussed this in dept with you off the record. Just because you mis-stated what was supposed to be paid as attorney fees rather than offsets to NPS in no way off-sets or negates the written settlement agreement under the PAROL EVIDENCE RULE and I stand on that rule, just as you should. My final position is this:

I had agreed to pay the offsets owed by SEPAR/QUALITY to NPS. This amount and debt was waived by the settlement agreement in writing of " all claims, waived, etc." No where in the written agreement does it state I am to pay anything to NPS and that the claim is waived. It does clearly state both in the court record AND the written agreement, Schwarz is to pay me legal fees + Per the rule, since there is " no mutual agreement ", but neither side is claiming fraud or duress, the PAROL EVIDENCE RULES. I want my \$ 22m and I want you to fight for it as stated.

December 14, 1993

Confidential to George Bishop:

Re: Our conversation tonight and my previous letters.

I spoke with Randy Pennington after we talked and he never requested any type of inventory for due diligence from Mr. Reynolds. Mr. Pennington assured me he has no intention whatsoever of recognizing invented figures from McCormack and will insist on his own inventory.

More importantly, you did not respond to my letter outlining your fee's. If you do not agree with my suggested fee schedule, then I will not be able to provide a non compete to Pennington as I will have no way of recouping my enormous loss from this so called settlement agreement leaving me as the only person losing money in this transaction. I will insist on purchasing NPS myself and to that extent I met with my banker for lunch to discuss same. He has assured me that he is ready to proceed ASAP in my loan application.

One item I omitted in my suggested fee of \$ 100,000.00 to you is that is based on your making Reynolds accept the letter of the agreement stating that Schwarz is to pay me an additional \$ 22,000.00. If the \$ 22,000.00 is not paid to me per the letter of the agreement, I expect you to take \$ 100,000.00 less \$ 22,000.00.

Realistically, you hold the closing of the sale to Pennington in your hands by accepting my fee outline or rejecting it. It is not fair to make Pennington get involved in a dog & pony show if he cannot complete the purchase of NPS due to lack of a non compete from me. In fairness to Pennington, you should respond to me immediately as to your acceptance or rejection so that I can write Reynolds and tell him I am proceeding with my loan application based on me being the high bidder. As my attorney in this matter until conclusion, I also expect you to force Reynolds to let me in the premises for my due diligence as stated in my proposal to purchase the assets of NPS.

If he refuses to sell me NPS, then I expect you and I to make a motion to kick him out as receiver and immediately appoint another receiver. If you do not want to help me, then I will make the motion on my behalf in order to complete the sale of assets to myself. I will send the Judge a copy of my proposal, declare myself high bidder and ask the judge to recognize same and order the sale of NPS to me.

Please quit trying to patronize me with lawyer expressions that " you are going to get the most money you can for me." In lawyer language, we all know what that means. It means that I will definitely get the "most of what is left " after you guys get the cream off the top. In George Bishops world, you win, Schwarz wins, Cook wins and Harry is loser. Sorry, George, I am not enjoying the 3 years of losing that I have already experienced only to get beat up even more.

If I do not get a response from you tomorrow regarding the fees I have outlined, I will go ahead and write Reynolds, telling him that I want to go thru with the sale of NPS to me. I will give him a deadline, if he does not respond, I'll proceed as noted

page 1 of 2:



page 2 of 2:  
confidential to George Bishop

Please believe that I am serious about all of this George. The way I look at it, I have lost everything anyway. I suppose you can do the right thing and ask that the settlement be abrogated due to bad faith on the receivers part and ask that we be resheduled for trial.

That is another alternative, if you wish to discuss same. In any event, if I do not receive an agreement from you on the fees tomorrow, I will proceed as noted.

*Harry*

**HLB**

December 12, 1993

Confidential to:  
Mr. George Bishop:

As follows are three (3) pages of evaluation of the purchasers proposals. After my written evaluation, you may want to hold up on notifying Pennington that he is high bidder. It appears that my bid is high bid and I may exercise my right to buy the company myself.

As you can see from the projected evaluations, I stand to make little to in fact losing a lot from sale of my own equity. You of course either win a little or a lot depending on the proposals. If I buy Schwarz out, I will in effect be simply retaining my own  $\frac{1}{3}$  equity resulting in "no proceeds" of sale. As you can see, the only way I really have of recovering some of my losses is to buy the Company. If you are agreeable to a settlement figure for your interest in the sale to Pennington, I will offer \$ 100,000.00 as your total fee to include your interest in the  $\frac{1}{3}$  contingency fee, the interest in the building when sold, and the  $\frac{1}{3}$  due at closing from the legal fees Schwarz is to pay me and also including your  $\frac{1}{3}$  in Quality money in the registry of the court. Included also is all costs expended by you to date of closing. With the \$ 16,667.00 you already received, you will then gross \$ 116,667.00 total.

If you wish to retain your  $\frac{1}{3}$  interest until the building is sold, the offer changes to \$ 75,000.00 at asset closing with your  $\frac{1}{3}$  building interest paid at closing of building sale. Your total proceeds would then be \$ 91,667.00 plus whatever the building brings when sold.

All of the above is based on me being reimbursed the legal fees and Quality funds owed me at closing.

If you are not interested in settling your portion of the sale to Pennington, then I will exercise my right to purchase the company per my high bid and you will receive as agreed the  $\frac{1}{3}$  from the recovered legal fees + the \$ 16,667.00 already paid, a total of perhaps \$ 45,000. to \$ 60,000.00 depending on how good you are at convincing Cook/Reynolds that the figure should be \$ 134,000.00 paid to us by Schwarz rather than \$ 91,000.00. I will probably also make an offer for the building again being a purchase rather than proceeds, hence no revenue for you as I will be buying, not selling.

I will appreciate your response today of my offer in consideration of Randy Pennington's proposal, so that he does not put any more work into the project if I should end up the purchaser. Remember, by not agreeing to give a non compete to Pennington, he will not purchase anyway, leaving me far and away the high bidder.

I went by NPS, Saturday @ 1:00 p.m. and McCormack was there. I drove by again at 2:45 P.M. and he was still there. I went by at 3:15 and he was gone. I assume he was copying documents, records, drawings, etc for his own use to perhaps offer for sale to competitors as he has no business to conduct at NPS on Saturday. I notified Pennington of this also. There should be a security guard as I have previously requested.

*George Bishop*

Evaluation of Purchase proposals of 12/7/93 for NPS.

PENNINGTON CASH OFFER:

\$ 1,200,000.00 cash:

His offer includes the Accounts Receivable (A/R) with us keeping cash, as opposed to our offer of us keeping cash & A/R. So the A/R is in effect a deduction from his total offer. He also is stating an inventory base of \$ 950,000.00 which is to be adjusted, whereas the true inventory will be about \$ 850,000.00 or less.

Cash offer:	\$ 1,200,000.00
less A/R :	- 122,000.00
Less diff. of inventory from 950M to 850M	- 100,000.00
Gross Bid, estimate:	\$ 978,000.00
My $\frac{1}{2}$ of proceeds:	+ 489,000.00
Less Bishop projected legal fees owed of 1/3	- 163,000.00
Less Bowles paid fees to date:	- 43,000.00
net to Bowles:	<u>- 283,000.00</u>
	<u>- 250,000.00</u>
Bowles lost income, benefits for 2 $\frac{1}{2}$ years, estimate:	
True net to Bowles:	<u>+ 33,000.00</u>

J.P. DELORENZO OFFER:

\$ 500,000.00 cash

His offer is based on an inventory assumption of \$ 300,000.00 shown on 9/30/93 statement adjusted to actual or an AGREED FIGURE. He does not know the inventory is understated by excess of \$ 500,000.00. The shareholders interest may be even less based on a full year of operation if revenues less. The best case offer below is assuming he can be talked up to the \$ 850,000.00 which is highly improbable and he will insist on an AGREED FIGURE as stated in his offer:

cash offer:	\$ 500,000.00
inventory:	800,000.00
Gross bid, estimate:	<u>1,300,000.00</u>
My $\frac{1}{2}$ of proceeds:	650,000.00
less Bishop projected legal fees owed of 1/3	- 216,645.00
less legal paid:	- 43,355.00
net to Bowles:	<u>+ 390,000.00</u>
less Bowles lost income, benefits above :	- 250,000.00
True net to Bowles:	<u>+ 140,000.00</u>

page 2:

DIXON OFFER:

Cash; \$ 450,000.00

His offer includes a \$ 300,000.00 note and also includes cash & A/R of \$ 122,000.00. He mentions a 3% royalty which assumed to be personal to shareholders not subject to legal fees. There is no mention of adjustment of inventory so none is assumed:

cash offer:	\$ 450,000.00	
note:	<u>300,000.00</u>	
	Sub: 750,000.00	
	<u>122,000.00</u>	
Less A/R:	628,000.00	
Gross bid, estimate:	314,000.00	
My $\frac{1}{3}$ of proceeds:	104,656.00	
less Bishop projected legal fees owed of 1/3	<u>43,344.00</u>	
less legal paid:	166,000.00	
net to Bowles:	<u>250,000.00</u>	
Less Bowles lost income, benefits:	<u>(- 84,000.00)</u>	loss
True net to Bowles:		

CROUCH OFFER:

Cash: \$ 634,000.00

His offer deducts for our keeping the building and makes no adjustment for inventory of 9/30/93 statement:

cash offer:	\$ 634,000.00	
less bldg. deduct:	<u>-242,000.00</u>	
	net offer: 392,000.00	
	196,000.00	
My $\frac{1}{3}$ of proceeds:	65,326.00	
Less Bishop projected legal fees owed of 1/3	<u>43,674.00</u>	
less legal paid:	87,000.00	
net to Bowles:	<u>250,000.00</u>	
less lost income, benefits above:	<u>(- 163,000.00)</u>	loss
True net to Bowles:		

All offers are less any consideration for building as noted except Crouch offer that deducts for building. The Pennington cash offer is really a gross bid offer of: about \$ 978,000.00 estimated to be a maximum figure, but could be less.

The DeLorenzo offer could really be as much as \$ 1,300,000.00 or as little as \$ 800,000.00 since he has no knowledge of the \$ 500,000.00 excess differential difference offer and he qualifies same with an AGREED FIGURE. Additionally, it could be even less if sales revenues drop.

The Dixon offer seems to speak for itself with the added potential of about \$ 15,000.00 per year royalty to each owner for 5 years, or \$ 75,000.00 additional maybe.

The Crouch offer seems to speak for itself.

page 3:

Based on the assumptions listed it appears the net revenue to Bishop/Bowles is as follows:

Pennington offer:			net to Bishop: \$ 163,000.00..	Net to Bowles: \$ 33,000.00			
DeLorenzo offer:	"	"	216,645.00	"	"	"	140,000.00
or	"	"	133,320.00	"	"	"	(- 27,000.00 )
if accepts 9/30/93 inventory as AGREED FIGURE							LOSS
Dixon offer:	"	"	104,656.00	"	"	"	(- 84,000.00)
							LOSS
Crouch offer:	"	"	65,326.00	"	"	"	(-163,000.00 )
							LOSS

Although there are additional variations to be factored in for each bid pending final accounting such as cash, no assumption is made for cash. It is assumed there will be no cash available at closing because of Receiver fees and other factors.

Also no allowance is made for the building which will increase proceeds by an unknown amount to Bishop/Bowles. Based on the above assumptions, Bishop will realize fees from sale of assets less building of from \$ 65,326.00 to \$ 216,645.00  
Bowles will realize income for his equity:(163,000.00)to \$ 140,000.00  
LOSS

From proceeds of sale of assets less building, Bishop will realize from \$ + 97,000.00 to + 76,000.000 more from sale of NPS than Bowles.

These figures do not take into account the legal costs incurred which are proposed by Bishop to be deducted from Bowles proceeds giving Bowles even less return on his equity.

On the basis of the net bids after allowances, it would appear that the Bowles bid of \$ 1,100,000.00 based on inventory of \$ 800,000.00 is the best net bid. This bid will result in a net bid after inventory allowance of at least \$ 1,000,000.00 which is then better than the best bid.

**THE HOME  
INSURANCE  
COMPANY**



2925 BRIARPARK  
SUITE 800  
HOUSTON, TEXAS 77042  
713-787-7800

P.O. BOX 4357  
HOUSTON, TX 77210

January 10, 1994

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

George M. Bishop  
3000 Smith  
Houston, TX 77006

Re: Claim No.: 085-600764-174  
Insured Name: Bishop, Peterson & Sharp  
Claimant: Harry Bowles  
Policy No.: LPL F 871578  
Policy Limits: \$2,000,000 Each Claim/\$2,000,000 Aggregate  
Deductible: \$10,000

Dear Mr. Bishop:

This will acknowledge receipt of correspondence from your office whereby Home Insurance Company has been made aware of a claim which has been made against you or circumstances which may give rise to a claim in the above-referenced matter. We have created a file on your behalf and request that all future correspondence be directed to my attention and indicate the claim number referenced above.

At this time, I request that you keep me advised of the circumstances surrounding this matter. Should you be served with a Summons and Complaint please forward them to my attention as soon as possible.

Please take your earliest opportunity to provide me with a narrative report. This information is needed as a part of Home's coverage evaluation of this matter.

Until we are in receipt of this information, the Company is accepting your notice of claim under a full and complete reservation of its rights with respect to coverage. We will further review our coverage for this claim once the requested information has been provided.

Page 2  
January 10, 19

Should you have any questions, please contact me at the address above  
or by calling me at (713) 787-5940.

Very truly yours,



Oscar Allen  
Professional Liability Department

OA:la

NO. 91-025939

HARRY L. BOWLES, and  
QUALITY SEAL COMPANY, a Texas  
Corporation,

Plaintiffs,

V.

CHARLES N. SCHWARZ, JR.,  
ROSALIE SCHWARZ, AND  
JOANN LANE

Defendants.

§ IN THE DISTRICT COURT OF  
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§ HARRIS COUNTY, TEXAS  
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§  
§ 190TH JUDICIAL DISTRICT

FILED  
HARRIS COUNTY  
DISTRICT CLERK  
94 APR -8 AM 11:49  
BY DEPUTY

MOTION TO WITHDRAW

TO THE HONORABLE JUDGE OF SAID COURT:

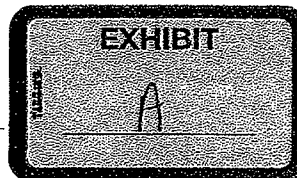
COMES NOW George M. Bishop, attorney of record for Plaintiff Harry L. Bowles, with this his Motion to Withdraw as counsel for Harry L. Bowles and would show the following in support thereof:

I.

George M. Bishop would show that he can no longer effectively represent the Plaintiff Harry L. Bowles, as Mr. Bowles refuses to follow the instructions of his lawyer, refuses to advise Mr. Bishop of what goals Mr. Bowles hopes to achieve, and Mr. Bowles threatened on Wednesday, April 6, 1994, to kill the court-appointed Receiver, Mr. Joe H. Reynolds.

II.

George M. Bishop can no longer participate as counsel of record for Harry L. Bowles, as Mr. Bowles has also refused to pay the fees due to George M. Bishop and the expenses incurred on behalf of Mr. Bowles by George M. Bishop.





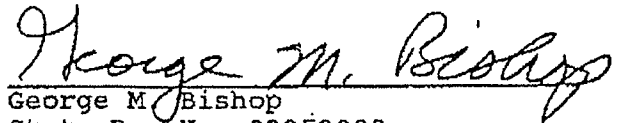
III.

Due to the urgency of this matter, George M. Bishop would request that the Court set an immediate hearing on this matter and upon hearing, relieve George M. Bishop of further responsibility for representing Harry L. Bowles in this matter so that George M. Bishop may proceed against Mr. Bowles to assert his claim for attorneys' fees and expenses.

WHEREFORE, PREMISES CONSIDERED, George M. Bishop requests that the Court grant this his Motion to Withdraw and for such other and further relief to which George M. Bishop may show himself justly entitled.

Respectfully submitted,

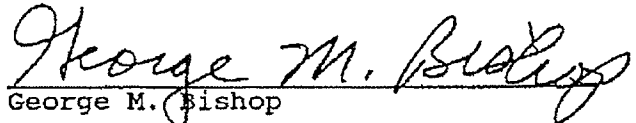
GEORGE M. BISHOP & ASSOCIATES



George M. Bishop  
State Bar No. 02353000  
3000 Smith  
Houston, Texas 77006  
Telephone: (713) 521-9797  
Telecopier: (713) 521-3125

CERTIFICATE OF SERVICE

I hereby certify that on this the 8<sup>th</sup> day of April, 1994, a true and correct copy of the foregoing Motion to Withdraw was forwarded by U.S. Mail to Mr. Harry L. Bowles at his last known address, 306 Big Hollow Lane, Houston, TX 77042. Mr. Bowles telephone numbers are 784-8966 and 780-8717. Also, a copy of this Motion to Withdraw was sent to the following interested persons: Mr. Grant Cook, Keck Mahin & Cate, 1021 Main Street, Suite 2800, Houston, Texas 77002-6606; and Mr. Joe Reynolds, Andrew & Kurth, 4200 Texas Commerce Tower, Houston, TX 77002.

  
George M. Bishop

TR-24 P-2  
BCPX  
6

NO. 91-025939

HARRY L. BOWLES, and  
QUALITY SEAL COMPANY, a Texas  
Corporation,

Plaintiffs,

V.

CHARLES N. SCHWARZ, JR.,  
ROSALIE SCHWARZ, AND  
JOANN LANE

Defendants.

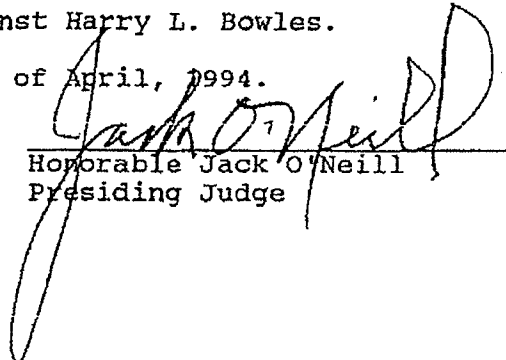
§ IN THE DISTRICT COURT OF  
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§ HARRIS COUNTY, TEXAS  
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§ 190TH JUDICIAL DISTRICT

ORDER

Be it remembered that on this 11<sup>th</sup> day of April, 1994,  
came on to be heard the Motion to Withdraw of George M. Bishop and  
the Court, after having considered same, was of the opinion that  
the motion should be granted in all respects. It is therefore

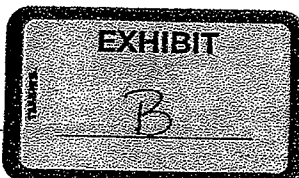
ORDERED that George M. Bishop be allowed to withdraw as  
attorney of record for Harry L. Bowles whose address is 306 Big  
Hollow Lane, Houston, TX 77042, and that George M. Bishop may  
hereafter intervene in this case to enforce his claim for  
attorneys' fees and expenses against Harry L. Bowles.

SIGNED on this 11<sup>th</sup> day of April, 1994.

  
Honorable Jack O'Neill  
Presiding Judge

RECORDER'S MEMORANDUM.  
This instrument is of poor quality  
and not satisfactory for photographic  
recording; and/or alterations were  
present at the time of filming.

V01JU P0J39



Approved as to form and substance:

GEORGE M. BISHOP & ASSOCIATES

*George M. Bishop*

George M. Bishop  
State Bar No. 02353000  
3000 Smith  
Houston, Texas 77006  
Telephone: (713) 521-9797  
Telecopier: (713) 521-3125

RECORDER'S MEMORANDUM.  
This instrument is of poor quality  
and not satisfactory for photographic  
recording; and/or alterations were  
present at the time of filming.

V813U PUJ4U

ASSESSED	AA
ENTERED	20
VERIFIED	

512  
#2a

NO. 91-025939 A

HARRY L. BOWLES, and  
QUALITY SEAL COMPANY, a Texas  
Corporation,

Plaintiffs,

V.

CHARLES N. SCHWARZ, JR.,  
ROSALIE SCHWARZ, AND  
JOANN LANE

Defendants.

§ IN THE DISTRICT COURT OF  
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 § HARRIS COUNTY, TEXAS  
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 § 190TH JUDICIAL DISTRICT

FILED  
 KATHERINE TYRA  
 DISTRICT CLERK  
 HARRIS COUNTY, TEXAS  
 91 APR 18 AM 11:28  
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THIRD-PARTY INTERVENTION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Bishop Peterson & Sharp, P.C. and George M. Bishop, hereinafter referred to as third-party Intervenors, with this their Third-Party Intervention complaining of Plaintiff Harry L. Bowles and would show unto the Court the following in support of this their Petition in Intervention:

I.

Third-Party Intervenors would show that they entered into a contract with Plaintiff whereby they would represent plaintiff in the above-styled and numbered cause for forty percent (40%) of any funds collected by Plaintiff in this suit. A true and correct copy of the contract of employment is attached hereto as Exhibit "A". Subsequent to entering into the contract, Third-Party Intervenors performed services for Plaintiff and incurred expenses for which they have not been paid. Third-Party Intervenors have made demand on Plaintiff as shown by the attached Exhibit "B" and Plaintiff has not responded to this demand. The attached demand complies with



Section 38.001 of the Texas Civil Practice and Remedies Code. Third-Party Intervenors now seek enforcement of the contract attached as Exhibit "A" and attorney's fees for the services of their attorney in prosecuting this claim on a written contract pursuant to Section 38.001 of the Texas Civil Practice and Remedies Code. Third-Party Intervenors seek attorney's fees against Plaintiff Harry L. Bowles for preparation for trial, for trial, and for each step of the appellate process, in addition to forty percent (40%) of any funds received by Plaintiff and reimbursement of expenses incurred on behalf of Plaintiff.

II.

Third-Party Intervenors would show in the alternative that under the Doctrine of Quantum Meruit, Third-Party Intervenors are entitled to recovery of no less than \$300,000.00 for the value of their services rendered to Plaintiff Harry L. Bowles, plus interest at the highest rate allowed by law from the earliest date allowed by law on all amounts awarded by the Judgment and attorney's fees for preparation of Intervention for trial, trial, and for each step of the appellate process. All fees of the Receiver should come out of the portion of the recovery allotted to Plaintiff Bowles, as his actions have caused the fees and expenses of the Receiver to be increased to an amount greater than if Plaintiff had cooperated with the efforts of the Receiver to sell the stock or assets of N.P.S.

III.

Third-Party Intervenors would request that all funds to be paid to Harry L. Bowles pursuant to the Settlement Agreement entered into in this case be paid into the Registry of the Court pending determination of the issues in this intervention and that such monies be invested at the highest interest rate possible until Third-Party Intervenors' claim for breach of contract against Plaintiff Harry L. Bowles has been resolved.

WHEREFORE, PREMISES CONSIDERED, Third-Party Intervenors Bishop Peterson & Sharp, P.C. and George M. Bishop pray that after final hearing the Court enter Judgment for the Third-Party Intervenors enforcing the contract in question attached as Exhibit "A" and requiring that forty percent (40%) of all funds to be paid to Harry L. Bowles be paid to George M. Bishop pursuant to the Settlement Agreement so that those funds may be divided between George M. Bishop and Bishop Peterson & Sharp, P.C. and that Third-Party Intervenors recover interest from the earliest date allowed by law at the highest rate allowed by law and their attorney's fees pursuant to Section 38.001 of the Texas Civil Practice and Remedies Code for preparation for trial, trial, and for each step of the appellate process. Further, Third-Party Intervenors request recovery of all costs of court and that any fees for the Receiver be charged to the sixty percent (60%) of the recovery allowed to Harry L. Bowles since his actions alone have caused the increase of fees of the Receiver and the necessity for the hearing to enjoin

Harry L. Bowles from interfering with, threatening, or killing the Receiver or any of his agents or employees.

Respectfully submitted,

JOSEPH M. NIXON

*Joseph M. Nixon* ★  
Joseph M. Nixon  
State Bar No. 15244800  
3000 Smith  
Houston, Texas 77006  
Telephone: (713) 521-9797  
Telecopier: (713) 521-3125

Attorney for Third-Party Intervenors

**CERTIFICATE OF SERVICE**

I hereby certify that on this the 18th day of April, 1994, a true and correct copy of the foregoing was forwarded by U.S. Mail to Mr. Harry L. Bowles, 306 Big Hollow Lane, Houston, TX 77042; Mr. Joe Reynolds, Andrew & Kurth, 4200 Texas Commerce Tower, Houston, TX 77002; Mr. Grant Cook, Keck Mahin & Cate, 1021 Main Street, Suite 2800, Houston, Texas, 77002-6606.

*George M. Bishop*  
George M. Bishop

★ Signed by permission

CONTINGENT FEE CONTRACT

On this 6th day of November, 1992, Harry L. Bowles, plaintiff in Cause No. 91-025939, presently pending the 165th District Court, entered into a contingent fee contract with George M. Bishop of Bishop Peterson & Sharp, P.C., wherein George M. Bishop and Bishop Peterson & Sharp, P.C., would represent Harry L. Bowles in Cause No. 91-025939 from this date forward until termination of this case through settlement, trial, appeal, or otherwise. The parties agree that no settlement will be made without the express consent of both Harry L. Bowles and George M. Bishop, and that George M. Bishop of Bishop Peterson & Sharp, P.C. will put forth his best effort on behalf of Harry L. Bowles in Cause No. 91-025939. In consideration of the services of George M. Bishop and Bishop Peterson & Sharp, P.C., Harry L. Bowles hereby assigns a forty percent (40%) interest in all recovery he may receive in Cause No. 91-025939, including attorneys' fees. He covenants and agrees to protect the interest of Bishop Peterson & Sharp, P.C., in any recovery in Cause No. 91-025939. Harry L. Bowles will be responsible for all out-of-pocket costs incurred from this date forward and if same are paid by Bishop Peterson & Sharp, P.C., Bishop Peterson & Sharp, P.C. will be entitled to reimbursement for same before any distribution of any proceeds of any settlement or judgment. If Harry L. Bowles pays any expenses, he will be reimbursed for those expenses out of the proceeds of any settlement or judgment before the proceeds of the settlement or judgment are divided on a basis of sixty percent (60%) and forty

-1-


EXHIBIT "A"

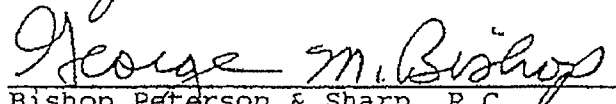
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percent (40%) to Bishop Peterson & Sharp, P.C. This will include all expenses that Harry L. Bowles has paid for depositions, filing fees, court costs or other necessary expenses incurred prior to this date, exclusive of any legal fees. In the event Mr. Bowles recovers the legal fees previously paid to Frank Svetlik, Jack Emmott, and David Williams and Associates for preparation of this case through a jury verdict or judgment, then those fees recovered as reimbursement for Mr. Bowles will be refunded to him prior to the division of the remainder of the proceeds of the case on a basis of sixty percent (60%) to Bowles, forty percent (40%) to Bishop Peterson & Sharp, P.C. In the event of an appeal to any of the courts of appeal of Texas or to the Texas Supreme Court, the fees will remain the same and the proceeds shall be divided between the parties on the same basis as if there had been no appeal.

SIGNED on this 6th day of November, 1992.

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

  
\_\_\_\_\_  
Bishop Peterson & Sharp, P.C.  
By George M. Bishop, President

GEORGE M. BISHOP & ASSOCIATES

ATTORNEYS AT LAW

3000 SMITH

HOUSTON, TEXAS 77006

(713) 521-9797

FAX: (713) 521-3125

April 12, 1994

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

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

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

Dear Harry:

I received a fax from you this morning even though there was a court order prohibiting you from faxing me at this office. Please do not fax me again except through your new counsel. I suggest you get new counsel as soon as possible to represent you in this matter as there are many areas in this case in which you will need competent counsel to advise you.

The purpose of this letter is to advise you that you have outstanding expenses that you owe me that we have incurred on your behalf in the amount of \$12,568.05. I enclose a copy of our expenses to date.

In addition to these expenses, we have incurred a considerable amount of attorney's fees since you retained the firm of Bishop Peterson & Sharp, P.C. in October 1992. Under the terms of the contract that you signed with me you are to pay forty percent (40%) of any recovery you have in this suit as attorney's fees.

I hereby make demand upon you for payment of all expenses and for you to honor the contract whereby you assigned forty percent of your recovery.

If I have not heard from you within ten days from the date of this letter, we will proceed with our intervention which we expect to file by the end of this week. We will seek to recover not only the attorney's fees you contracted for and the expenses incurred, but our attorney's fees for prosecuting this claim pursuant to Section 38.001 et. seq. of the Texas Civil Practice and Remedies Code.

EXHIBIT "B"

Page 2

April 12, 1994

If you wish to acknowledge your contractual debt for attorney's fees and expenses, please have your attorney contact me within ten days from the date of this letter. If we have not heard from your attorney by that date, we will seek to recover not only the fees and expenses you owe, but the necessary and reasonable time for collecting these fees and expenses in the intervention.

Very truly yours,

*George Bishop*

George M. Bishop

GMB:tr  
enclosure

G. RGE M. BISHOP & ASSOCIATE:  
3000 Smith  
Houston, Texas 77006  
713/521-9797  
Fax/521-3125

April 12, 1994

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

Invoice #859308

In reference to: Cause No. 91-025939 Harry L. Bowles and Quality  
Seal Company v. Charles N. Schwartz, Jr.; In the  
165th District Court of Harris County, Texas

	Amount
Out of pocket expenses incurred	
10/16/92 Postage for Harry Bowles	3.90
Copies for Harry Bowles	9.50
Faxes for Harry Bowles	8.00
11/20/92 Copies for November	25.50
11/24/92 Lunch meeting.	15.92
11/30/92 Postage for November	4.28
Fax charges for November	15.00
12/31/92 Postage for December	4.75
Copies for December	50.75
Fax	29.00
01/08/93 Subpoena fee for Snyder, Olson, Freeman	3.00
01/14/93 Subpoenas for Pat Olson, Dennis Forman, Barbara Snyder, Grady McCormack, Mamie May, Pamela Radford, and Al Stein.	317.00
Deposition of Pat Olson	515.30
Deposition of Dennis Dean Foreman	341.00
01/20/93 DocuCopy	251.66

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Mr. Harry L. Bowles

Page 2

	Amount
	-----
Deposition of Mamie May	333.80
Deposition of Pamela Radford	345.70
01/31/93 Copies for January	314.75
Postage for Januray	13.13
Fax	103.00
Messenger	13.00
02/03/93 Messenger	15.00
02/06/93 Service of subpoenas on Al Stein, Barbara Snyder and Grady McCormack.	160.00
02/11/93 Messenger	19.90
02/28/93 Fax	109.00
Copies for February	148.75
Postage for February	14.77
Messenger	5.00
03/03/93 Jury Fee	30.00
03/15/93 Subpoena fee of Pat Olson	77.50
03/19/93 Deposition of Allan T. Stein, Jr.	496.50
03/23/93 Miscellaneous/NPL	10.72
03/24/93 Deposition of Barbara Snyder	1,017.18
03/25/93 Sixth amended petition service fee	106.00
03/26/93 Mileage/Bowles office for document production	7.50
03/29/93 Transcript of hearing	990.00
03/31/93 Copies for March	386.85
Postage for March	5.95
Messenger for March	125.00

Mr. Harry L. Bowles

Page 3

	<u>Amount</u>
Fax for March	80.00
04/05/93 Copy of Schwartz records	47.00
04/15/93 Deposition of JoAnn Lane taken 03/24/93	437.80
04/19/93 Deposition/Rosalie Schwartz taken 03/24/93	489.50
04/21/93 Deposition of Grady McCormack, taken 03/26/93.	449.10
04/30/93 Fax for April	65.00
Postage for April	14.38
Copies for April	159.25
Messenger April	50.00
05/13/93 Westlaw Research	43.60
05/14/93 Deposition of Charles N. Schwarz taken on 03/23/93.	1,128.00
05/28/93 Messenger	19.50
Messenger	1.90
05/31/93 Postage for May	6.08
Copies for May	261.50
Fax for May	14.00
06/04/93 Mileage	5.00
06/06/93 Deposition of John Brantley	538.50
06/07/93 Westlaw	72.86
06/08/93 Subpoenas	32.00
06/09/93 Service on Fred Harssema	60.00
Filing fee - subpoenas	12.00
Witness fee's for Subpoena Randy Pennigton, Fred Harssema, Al Stien.	3.00

Mr. Harry L. Bowles

Page 4

	Amount
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06/11/93 Westlaw	7.54
06/18/93 Witness fee Peter Boesel, Joe Pippert, JoAnn Cloud, David Peterman	4.00
Subpoenas for Peter Basil, JoAnn Cloud, David Peterman and Joel T. Peppert.	16.00
Westlaw	29.52
06/21/93 Witness fee for Jack Hardy (\$1), Subpoena fee (\$4)	5.00
06/22/93 Trip to N.P.S. office/25 miles at .25 per mile	6.25
06/24/93 Subpoenas for Pat Olson, Mamie May and Pam Radford	15.00
Westlaw	12.36
06/30/93 Copies for June	406.50
Postage for June	15.05
Fax for June	172.00
Messenger for June	170.00
DocuCopy	70.44
07/15/93 Fax July	30.00
Copies for July 1-15	12.75
Postage for July 1-15	2.78
Messenger July 1-15	15.00
07/23/93 Parking	0.75
07/31/93 Postage for July 16-31	2.78
Copies for July 16-31	6.75
Fax July 16-31	7.00
08/16/93 Westlaw research	86.35

Mr. Harry L. Bowles

Page 5

	<u>Amount</u>
08/31/93 Fax August	20.00
Copies for August	9.00
Postage for August	3.42
09/30/93 Messenger charges for September	30.00
Fax for September	4.00
Copies for September	11.75
Postage for September	3.71
10/07/93 Certified copies	1.00
10/19/93 File fee Notice of Deposition; deliver depositions to Mr. Cook.	10.00
10/21/93 Service fees on Mamie May, Pamela Radford, Pat Olson, Barbara Snyder, Grady McCormack, JoAnn Lane, Fred Harssema and Charles Schwarz (\$8.00) and filing fees on May, Radford, McCormack, Olson, and Snyder(\$20.00).	28.00
Messenger / Service of subpoenas on Barbara Snyder, Pat Olson and Pamela Radford.	20.00
Messenger / trip to courthouse to file subpoenas on Barbara Snyder, Pat Olson, Pamela Radford, Mamie May and Grady McCormack.	10.00
10/22/93 Subpoenas serviced by Dick Golden	77.00
10/26/93 Parking	2.00
John Brantley	60.00
Messenger/Settlement agreement to Mr. Cook	10.00
Court Reporter charge for John R. Brantley on 10/22/93.	60.00
10/28/93 Messenger/Receivers Bond to Joe Reynolds.	10.00
10/31/93 Fax for October	38.00
Copies for October	241.50



Mr. Harry L. Bowles

Page 6

	Amount
Postage for October	1.45
11/30/93 Fax for November	92.00
Copies for November	15.25
Postage for November	6.83
12/31/93 Fax for December	35.00
Postage for December	8.28
Copies for December	41.50
01/31/94 Copies for January	17.75
Postage for January	4.23
Fax charges for January	5.00
02/28/94 Fax for February	14.00
Postage for February	2.32
Copies for February	5.00
03/31/94 Fax for March	59.00
Postage for March	6.78
Copies for March	16.25
04/11/94	1.50
04/12/94 Copies for April	13.75
Postage for April	2.43
Fax for April	43.00
Total expenses	----- \$12,568.05
Balance due	----- \$12,568.05 -----

ASSESSED
ENTERED
VERIFIED

CAUSE NO. 91-025999

HARRY L. BOWLES, and  
QUALITY SEAL COMPANY, a Texas  
Corporation,

Plaintiffs,

V.

CHARLES N. SCHWARZ, JR.,  
ROSALIE SCHWARZ, and  
JOANN LANE,

Defendants

IN THE DISTRICT COURT

HARRIS COUNTY, TEXAS

190TH JUDICIAL COURT

FILED  
KATHERINE TYLE  
DISTRICT CLERK  
HARRIS COUNTY TEXAS  
94 MAY -6 PM 2:20  
BY  
MICHAEL SHERIDAN

Str # 2b

PLAINTIFF'S PETITION IN INTERVENTION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, PLAINTIFF, HARRY L. BOWLES, files this, his Intervention for legal costs and in support of his Petition would show the court as follows:

I.

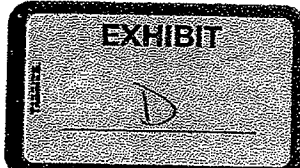
Plaintiff entered into a contract dated November 6, 1992 with George M. Bishop as President of Bishop, Peterson & Sharp, P.C. (Bishop).

Said contract attached as EXHIBIT 1, called for Bishop to receive 40% of the proceeds with expenses by both parties to be deducted first, before distribution, with the balance payable 40% to Bishop and 60% to Plaintiff.

Bishop does not contest this agreement of distribution of proceeds in his "Third Party Intervention." Bishop submits as his Exhibit B of his Petition a letter of April 12, 1994 as support to his claim of 40% of proceeds.

Said letter Exhibit B is fraudulent and contested by Plaintiff as follows:

a) Bishop and Plaintiff entered into a verbal agreement of October 25, 1993, setting aside the agreement of 40% to Bishop and 60% to Bowles. This verbal agreement was in consideration of the case being settled rather than tried on merits. The new verbal agreement setting aside above called for Bishop to receive 33-1/3%



and Plaintiff 66-2/3% of proceeds after expenses as noted paid first to each party.

b) This verbal agreement was later ratified by Bishop in the open Court hearing prior to trial and at settlement on October 25, 1993. Said agreement was made a part of the Court record of that date and is submitted as Plaintiff EXHIBIT 2.

c) Said open court record was later again restated by Bishop in a letter to Plaintiff Bank dated January 7, 1994 and submitted as Plaintiff EXHIBIT 3.

d) Plaintiff at no time has ever agreed for Bishop to raise his fee back to 40% and in fact vigorously contested said action by Bishop at all times.

e) Plaintiff charges that Bishop intervention does not comply with Section 38.001 of the Texas Civil Practice and Remedies Code and in fact is in direct violation of said code.

f) Further to controvert Bishop section 1 charge, Bishop is not entitled to any additional funds in violation of said code and in direct violation of the agreement of November 6, 1992 and the subsequent verbal court record between the parties.

g) Bishop states under Doctrine of Quantum Merit, Bishop is entitled to recovery of no less than \$ 300,000.00. Said request is in direct violation of the 11/6/92 agreement and also of Quantum Merit, where Bishop himself has breached said agreement and is perpetrating a fraud upon Plaintiff and this honorable Court.

h) No fees should come exclusively out of Plaintiff's proceeds to be paid to Receiver as both Bishop and Receiver have caused all fees to all parties to be increased due to their respective individual and joint actions against Plaintiff. Said actions will be defined in Plaintiffs Petition to be filed against Bishop.

## II


Submitted as EXHIBIT 4 , is plaintiff legal costs through September, 1993. This is not a final accounting and will be supplemented with a current total at conclusion of this instant cause.

III

Plaintiff contests Bishop unnumbered EXHIBIT with his Petition identified only as Invoice no. 859308 as being inaccurate and fraudulent. Bishop had previously agreed that his total legal costs were approximately \$ 8,000.00.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Bishop Third Party Intervention be set aside and that Bishop take nothing in the way of legal costs or fees of any nature pending adjudication of Plaintiff claims of monetary damages greater than Bishops claim of fees/legal costs against Plaintiff.


Respectfully submitted,

  
\_\_\_\_\_  
Harry L. Bowles  
306 Big Hollow Lane  
Houston, 77042  
(713) 784-8966

ATTORNEY PRO SE

CERTIFICATE OF SERVICE

I hereby certify that on this the 5th day of May, 1994, a true and correct copy of the foregoing was mailed to Mr. George Bishop in care of his attorney, Joseph M. Nixon, 3000 Smith, Houston, Texas 77006; Mr. Joe Reynolds, 4200 Texas Commerce Tower, Houston, 77002 and Mr. Grant Cook, Keck, Mahin & Cate, 1021 Main, Suite 2800, Houston, 77002-6606.

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

CAUSE NO. 91-025939

JUDICIAL NOTICE

COMES NOW, PLAINTIFF, HARRY L. BOWLES, and makes Judicial Notice to the Honorable Judge of the 190th Judicial District Court of Harris County, Texas.

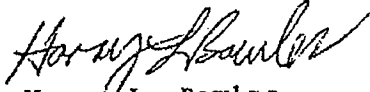
Plaintiff in Cause no. 91-025939, has received a copy of "THIRD PARTY INTERVENTION" filed with this Court by Mr. George Bishop, former lawyer for Plaintiff.

Plaintiff puts this Court and all interested parties on notice that Plaintiff has filed his own "PLAINTIFFS INTERVENTION" for legal costs submitted concurrently with this Judicial Notice.

Plaintiff notices the Court and all interested parties that Plaintiff will be filing suit against Mr. Bishop shortly and that no distribution of proceeds should be made to Mr. Bishop until said suit is adjudicated in the Court of jurisdiction. This Judicial Notice is made in event proceeds are available for distribution prior to said suit and ancillary requests being filed.

This Judicial Notice is made and filed as a part of "Plaintiffs Intervention" of the same date.

Respectfully submitted,



Harry L. Bowles  
ProSe Attorney for Plaintiff,  
Harry L. Bowles  
306 Big Hollow Lane  
Houston, 77042  
784-8966

FILED  
BERNE TYRA  
DISTRICT CLERK  
HARRIS COUNTY TEXAS  
JULY -6 PM 2:20  
DEPUTY

CONTINGENT FEE CONTRACT

On this 6th day of November, 1992, Harry L. Bowles, plaintiff in Cause No. 91-025939, presently pending the 165th District Court, entered into a contingent fee contract with George M. Bishop of Bishop Peterson & Sharp, P.C., wherein George M. Bishop and Bishop Peterson & Sharp, P.C., would represent Harry L. Bowles in Cause No. 91-025939 from this date forward until termination of this case through settlement, trial, appeal, or otherwise. The parties agree that no settlement will be made without the express consent of both Harry L. Bowles and George M. Bishop, and that George M. Bishop of Bishop Peterson & Sharp, P.C. will put forth his best effort on behalf of Harry L. Bowles in Cause No. 91-025939. In consideration of the services of George M. Bishop and Bishop Peterson & Sharp, P.C., Harry L. Bowles hereby assigns a forty percent (40%) interest in all recovery he may receive in Cause No. 91-025939, including attorneys' fees. He covenants and agrees to protect the interest of Bishop Peterson & Sharp, P.C., in any recovery in Cause No. 91-025939. Harry L. Bowles will be responsible for all out-of-pocket costs incurred from this date forward and if same are paid by Bishop Peterson & Sharp, P.C., Bishop Peterson & Sharp, P.C. will be entitled to reimbursement for same before any distribution of any proceeds of any settlement or judgment. If Harry L. Bowles pays any expenses, he will be reimbursed for those expenses out of the proceeds of any settlement or judgment before the proceeds of the settlement or judgment are divided on a basis of sixty percent (60%) and forty

-1-

EXHIBIT "A" PLAINTIFF  
EXHIBIT - 1

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percent (40%) to Bishop Peterson & Sharp, P.C. This will include all expenses that Harry L. Bowles has paid for depositions, filing fees, court costs or other necessary expenses incurred prior to this date, exclusive of any legal fees. In the event Mr. Bowles recovers the legal fees previously paid to Frank Svetlik, Jack Emmott, and David Williams and Associates for preparation of this case through a jury verdict or judgment, then those fees recovered as reimbursement for Mr. Bowles will be refunded to him prior to the division of the remainder of the proceeds of the case on a basis of sixty percent (60%) to Bowles, forty percent (40%) to Bishop Peterson & Sharp, P.C. In the event of an appeal to any of the courts of appeal of Texas or to the Texas Supreme Court, the fees will remain the same and the proceeds shall be divided between the parties on the same basis as if there had been no appeal.

SIGNED on this 6th day of November, 1992.

Harry L. Bowles  
Harry L. Bowles

George M. Bishop  
Bishop Peterson & Sharp, P.C.  
By George M. Bishop, President

CAUSE NO. 91-25939

HARRY L. BOWLES and           §    IN THE DISTRICT COURT OF  
QUALITY SEAL COMPANY,       §  
a Texas Corporation,         §

VS.                               §    HARRIS COUNTY, T E X A S  
CHARLES N. SCHWARZ, JR.   §    190TH JUDICIAL DISTRICT

-----

SETTLEMENT AGREEMENT

came on to be heard before the Honorable Jack O'Neill on  
the 25<sup>TH</sup> day of October, 1993.  
25TH

Mary F. Edwards, C.S.R.  
Official Court Reporter, 190th Judicial Court  
Harris County, Texas  
(713) 755-7632

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1 on hand.

2 MR. BISHOP: That dividend is  
3 payable to myself and Mr. Bowles, since we  
4 have a contingent fee agreement, that I would  
5 receive one-third of that money.

6 MR. COOK: That money being the  
7 dividend payable to Mr. Bowles, not part of  
8 the dividend paid to Mr. Schwarz.

9 MR. BISHOP: That's correct.

10 MR. COOK: All right. Number  
11 next. Upon the closing of the sale of NPS,  
12 whether by stock or assets, as part of that  
13 transaction and as a condition to the  
14 consummation of that transaction on the part  
15 of the two shareholders of NPS, Mr. Bowles and  
16 Mr. Schwarz, the following things will occur:

17 (1) A judgment of dismissal  
18 with prejudice of the claims by and between  
19 the parties hereinabove originally named shall  
20 be approved by counsel for those parties, as  
21 well as Ms. Bowles, Pamela Bowles, and  
22 submitted to Judge O'Neill for entry.

23 (2) A joint mutual release  
24 will be executed by and between Mr. Bowles,  
25 Pamela Bowles, Quality Seal Company, Inc., a

GEORGE M. BISHOP & ASSOCIATES

ATTORNEYS AT LAW

3000 SMITH

HOUSTON, TEXAS 77006

(713) 521-8787

FAX: (713) 521-3125

January 7, 1994

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

Mr. Roger Russell  
Sunbelt National Bank  
P.O. Box 55869  
Houston, TX 77255-5896

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

Dear Mr. Russell:

Please be advised that I represent Harry Bowles in the above-styled and numbered cause. Mr. Bowles is one-half owner of National Parts System, Inc., a Texas corporation that is now in Receivership, with Mr. Joe Reynolds of Andrews & Kurth as the court-appointed Receiver. Mr. Reynolds is in the process of selling the stock of NPS to the high bidder which should net approximately \$1.2 million. Mr. Bowles will receive one-half of these proceeds, plus approximately \$200,000. I have a contingent fee contract giving me a 40% interest in these proceeds to be received by Harry Bowles. A copy of that agreement is enclosed for your file.

When the funds are paid to me, I will deposit them into my trust account. The expenses of this case will then be paid, which are less than \$10,000. I have agreed with Harry to cut my fee, taking into account various matters in this case, to one-third. After payment of expenses, I will keep one-third for my fee, and remit a check payable to Sunbelt National Bank and to Harry Bowles for the remaining two-thirds so that any loan that is made to Harry Bowles based on this sale can be repaid.

I should inform you that there is a temporary injunction in effect against Mr. Bowles prohibiting him from competing with National Parts System. This temporary injunction will remain in effect until this matter is closed. If these funds are to be used to start a business that will compete with NPS, I believe permission from the Court should be sought to start this business. I do not know what these funds are to be used for, but thought you should be aware of the provisions of the temporary injunction.

Should you have any questions concerning any of these matters, please do not hesitate to contact me at your convenience.

Very truly yours,

*George Bishop*  
George M. Bishop

GMB:tr  
enclosure  
cc: Mr. Harry Bowles

EXHIBIT-3  
08/07/2007 03:33 PM BE063\_472

NRS LEGAL COSTS

1991 LEGAL COSTS

Attorneys:

	<u>Amount</u>	<u>Chk. No.</u>
Emmot & Arbuckle.....	\$ 5,000.00	103
Emmot & Arbuckle.....	2,000.00	823
Peter Boesal.....	1,000.00	803
David Williams.....	500.00	865
Frank Svetlik.....	5,000.00	MM

Law Clerks:

David Reeves.....	325.00	114
David Reeves.....	89.00	117
David Reeves.....	321.00	850
Elizabeth Tan.....	90.00	834
Elizabeth Tan.....	158.00	835
Elizabeth Tan.....	112.00	838

Court Reporters:

A Better Court Reporting.....	562.20	104
A Better Court Reporting.....	735.00	105
A Better Court Reporting.....	870.00	107
A Better Court Reporting.....	735.00	108
A Better Court Reporting.....	735.00	109
A Better Court Reporting.....	150.00	110
A Better Court Reporting.....	40.00	111
A Better Court Reporting.....	946.90	871
A Better Court Reporting.....	847.70	888
Cindy Colvin Reporting.....	289.00	860
Cindy Colvin Reporting.....	1,102.02	819
Cindy Colvin Reporting.....	2,100.00	824

Service of Process:

All Process Service.....	180.00	817
All Process Service.....	133.00	821

Filing Fees:

Katherine Tyra, Clerk.....	28.00	840
First Ct. of Appeals.....	55.00	841
First Ct. of Appeals.....	55.00	Cash

Parking:.....	150.00	Cash
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Printing, Copies:.....	<u>350.00</u>	Cash
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TOTAL 1991 LEGAL COSTS:.....\$26,899.00

EXHIBIT - 4  
08/07/2007 03:33 PM BE063\_472

1992 LEGAL COSTS

Attorneys:

David Williams.....	500.00	987
Harry L. Bowles, Sr.....	8,612.00	980
<u>TOTAL 1992 LEGAL COSTS:.....</u>	<u>9,112.00</u>	

1993 LEGAL COSTS

Attorneys:

Beard & Phillips.....	371.05	997
George Bishop.....	1,000.00	1013
George Bishop.....	1,000.00	1044
Jim Cupples.....	500.00	1024
Jim Cupples.....	500.00	1026

Legal Clerical:

Donna Davis.....	128.00	1001
Donna Davis.....	144.00	1003
Thomas R. Cooper.....	210.00	1010
Mark Bowers.....	250.00	1037
Mark Bowers.....	250.00	1043
Mark Bowers.....	250.00	1045
Mark Bowers.....	250.00	1047
Mark Bowers.....	250.00	1050
Mark Bowers.....	250.00	1058

C.P.A.:

Adrian Sebastian.....	250.00	1065
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TOTAL 1993 LEGAL COSTS.....

Py

SR# 38

R3  
BAPX

NO. 91-025939 A

HARRY L. BOWLES, and  
QUALITY SEAL COMPANY, a Texas  
Corporation,

Plaintiffs,

v.

CHARLES N. SCHWARZ, JR.,  
ROSALIE SCHWARZ, AND  
JOANN LANE

Defendants.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS.

190TH JUDICIAL DISTRICT

FILED  
JUL 14 1994  
CLERK OF COURT  
HARRIS COUNTY

ORDER GRANTING INTERVENOR'S MOTION FOR SUMMARY JUDGMENT

Be it remembered that on this 14th day of July, 1994, the Motion for Summary Judgment of Intervenor Bishop Peterson & Sharp, P.C. against the Defendant in Intervention Harry L. Bowles was heard by submission. The Court, after having reviewed the Petition in Intervention, the affidavits on file, and the evidence in the Court's file, and being aware that the Defendant in Intervention had entered an appearance pursuant to Rule 120 of the Texas Rules of Civil Procedure and had failed to file a response to the Motion for Summary Judgment of Bishop Peterson & Sharp, P.C., was of the opinion that the Motion for Summary Judgment was in compliance with Rule 166a of the Texas Rules of Civil Procedure and should be granted. It is therefore

ORDERED, ADJUDGED, and DECREED that Bishop Peterson & Sharp, P.C. recover of and from the Defendant in Intervention, Harry L. Bowles, forty percent of any monies paid to Harry L. Bowles as a result of the settlement of October 25, 1993, exclusive of any monies to be set aside from Mr. Bowles' portion of the

RECORDER'S MEMORANDUM:  
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and not satisfactory for photographic  
recording; and/or alterations were  
present at the time of filming.

Certified Document Number: 812284 - P 0546

settlement to pay the cost of defending Joe Reynolds in his capacity as Receiver for this Court in a suit brought by Mr. Bowles. Such monies totalling \$50,000 to be held by Joe Reynolds, Receiver, shall come exclusively from the sixty percent (60%) portion of the settlement that is attributable to the Defendant-in-Intervention Harry L. Bowles. The Court is further of the opinion that Bishop Peterson & Sharp, P.C. recover, in addition, its expenses in the amount of \$12,568.05 spent in prosecuting this case on behalf of Harry L. Bowles and that Bishop Peterson & Sharp, P.C. recover their attorney's fees of \$3,500.00 as found by the Court pursuant to Section 38.001 et. seq. of the Texas Civil Practice and Remedies Code for the services of its attorney as of the time of the granting of this Motion for Summary Judgment.

FURTHER, Bishop Peterson & Sharp, P.C. shall recover \$30,000.00 in attorney's fees for the services of its attorney for the appeal of this case, such amount to be reduced by remittitur in the amount of \$15,000.00 in the event there is no appeal from this Court to one of the fourteen Courts of Appeal of Texas, to be reduced by an additional \$5,000.00 in the event there is no Application for Writ of Error from one of the Courts of Appeal to the Supreme Court of Texas, and an additional \$10,000.00 in the event the Supreme Court of Texas does not hear this case after a ruling by one of the Courts of Appeal of Texas. It is further

ORDERED, ADJUDGED, and DECREED that Bishop Peterson & Sharp, P.C. recover all costs of court incurred in this intervention and interest at the rate of ten percent (10%) from the

date of this Judgment until paid for which let execution issue if not timely paid. The Receiver Joe H. Reynolds is ordered to disburse forty percent (40%) of the amount of the funds due to Harry L. Bowles from the sale of National Parts System, Inc. and pay such amount to George M. Bishop, President of Bishop Peterson & Sharp, P.C., pursuant to the terms of the settlement agreement. The \$50,000.00 to be retained by the Receiver for his defense of the suit brought by Harry L. Bowles against the Receiver shall be paid exclusively from the sixty percent (60%) of the funds to be paid from the settlement to Harry L. Bowles.

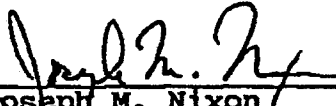
The Receiver is further ORDERED to disburse the reasonable expenses as found by this Court of \$12,568.05 to Bishop Peterson & Sharp, P.C., in addition to the forty percent (40%) recovery, and to reissue the check for \$12,500.00 representing a previous disbursement of funds to Mr. Bowles which was approved by the Receiver paying forty percent (40%) of said funds to George M. Bishop and sixty percent (60%) of said funds to Harry L. Bowles pursuant to the October 15, 1993 settlement agreement.

SIGNED on this 18<sup>th</sup> day of July, 1994.

  
Honorable Jack O'Neill  
Presiding Judge

Approved as to form and substance:

JOSEPH M. NIXON

  
Joseph M. Nixon  
State Bar No. 15244800  
3000 Smith  
Houston, Texas 77006  
Telephone: (713) 521-9797  
Telecopier: (713) 521-3125

RECORDER'S MEMORANDUM:  
This instrument is of poor quality  
and not satisfactory for photographic  
recording; and/or alterations were  
present at the time of filming.

STATE OF TEXAS  
COUNTY OF HARRIS

I, Charles Esposito, County Clerk of Harris County, Texas, do hereby certify that the foregoing data is a true and correct copy of the original record, now in my lawful custody, as appears on the records of record in my office.

- a) filed on \_\_\_\_\_
- b) recorded under \_\_\_\_\_  
in the Minutes of \_\_\_\_\_
- c) abstracted from the original record of \_\_\_\_\_  
possession, \_\_\_\_\_  
and parcel to \_\_\_\_\_  
in reference to \_\_\_\_\_
- d) abstracted from \_\_\_\_\_  
possession, \_\_\_\_\_  
parcel to \_\_\_\_\_  
from \_\_\_\_\_

Witness my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_ 1995

APR 26 1995  
CHARLES ESPOSITO, COUNTY CLERK  
Harris County, Texas

By \_\_\_\_\_ Deputy





I, Theresa Chang, District Clerk of Harris County, Texas, certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date  
Witness my official hand and seal of office  
this March 25, 2008

Certified Document Number: 21028184 Total Pages: 4

THERESA CHANG, DISTRICT CLERK  
HARRIS COUNTY, TEXAS

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P4

TR-40

P-3  
4B

91-25939A  
117"

NO. 91-025939

HARRY L. BOWLES, and  
QUALITY SEAL COMPANY, a Texas  
Corporation,

Plaintiffs,

V.

CHARLES N. SCHWARZ, JR.,  
ROSALIE SCHWARZ, AND  
JOANN LANE

Defendants.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

190TH JUDICIAL DISTRICT

**ORDER GRANTING SEVERANCE REQUESTED BY  
BISHOP PETERSON & SHARP, P.C. AND GEORGE M. BISHOP**

On this \_\_\_ day of April, 1995, came on to be considered the Motion for Severance of Intervenor Bishop Peterson & Sharp, P.C. and George M. Bishop and for entry of Final Judgment as to their Intervention. Having considered the law, the pleadings, and the argument of all interested parties, the Court is of the opinion that the Motion should be granted. It is therefore

ORDERED that the cause of action asserted by Bishop Peterson & Sharp, P.C. and George M. Bishop against Harry L. Bowles be and the same is hereby severed from the original suit and the Clerk is ORDERED to:

a. docket the severed cause under Cause Number 91-025939-A, with Bishop Peterson & Sharp, P.C. and George M. Bishop as Plaintiffs and Harry L. Bowles as the Defendant;

b. prepare certified copies of the following pleadings, papers, and orders and file them in the separate cause of action:

1. Third party intervention of Bishop Peterson & Sharp, P.C. and George M. Bishop, filed April 18, 1994

V8804 P0954

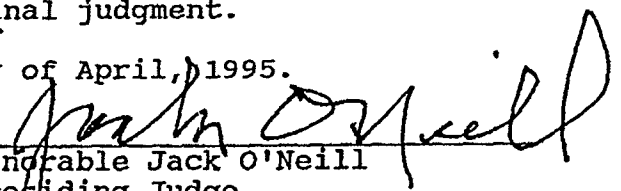
2. Intervenor's Motion for Summary Judgment, filed May 27, 1994
3. Order Granting the Summary Judgment of Bishop Peterson & Sharp, P.C. of July 18, 1994
4. Motion for Severance filed by Bishop Peterson & Sharp, P.C. and George M. Bishop, filed April 6, 1995
5. A copy of this Order signed by the Court.

It is further ORDERED that the cost of making the certified copies ordered above are to be taxed against Harry L. Bowles.

It is further ORDERED that separate Judgments be entered in the severed causes, each Judgment to be final and to dispose completely of all of the issues between all parties in their respective suits.


It is further ORDERED that the Summary Judgment granted by this Court in favor of Bishop Peterson & Sharp, P.C. be entered in Cause No. 91-025939-A as a final judgment.

SIGNED on this 10<sup>th</sup> day of April, 1995.

  
Honorable Jack O'Neill  
Presiding Judge

Approved as to form and substance:

GEORGE M. BISHOP & ASSOCIATES

  
George M. Bishop  
State Bar No. 02353000  
3000 Smith  
Houston, Texas 77006  
Telephone: (713) 521-9797  
Telecopier: (713) 521-3125

**F I L E D**  
CHARLES BACARISSE  
District Clerk  
APR 10 1995  
Harris County, Texas  
By *[Signature]*  
Kish  
Kish

CERTIFICATE OF SERVICE

I hereby certify that on this the 6th day of April, 1995, a true and correct copy of the foregoing proposed Order Granting Severance Requested by Bishop Peterson & Sharp, P.C. and George M. Bishop was forwarded by U.S. Mail to Mr. Harry L. Bowles, 306 Big Hollow Lane, Houston, TX 77042; Mr. Joe Reynolds, Andrew & Kurth, 4200 Texas Commerce Tower, Houston, TX 77002; Mr. Grant Cook, Keck Mahin & Cate, 1021 Main Street, Suite 2800, Houston, Texas 77002-6606.

George M. Bishop  
George M. Bishop

APR 11 1995  
U.S. MAIL  
RECEIVED  
MAY 1 1995  
U.S. MAIL

Certified Document Number: 22004154 - Page 4 of 4  
V8804 P0956



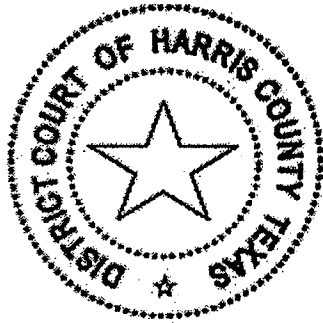
I, Theresa Chang, District Clerk of Harris County, Texas, certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date  
Witness my official hand and seal of office  
this March 25, 2008

Certified Document Number: 22004154 Total Pages: 4

THERESA CHANG, DISTRICT CLERK  
HARRIS COUNTY, TEXAS

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I, Theresa Chang, District Clerk of Harris County, Texas, certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date  
Witness my official hand and seal of office  
this March 25, 2008

Certified Document Number: 21028203 Total Pages: 1

THERESA CHANG, DISTRICT CLERK  
HARRIS COUNTY, TEXAS

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- July 18, 1994: Order granting Bishop, Peterson & Sharp, P.C.'s Motion for Summary Judgment in Cause No. 1991-25939 is signed awarding attorney's fees;
- April 10, 1995: Order granting Severance as requested by Defendants is signed and it is ordered that Summary Judgment in favor of Bishop, Peterson & Sharp, P.C. be entered as Cause No. 1991-25939-A as final judgment;
- May 15, 1995: April 10, 1995 Order of Severance is set aside;
- November 1, 1995: George Bishop filed a Third Party Intervention in Cause No. 1991-25939 to recover attorney fees;
- February 12, 1996: Final Summary Judgment signed in Cause No. 1991-25939 in the 334<sup>th</sup> District Court;
- April 26, 1996: Order signed in Cause No. 1991-25939 stating that the Order of May 15, 1995 setting aside the severance order dated April 10, 1995 is vacated; the severance (Cause No. 1991-25939-A) is reinstated;
- August 30, 1996: Order for Disbursement of Funds is signed as to Cause No. 1991-25939-A; Ordered that the clerk issue from the registry of the Court to (1) George Bishop the sum of \$39,618.18 and (2) Bishop, Peterson & Sharp, P.C. c/o George Bishop \$186,781.19.

In January of 2006, this Court took under advisement Defendant BISHOP, PETERSON & SHARP, P.C.'s Motion for Summary Judgment. After careful consideration of the complex procedural history of this case as well as the applicable case law, this Court contacted counsel for the parties and requested additional briefing regarding the following specific question:

"If the February 12, 1996 order signed by the 334<sup>th</sup> District Court is a "final judgment" as to the 1991-25939 case, what

effect, if any, does that order have on Mr. Bowles' malpractice claim filed on August 31, 1995, in a different Civil District Court (the 151<sup>st</sup>), since this claim was not made as a compulsory counter-claim in the main lawsuit in the 334<sup>th</sup> District Court?"

To date, counsel for neither party has filed any additional briefing specifically addressing this question posed by the Court. Since no additional briefing has been filed on this issue, this Court must rely on the record before it.

It is the opinion of this Court that Final Judgments have been entered in the underlying cases, (Cause No. 1991-25939 and Cause No. 1991-25939-A; and, therefore, Plaintiff's cause of action for legal malpractice is barred by *res judicata*. In accordance with Texas Rule of Civil Procedure 97(a) and established case law, a cause of action for legal malpractice is a compulsory counterclaim that must be filed when a party files a cause of action contesting legal fees. Plaintiff failed to include his cause of action for legal malpractice in his cause of action contesting legal fees and, furthermore, failed to timely amend his pleadings to assert a cause of action for legal malpractice before a final judgment had been entered. Thus, because Plaintiff's cause of action for legal malpractice was a compulsory counterclaim that he failed to assert, he is now barred by *res judicata* from asserting it in this court. Accordingly, based on the pleadings, motions, and other evidence now before this Court, it is

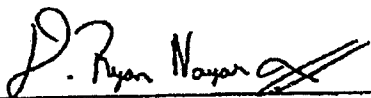
**ORDERED, ADJUDGED AND DECREED** that Defendant BISHOP, PETERSON  
& SHARP, P.C.'s Motion for Summary Judgment is **GRANTED** in its entirety.

SIGNED this 27<sup>th</sup> day of June, 2006.

Caroline Baker  
Judge Presiding

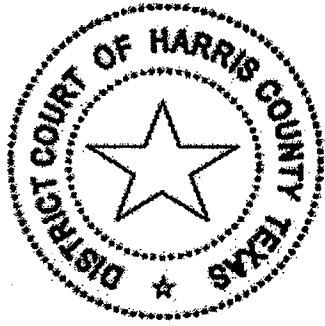
APPROVED AS TO FORM:

MARSHALL & McCracken, P.C.

By:   
John C. Marshall  
SBN 13043000  
D. Ryan Nayar  
SBN 24035911

1990 Post Oak Boulevard, Suite 2400  
Houston, TX 77056  
(713) 622-8944  
FAX (713) 622-6786

ATTORNEYS FOR DEFENDANT  
BISHOP, PETERSON & SHARP, P.C.



I, Theresa Chang, District Clerk of Harris County, Texas, certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date  
Witness my official hand and seal of office  
this April 30, 2008

Certified Document Number: 28904303 Total Pages: 4

THERESA CHANG, DISTRICT CLERK  
HARRIS COUNTY, TEXAS

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P-3  
Mr DSF

NO. 91-025939-A

BISHOP PETERSON & SHARP, P.C. and GEORGE M. BISHOP	§	IN THE DISTRICT COURT OF
	§	
vs.	§	HARRIS COUNTY, TEXAS
	§	
HARRY L. BOWLES	§	55TH JUDICIAL DISTRICT

and

NO. 91-025939

HARRY L. BOWLES, and QUALITY SEAL COMPANY, a Texas Corporation,	§	IN THE DISTRICT COURT OF
	§	
Plaintiffs,	§	
	§	
V.	§	HARRIS COUNTY, TEXAS
	§	
CHARLES N. SCHWARZ, JR., ROSALIE SCHWARZ, AND JOANN LANE	§	
	§	
Defendants.	§	55TH JUDICIAL DISTRICT

ORDER FOR DISBURSEMENT OF FUNDS

Be it remembered that on the 19th day of July, 1996, and again on the 23rd day of July, 1996, came on to be heard the Motion of Plaintiffs Bishop Peterson & Sharp, P.C. and George M. Bishop for the distribution to them of the funds heretofore deposited into the registry of the Court in Cause No. 91-025939. Plaintiffs in Cause No. 91-025939-A and Intervenor, Charles N. Schwarz, Jr., appeared by counsel and Defendant Harry L. Bowles did not appear, even though he had been properly notified of the hearing of such motion. The Plaintiffs and Intervenor Charles N. Schwarz, Jr. announced to the Court that they had reached a partial agreement relative to the motion, which agreement pertains to the funds deposited into the

RECORDER'S MEMORANDUM  
This instrument is of poor quality  
and not satisfactory for photographic  
recording; and/or alterations were  
present at the time of filing

V10230P0657

registry of the Court by Charles N. Schwarz, Jr. on February 26, 1996, in the amount of \$42,219.99. The Court finds that the agreement of the parties should be carried forward as an order of the Court; accordingly it is

ORDERED that the Clerk issue to George M. Bishop the sum of \$39,618.18 from the registry of the Court out of the deposit made into the registry of the Court on February 26, 1996, by Charles N. Schwarz, Jr.

In addition, the Court having heard evidence and argument of counsel concerning the funds tendered into the registry of the Court by the court-appointed receiver, Joe H. Reynolds, was of the opinion that George M. Bishop <sup>and</sup> ~~of~~ Bishop Peterson & Sharp, P.C. <sup>were</sup> ~~was~~ entitled to a recovery of \$186,781.19, representing principal and

interest due through July 26, 1996, on the judgment signed by the Honorable Jack O'Neill on July 18, 1994.

To Bishop Peterson f 51

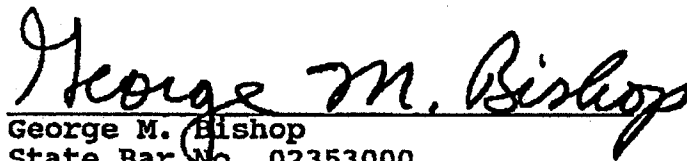
The Clerk is ORDERED to disburse \$186,781.19 <sup>1/10</sup> to George M. Bishop at 3000 Smith Street, Houston, Texas 77006. The Clerk is ORDERED to disburse the remainder of the funds in the registry of the Court in Cause No. 91-025939 to Harry L. Bowles, 306 Big Hollow Lane, Houston, Texas 77042.

SIGNED and RENDERED on this 30 day of <sup>August</sup> ~~July~~, 1996.

  
Honorable Kathleen Stone  
Presiding Judge

Approved as to form and substance:

GEORGE M. BISHOP & ASSOCIATES



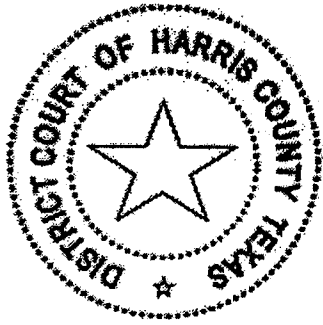
George M. Bishop  
State Bar No. 02353000  
3000 Smith  
Houston, Texas 77006  
Telephone: (713) 521-9797  
Telecopier: (713) 521-3125



CHARLES SACARISSE  
District Clerk

JUL 23 1896  
Harris County, Texas

By \_\_\_\_\_  
Deputy



I, Theresa Chang, District Clerk of Harris County, Texas, certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date  
Witness my official hand and seal of office  
this March 25, 2008

Certified Document Number: 21028196 Total Pages: 4

THERESA CHANG, DISTRICT CLERK  
HARRIS COUNTY, TEXAS

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1991-25939  
NO. 1991-25939

P.2  
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TINIX

HARRY L. BOWLES

VS.

CHARLES N. SCHWARZ, JR.,  
JOE H. REYNOLDS, and  
ANDREWS KURTH LLP

§ IN THE DISTRICT COURT OF  
§ 2005 MAR -2 AM 11:07  
§ HARRIS COUNTY, TEXAS  
§ CHARLES N. SCHWARZ, JR.  
§ ANDREWS KURTH LLP  
§ 55<sup>TH</sup> JUDICIAL DISTRICT

**ORDER OF PERMANENT INJUNCTION**

The Court has considered the Application for Permanent Injunction, verified as required by law, filed on behalf of Charles N. Schwarz, Jr., Joe H. Reynolds, and Andrews Kurth LLP (collectively "Movants"). The Court finds, based upon the evidence presented, and after taking judicial notice of its own file, that Harry L. Bowles ("Bowles") continues to engage in vexatious and harassing litigation in this case long after the final judgment has been entered. In order to protect the finality of the judgment in this case and to protect the Movants from having to respond to repeated efforts by Bowles to re-litigate issues that have been finally determined, the Court finds it is necessary to enjoin and restrain Bowles from filing further pleadings in this case.

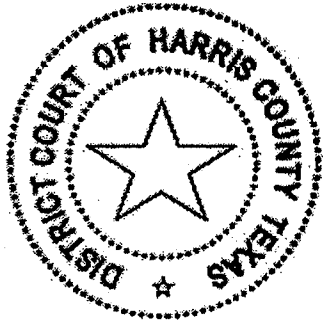
The Court specifically takes judicial notice of the previous permanent injunctions entered against Bowles in No. 94-031315 (in the 334<sup>th</sup> District Court) and in No. 96-022972 (in the 151<sup>st</sup> District Court), copies of which were attached to Movants' Application. This Order of Permanent Injunction is intended to

supplement those prior injunctions and to make it clear that Bowles is enjoined from filing any further pleadings in this case, as well as from instigating new litigation that relates to the Final Judgment in this case.

It is therefore ORDERED that Bowles, and anyone acting in concert with him, including his attorneys, are hereby permanently enjoined and restrained from filing any further pleadings in this case. The purported Motion for Summary Judgment filed by Bowles and any other pleadings previously filed by Bowles after the entry of the Final Judgment in this case are deemed to be null and void and of no legal effect.

SIGNED: March 21, 2005.

  
PRESIDING JUDGE



I, Theresa Chang, District Clerk of Harris County, Texas, certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date  
Witness my official hand and seal of office  
this March 25, 2008

Certified Document Number: 11506923 Total Pages: 2

THERESA CHANG, DISTRICT CLERK  
HARRIS COUNTY, TEXAS

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NO. 1995-43235

HARRY BOWLES

§ IN THE DISTRICT COURT

V.

§ HARRIS COUNTY, TEXAS

GEORGE M. BISHOP, CHARLES  
K. PETERSON, AND DAVID E. SHARP,  
ET AL

**F I L E D**  
CHARLES BACARISSE  
District Clerk

§ 151st JUDICIAL DISTRICT AUG 30 2006

ORDER

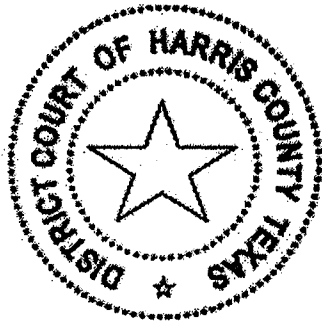
Harris County, Texas  
By \_\_\_\_\_ Deputy

Came on to be heard Plaintiff Harry L. Bowles' Motion for Rehearing, and the Court, having reviewed again the pleadings and evidence on file, and having heard the arguments of counsel at the rehearing, is of the opinion that the amended summary judgment granted as to Bishop, Peterson & Sharp, P.C. was proper. It is, therefore,

ORDERED that Plaintiff Harry L. Bowles' Motion is denied and the Order signed on June 27, 2006 stands.

SIGNED this 30<sup>th</sup> day of August, 2006.

Caroline Baker  
CAROLINE E. BAKER,  
JUDGE PRESIDING



I, Theresa Chang, District Clerk of Harris County, Texas, certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date  
Witness my official hand and seal of office  
this April 30, 2008

Certified Document Number: 24135508 Total Pages: 1

THERESA CHANG, DISTRICT CLERK  
HARRIS COUNTY, TEXAS

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NO. 1995-43235

HARRY L. BOWLES	§	IN THE DISTRICT COURT OF
	§	
VS.	§	HARRIS COUNTY, TEXAS
	§	
GEORGE M. BISHOP, CHARLES K.	§	
PETERSON, AND DAVID E. SHARP,	§	
EACH IN THEIR INDIVIDUAL	§	
CAPACITIES; AND GEORGE BISHOP	§	
& ASSOCIATES, AND	§	
BISHOP, PETERSON & SHARP, P.C.,	§	
EACH A PROFESSIONAL LAW	§	
CORPORATION, AND/OR AN	§	
ASSUMED NAME OF THE NAMED	§	
INDIVIDUALS	§	151st JUDICIAL DISTRICT

FILED  
 CHARLES BACARISSE  
 DISTRICT CLERK  
 HARRIS COUNTY, TEXAS

JUL 14 PM 12: 07

7-14-96  
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MAIL PROCESSING DEPT. 1-B

**ORDER GRANTING DEFENDANT BISHOP, PETERSON & SHARP, P.C.'s  
 MOTION TO SEVER**

ON THIS DAY came on to be heard Defendant Bishop, Peterson & Sharp's Motion to Sever, and the Court, having reviewed the pleadings on file and having heard the arguments of counsel, is of the opinion that the requested relief is proper. It is, therefore,

**ORDERED, ADJUDGED AND DECREED as follows:**

1. Plaintiff Harry L. Bowles' claims against Defendant Bishop, Peterson & Sharp, P.C. are hereby severed in their entirety from Cause No. 1995-43235.
2. The clerk of the court is hereby ordered to assign the severed claims Cause No. 1995-43235-A.
3. The clerk of the court is hereby instructed to create a separate file for Cause No. 1995-43235-A, which is to include the following documents:
  - a. A true and correct copy of Plaintiff's Original Petition, filed on or about August 31, 1995;



- b. True and correct copies of any and all Orders signed by this Court, including, but not limited to:
  - i. Order Granting Defendant Bishop, Peterson & Sharp, P.C.'s Motion for Summary Judgment, signed by the Court on or about June 22, 2006; and
  - ii. Amended Order Granting Defendant Bishop, Peterson & Sharp, P.C.'s Motion for Summary Judgment, signed by the Court on or about June 27, 2006;
- c. True and correct copies of Defendant Bishop, Peterson & Sharp P.C.'s Fifth Amended Answer, filed on or about January 24, 2006;
- d. A true and correct copy of Defendant Bishop, Peterson & Sharp, P.C.'s Motion for Summary Judgment, filed on or about November 18, 2005;
- e. A true and correct copy of Plaintiff's Response to Bishop, Peterson & Sharp, P.C.'s Motion for Summary Judgment, filed on or about December 5, 2005;
- f. A true and correct copy of Defendant's Reply to Plaintiff's Response to Bishop, Peterson & Sharp, P.C.'s Motion for Summary Judgment, filed on or about December 9, 2005;
- g. A true and correct copy of Plaintiff's Response to Bishop, Peterson & Sharp, P.C.'s Response to Plaintiff's Response to BPS Motion for Summary Judgment & Request for Consideration, filed on or about January 4, 2006;
- h. A true and correct copy of Defendant's Post Hearing Addendum to Defendant Bishop, Peterson & Sharp P.C.'s Motion for Summary Judgment, filed on or about February 8, 2006;
- i. A true and correct copy of Plaintiff's Third Response to Defendant Bishop, Peterson & Sharp, P.C.'s Motion for Summary Judgment, filed on or about February 13, 2006;
- j. A true and correct copy of Plaintiff's Supplemental Response in Opposition to BPS Motion for Summary Judgment Based on Recent New Discovery, filed on or about June 2, 2006;

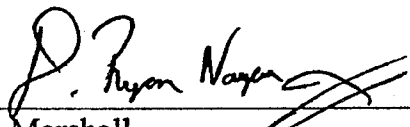
- k. A true and correct copy of Plaintiff's Application for Writ of Mandamus, filed on or about June 5, 2006;
- l. A true and correct copy of Memorandum Opinion Denying Plaintiff's Application for Writ of Mandamus, signed by the Honorable First Court of Appeals on or about June 15, 2006;
- m. A copy of the docket sheet.
- n. A copy of the current docket control order.
- o. A copy of this Order.

SIGNED this 30<sup>th</sup> day of August, 2006.

Caroline Baker  
JUDGE PRESIDING

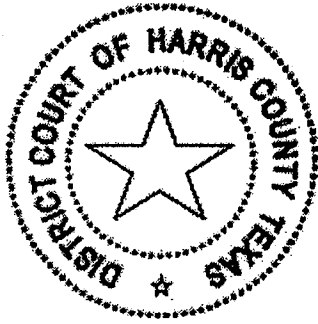
APPROVED AS TO FORM:

MARSHALL & McCracken, P.C.

By:   
John C. Marshall  
SBN 13043000  
D. Ryan Nayar  
SBN 24035911

1990 Post Oak Boulevard, Suite 2400  
Houston, Texas 77056  
(713) 622-8944  
FAX (713) 622-6786

ATTORNEYS FOR DEFENDANT  
BISHOP, PETERSON & SHARP, P.C.



I, Theresa Chang, District Clerk of Harris County, Texas, certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date  
Witness my official hand and seal of office  
this April 30, 2008

Certified Document Number: 24135509 Total Pages: 3

THERESA CHANG, DISTRICT CLERK  
HARRIS COUNTY, TEXAS

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NO. 1995-43235

HARRY L. BOWLES  
VS.  
GEORGE M. BISHOP

§  
§  
§  
§  
§

IN THE DISTRICT COURT OF  
HARRIS COUNTY, TEXAS  
151<sup>ST</sup> JUDICIAL DISTRICT

CHARLES L. HARRIS  
District Clerk

APR 12 2007

ORDER

Harris County, Texas

Came on to be heard Defendant George M. Bishop's Motion for Summary Judgment as to Plaintiff Harry L. Bowles' cause of action for legal malpractice. The Court, having considered the pleadings on file and the evidence, and having heard the arguments of counsel, finds the following:

Deputy

A relevant-chronology of this case is as follows:

- April 8, 1994: Bishop, Peterson, & Sharp, P.C. filed a Motion to Withdraw as counsel for Plaintiff Bowles in Cause No. 1991-25939
- April 11, 1994: The 190<sup>th</sup> District Court granted Bishop, Peterson & Sharp, P.C.'s Motion to Withdraw.
- April 19, 1994: Bishop, Peterson, & Sharp, P.C. filed a Third Party Intervention in Cause No. 1991-25939 for attorney's fees
- May 6, 1994: Plaintiff filed a Petition in Intervention in Cause No. 1991-25939 contesting Bishop, Peterson, & Sharp, P.C.'s legal costs. Plaintiff fails to file a counterclaim for legal malpractice or negligence
- July 18, 1994: Order granting Bishop, Peterson, & Sharp, P.C.'s Motion for Summary Judgment in Cause No. 1991-25939 is signed awarding attorney's fees
- April 10, 1995: Order granting Severance as requested by Defendants is signed and it is ordered that Summary Judgment in favor of Bishop, Peterson, & Sharp, P.C. be entered as Cause No. 1991-25939-A as final judgment
- May 15, 1995: April 10, 1995 Order of Severance is set aside

- August 31, 1995: Harry Bowles filed Plaintiff's Original Petition in the 151<sup>st</sup> District Court naming George M. Bishop, Charles K. Peterson, and David E. Sharp individually as Defendants giving rise to Cause No. 1995-43235.
- November 1, 1995: George Bishop filed a Third Party Intervention in Cause No. 1991-25939 to recover attorney fees
- January 29, 1996: Answer filed by George M. Bishop individually to Cause No. 1995-43235.
- February 12, 1996: Final Summary Judgment signed in Cause No. 1991-25939 in the 334<sup>th</sup> District Court
- April 26, 1996: Order signed in Cause No. 1991-25939 stating that the Order of May 15, 1995 setting aside the severance order dated April 10, 1995 is vacated; the severance (Cause No. 1991-25939-A) is reinstated.
- August 30, 1996: Order for Disbursement of Funds is signed as to Cause No. 1991-25939-A; Ordered that the clerk issue from the registry of the Court to (1) George Bishop the sum of \$39,618.18 and (2) Bishop, Peterson & Sharp, P.C. c/o George Bishop \$186,781.19

This Court has taken under advisement Defendant's Motion for Summary Judgment. After careful consideration of the complex procedural history of this case as well as the applicable case law, this Court contacted counsel for the parties and requested additional briefing regarding the following specific question:

"If the February 12, 1996 order signed by the 334<sup>th</sup> District Court is a "final judgment" as to the 1991-25939 case, what effect, if any, does that order have on Mr. Bowles' malpractice claim filed on August 31, 1995, in a different Civil District Court (the 151<sup>st</sup>), since this claim was not made as a compulsory counter-claim in the main lawsuit in the 334<sup>th</sup> District Court?"

To date, counsel for neither party has filed any additional briefing specifically addressing this question posed by the Court. Since no additional briefing has been filed on this issue, this Court must rely on the record before it.

It is the opinion of this Court that Final Judgments have been entered in the underlying cases, Cause No. 1991-25939 and Cause No. 1991-25939-A; and, therefore, Plaintiff's cause of action for legal malpractice is barred by *res judicata*. In accordance with Texas Rule of Civil Procedure 97(a) and established case law, a cause of action for legal malpractice is a compulsory counterclaim that must be filed when a party files a cause of action contesting legal fees. Plaintiff failed to include his cause of action for legal malpractice in his cause of action contesting legal fees and, furthermore, failed to timely amend his pleadings to assert a cause of action for legal malpractice before a final judgment had been entered. Thus, because Plaintiff's cause of action for legal malpractice was a compulsory counterclaim that he failed to assert, he is now barred by *res judicata* from asserting it in this court. Accordingly, based on the pleadings, motions, and other evidence now before this Court, it is

**ORDERED, ADJUDGED AND DECREED** that Defendant's Motion for Summary Judgment is **GRANTED** in its entirety.

SIGNED this 12<sup>th</sup> day of April, 2007.

Caroline Baker  
Judge Presiding



I, Theresa Chang, District Clerk of Harris County, Texas, certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date  
Witness my official hand and seal of office  
this March 7, 2008

Certified Document Number: 27997977 Total Pages: 3

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HARRIS COUNTY, TEXAS

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CAUSE NO. 95-043235

HARRY L. BOWLES,  
Plaintiff

VS.

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  
Defendants

§ IN THE DISTRICT COURT OF  
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§ HARRIS COUNTY, TEXAS  
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§ 151<sup>ST</sup> JUDICIAL DISTRICT  
§

**DEFENDANT DAVID E. SHARP'S MOTION FOR SUMMARY JUDGMENT**

**TO THE HONORABLE JUDGE OF SAID COURT:**

COMES NOW, David E. Sharp, Defendant in the above-entitled and numbered cause (hereinafter referred to as "Defendant"), and respectfully requests this Honorable Court to render summary judgment in favor of said Defendant in accordance with Rule 166a of the Texas Rules of Civil Procedure, and as grounds therefore, Defendant would respectfully show unto the Court as follows:

**I.**

**INTRODUCTION**

This is a legal malpractice case filed in 1995, but Defendant was just served with the lawsuit in May 2009.<sup>1</sup> Defendant is entitled to summary judgment as a matter of law

<sup>1</sup> Defective purported service was received in April 2009, and quashed by this Court on May 27, 2009. Under Rule 122, service is deemed to have occurred, as this Court's Order reflects, so as to make



for several reasons: 1) plaintiff's claims are barred by the statute of limitations, because Plaintiff waited *14 years* to serve Defendant; 2) a claim of legal malpractice is a compulsory counterclaim to a claim for attorneys' fees, but as explained below, plaintiff failed to counterclaim for legal malpractice in the underlying action after Defendant's law firm intervened for its fees; 3) Defendant is sued because he practiced law with the law firm Defendant Bishop, Peterson & Sharp, P.C; however, because that firm has already received a final judgment in the case, Plaintiff's claims against Defendant David E. Sharp are barred by *res judicata*; 4) as a shareholder in a professional corporation Defendant David E. Sharp is not liable for any professional errors, omissions, negligence, incompetence or malfeasance on the part of others in the corporation; 5) plaintiff waived his right to seek recovery from Defendant David E. Sharp by waiting some *14 years* to serve him.

## II.

### BACKGROUND

This case has a long history before service of Defendant David E. Sharp. Plaintiff filed this lawsuit in 1995 alleging that the Defendant, two lawyers with whom he practiced law, and his former law firm, Bishop, Peterson & Sharp, P.C. were negligent in representing him in the lawsuit styled *Harry L. Bowles v. Charles N. Schwarz, Jr., et;* Cause No. 1991-25939 (the underlying action).<sup>2</sup> George Bishop, who was then practicing as George M. Bishop & Associates, filed a Motion to Withdraw as counsel for

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Defendant's appearance date by June 22, 2009, the Monday following 20 days after this Court's Order quashing the defective purported service.

<sup>2</sup> See Original Petition, on file with this Court.

Plaintiff in Cause No. 1991-25939 on April 8, 1994.<sup>3</sup> On April 11, 1994, the Court granted Mr. Bishop's Motion to Withdraw.<sup>4</sup> On April 19, 1994, Bishop, Peterson & Sharp, P.C. filed a Third-Party Intervention in the underlying cause for its attorney fees.<sup>5</sup> On May 6, 1994, Plaintiff responded to Bishop, Peterson & Sharp, P.C.'s Third-Party Intervention by filing his own Petition in Intervention.<sup>6</sup> In his Petition in Intervention, Plaintiff contested Bishop, Peterson & Sharp, P.C.'s legal costs, but wholly failed to counterclaim based on any alleged legal malpractice or negligence, as required by law. *See Goggin v. Grimes*, 969 S.W.2d 135, 138 (Tex.App.—Houston [14<sup>th</sup> Dist] 1998, no pet.). Finally, on August 31, 1995, Plaintiff brought this separate suit claiming legal malpractice, or negligence, in Bishop, Peterson & Sharp, P.C.'s handling of the underlying action (Cause No. 1991-25939).

### III.

#### SUMMARY JUDGMENT STANDARD

In a traditional summary judgment case, the issue is whether the movant has met its summary judgment burden by establishing that no genuine issue of material fact exists and that the movant is entitled to judgment as a matter of law. *See Tex. R. Civ. P. 166a(c)*; *Cate v. Dover Corp.*, 790 S.W.2d 559, 562 (Tex. 1990); *City of Houston v. Clear Lake Basin Auth.*, 589 S.W.2d 671, 678 (Tex. 1979). A defendant is entitled to summary judgment if the summary judgment evidence establishes, as a matter of law, that at least one element of the plaintiff's cause of action cannot be established, *See*

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<sup>3</sup> *See* Motion to Withdraw, attached as Exhibit A. George Bishop represented Plaintiff as a Shareholder with Bishop, Peterson & Sharp, P.C., and after attorneys Bishop, Peterson and Sharp ceased practicing law together, continued representing Plaintiff with his new firm, George M. Bishop & Associates.

<sup>4</sup> *See* Order Granting Motion to Withdraw, attached as Exhibit B.

<sup>5</sup> *See* Third-Party Intervention, attached as Exhibit C.

<sup>6</sup> *See* Plaintiff's Petition in Intervention, attached as Exhibit D.

*Centeq Realty, Inc. v. Siegler*, 899 S.W.2d 197 (Tex. 1995); *Rosas v. Buddy's Food Store*, 518 S.W. 2d 534, 547 (Tex. 1975) or if the defendant conclusively establishes every factual element of an affirmative defense. See *Swilley v. Hughes*, 488 S.W.2d 64, 67 (Tex. 1972). Once this evidence is presented, the burden shifts to the plaintiff to put on competent controverting evidence that proves the existence of a genuine issue of material fact. See *Centeq*, 899 S.W.2d at 197.

### III.

#### ARGUMENTS AND AUTHORITY

**A. Plaintiff's claims are barred by limitations as a matter of law because he waited 14 years to serve Defendant**

A two-year statute of limitations governs legal malpractice claims as well as claims brought under the Texas Deceptive Trade Practices Act. TEX. CIV. PRAC. & REM.CODE ANN. § 16.003 (Vernon Supp.2006); *Willis v. Maverick*, 760 S.W.2d 642, 644 (Tex.1988); TEX. BUS. & COM. CODE ANN. §17.565. The statute of limitations begins to run when the claim accrues. TEX. CIV. PRAC. & REM.CODE ANN. § 16.003. A legal malpractice claim accrues when the client sustains a legal injury or, in cases governed by the discovery rule, when the client discovers or should have discovered through the exercise of reasonable care and diligence the facts establishing the elements of the claim. *Hughes v. Mahaney & Higgins*, 821 S.W.2d 154, 156 (Tex.1991); see also *S.V. v. R.V.*, 933 S.W.2d 1, 4 (Tex.1996) (legal injury rule); *Willis*, 760 S.W.2d at 646 (discovery rule). A claim under the Texas DTPA must be commenced within two years after the date on which the false, misleading, or deceptive act or practice occurred or within two years after the consumer discovered or in the exercise of reasonable diligence should

have discovered the occurrence of the false, misleading, or deceptive act or practice. TEX. BUS. & COM. CODE ANN. §17.565.

In a case where the Plaintiff filed his original petition prior to the running of limitations, whether a plaintiff's claim is barred by limitations depends on whether the plaintiff interrupted the running of limitations. See *Murray v. San Jacinto Agency*, 800 S.W.2d 826, 829-30 (Tex.1990). Generally, the mere filing of a suit does not interrupt the running of limitations unless due diligence is exercised in the issuance and service of citation. *Id. at 830*. "To obtain summary judgment on the grounds that an action was not served within the applicable limitations period, the movant must show that, as a matter of law, diligence was not used to effectuate service." *Gant v. DeLeon*, 786 S.W.2d 259, 260 (Tex.1990) (quoting *Zale Corp. v. Rosenbaum*, 520 S.W.2d 889, 891 (Tex.1975)). The existence of diligence is a question of fact and can only be found as a matter of law when no legally sufficient excuse is offered. *Valdez v. Charles Orsinger Buick Co.*, 715 S.W.2d 126 (Tex.App.-Texarkana 1986, no writ).

Summary judgment may be based on the lack of diligence if no excuse is offered for the delay in procuring the service of citation, or if the lapse of time in the plaintiff's failure to act is such as to conclusively negate diligence. *Ray v. O'Neal*, 922 S.W.2d 314, 317 (Tex.App.-Fort Worth 1996, n.w.h.); *De La Torre v. Our Lady of Guadalupe Center*, 807 S.W.2d 889, 890 (Tex.App.-Corpus Christi 1991, no writ). If a defendant affirmatively pleads the defense of limitations and shows the failure to timely serve the defendant, "the burden shifts to the plaintiff to explain the delay." *Murray*, 800 S.W.2d at 830.

In the present case, not only was the Plaintiff aware of his alleged injury, but he filed suit for that injury on August 31, 1995.<sup>7</sup> Plaintiff's cause of action had clearly accrued at least by the date of his filing suit, and the statute of limitations would have certainly run by August 31, 1997, two years after suit was filed.<sup>8</sup> Therefore the Plaintiff's claim was barred by the statute of limitations unless the plaintiff interrupted the running of limitations. However, Plaintiff waited *14 years* to serve Defendant. He has shown no excuse for the delay, and Texas Courts have routinely held that delays as short as five months constitute a lack of due diligence as a matter of law: see *Instrument Specialties Co.*, 924 S.W.2d 420 (six months); *Hansler v. Mainka*, 807 S.W.2d 3 (Tex.App.-Corpus Christi 1991, no writ) (five months); *Allen v. Bentley Laboratories*, 538 S.W.2d 857 (Tex.Civ.App.-San Antonio 1976, writ ref'd n.r.e.) (six months). Here the Plaintiff's failure to exercise due diligence in procuring service is fatal to his claim, and his claims fail as a matter of law.

**B. Plaintiff's Claims are barred by *res judicata***

- 1. A claim of attorney malpractice is a compulsory counterclaim to a claim for attorney's fees, and this action is therefore barred by *res judicata***

A claim of attorney malpractice is a compulsory counterclaim to a claim for attorneys' fees under Texas Rule of Civil Procedure 97(a). *CLS Associates, Ltd. v. AB*, 762 S.W.2d 221, 224 (Tex.App.-Dallas 1988, no writ). Rule 97(a) states:

A pleading shall state as a counterclaim any claim within the jurisdiction of the Court, not the subject of a pending action, which at the time of filing the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not

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<sup>7</sup> See Plaintiff's Original Petition, dated August 31, 1995, on file with this Court.

<sup>8</sup> Even if one assumed the 4 year statute of limitations, the time would have expired no later than August 31, 1999. This further underscores that there is no statute of limitations that did not expire so many years before service on Defendant David E. Sharp that the lack of due diligence is established as a matter of law.

require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction; provided, however, that a judgment based upon a settlement or compromise of a claim of one party to the transaction or occurrence prior to a disposition on the merits shall not operate as a bar to the continuation or assertion of the claims of any other party to the transaction or occurrence unless the latter has consented in writing that said judgment shall operate as a bar.

Thus, if an attorney or law firm previously filed a claim for attorney's fees and is later sued by the same party for malpractice, the malpractice claims are barred by *res judicata* when they arise from the same transaction or occurrence as the attorney's fees. *Id. See also Ogletree v. Crates*, 363 S.W.2d 431, 435 (Tex.1963) (res judicata bars litigation of all issues connected with a cause of action which, with the use of all diligence, might have been tried, as well as those which were actually tried).

In this case, the issue of legal malpractice and all other claims asserted by Plaintiff all arose from the same transaction or occurrences that gave rise to the attorney's fees sought by the law firm's intervention in the underlying suit (Cause No. 1991-25939). While Plaintiff contested Defendant Bishop, Peterson & Sharp, P.C.'s legal costs and fees, he failed to counterclaim for damages arising from any claimed legal malpractice. Because Plaintiff opted not to counterclaim for these purported actions, *all claims* are now barred by *res judicata*.<sup>9</sup> Indeed, the final judgment in favor of Bishop, Peterson & Sharp, P.C. is itself *res judicata* or collateral estoppel as to all issues regarding the proprietary of *res judicata* in favor of Bishop, Peterson & Sharp, P.C., any of its agents, and anything associated with any claim of liability involving Bishop, Peterson & Sharp, P.C.

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<sup>9</sup> This court previously granted Bishop, Peterson & Sharp, P.C.'s Motion for Summary Judgment based on this same argument.

2. **Plaintiff's claims are barred by *res judicata* because Defendant was sued as an agent of his firm, and his firm has already received summary judgment in this action**

Generally, in Texas, the doctrine of vicarious liability, or respondeat superior, makes a principal liable for the conduct of his employee or agent. *Minyard Food Stores v. Goodman*, 80 S.W.3d 573, 578 (Tex.2002); *Baptist Mem'l Hosp. Sys. v. Sampson*, 969 S.W.2d 945, 947 (Tex.1998). This liability is based on the principal's control or right to control the agent's actions undertaken to further the principal's objectives. See *Wingfoot Enters. v. Alvarado*, 111 S.W.3d 134, 136 (Tex.2003). In situations of vicarious liability, a judgment for one of the persons in the vicarious relationship bars a later action against the other. *Soto v. Phillips*, 836 S.W.2d 266, 269 (Tex.App.--San Antonio 1992, writ denied); see Restatement (Second) of Judgments § 51 (1982).

In the present case Defendant David E. Sharp was acting as an attorney practicing law at Bishop, Peterson & Sharp, P.C., and was sued solely because he was an attorney named shareholder in that law firm. On June 27, 2006, this Honorable Court granted Bishop, Peterson & Sharp, P.C.'s Motion for Summary Judgment, on the basis that Plaintiff was barred by *res judicata* from asserting a cause of action for legal malpractice.<sup>10</sup> Because this Court granted a final judgment in that case that was never appealed, Plaintiff is now barred by *res judicata* from asserting the same claims against Defendant David E. Sharp as an agent/attorney of that law firm. Further, the Plaintiff cannot base any claim upon any alleged theory involving Bishop, Peterson & Sharp, P.C., as that firm's non-liability has already been established by a final, non-appealable judgment. Therefore, Defendant David E. Sharp cannot be held liable for any actions undertaken while acting as an agent, employee or attorney for Bishop, Peterson & Sharp,

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<sup>10</sup> See Amended Order, dated June 27, 2006, attached as Exhibit E.

P.C., or otherwise for anything involving Bishop, Peterson & Sharp, P.C. This Court has already resolved the matters between Bishop, Peterson & Sharp, P.C. and the Plaintiff in favor of Bishop Peterson & Sharp, P.C.

C. **Defendant David E. Sharp is not personally liable for any alleged acts or omissions committed by others in the corporation.**

Plaintiff has not alleged that any wrongful act or omission committed by David E. Sharp caused him any harm. Plaintiff has only alleged that David E. Sharp is liable in this case through his role as a shareholder in Bishop, Peterson & Sharp, P.C. Texas law is clear that "[a] shareholder of a professional corporation, as such, shall have no duty to supervise the manner or means whereby the officers or employees of the corporation perform their respective duties." TEX. REV. CIV. STAT. ANN. art. 1528e, § 5. Furthermore, under Texas law, individual shareholders, officers or directors are not liable for the professional errors, omissions, negligence, incompetence or malfeasance of officers, employees or agents of the corporation. TEX. REV. CIV. STAT. ANN. art. 1528e, § 16.

Since Plaintiff has not alleged any wrongdoing by David E. Sharp in any individual capacity, Plaintiff is barred by Texas law from bringing suit against Mr. Sharp in his capacity as a shareholder. As such, Defendant David E. Sharp is entitled to judgment as a matter of law dismissing Plaintiff's claims against him.

D. **Plaintiff's waived his right to seek recovery from Defendant by waiting 14 years to serve him**

Waiver is defined as "an intentional relinquishment of a known right or intentional conduct inconsistent with claiming that right." *Sun Exploration & Prod. Co. v. Benton*, 728 S.W.2d 35, 37 (Tex.1987); *U.S. Fid. & Guar. Co. v. Bimco Iron & Metal*



*Corp.*, 464 S.W.2d 353, 357 (Tex.1971). Waiver is largely a matter of intent, and for implied waiver to be found through a party's actions, intent must be clearly demonstrated by the surrounding facts and circumstances. *Motor Vehicle Bd. v. El Paso Indep. Auto. Dealers Ass'n, Inc.*, 1 S.W.3d 108, 111 (Tex.1999). There can be no waiver of a right if the person sought to be charged with waiver says or does nothing inconsistent with an intent to rely upon such right. *Maryland Cas. Co. v. Palestine Fashions, Inc.*, 402 S.W.2d 883, 888 (Tex.1966). Waiver is ordinarily a question of fact, but when the surrounding facts and circumstances are undisputed, as in this case, the question becomes one of law. *Motor Vehicle Bd.*, 1 S.W.3d at 111.

In this case, clearly Plaintiff knew of his right to seek recovery against this Defendant, as shown by his filing of suit. It is also clear Plaintiff knew how to properly serve Defendants, as shown by service on codefendants. The Plaintiff made clear his intent to waive his right to seek recovery from Defendant when he served several codefendants and did not serve the Defendant. Furthermore, Plaintiff also showed a clear intent to waive his right to recovery from Defendant when he declined to serve Defendant with the suit for 14 years.

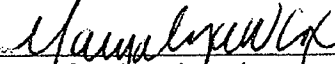
#### IV.

#### CONCLUSION AND PRAYER

For these reasons, Defendant David E. Sharp prays that this Court grant his Motion for Summary Judgment, and for such other and further relief to which he may show himself justly entitled.

Respectfully submitted,

MEHAFFYWEBER, P.C.

By: 

Arthur K. Almquist  
Texas Bar No. 01108800  
Maryalyce W. Cox  
Texas Bar No. 24009203  
One Allen Center  
500 Dallas, Suite 1200  
Houston, Texas 77002  
Telephone: (713) 655-1200  
Facsimile: (713) 655-0222

**ATTORNEYS FOR DEFENDANT,  
DAVID E. SHARP**

**CERTIFICATE OF SERVICE**

This will certify that a copy of the forgoing document was furnished to all counsel of record on this the 19<sup>th</sup> day of June, 2009, pursuant to the Texas Rules of Civil Procedure.

  
Maryalyce W. Cox

*(Handwritten mark)*

1995-43235

CAUSE NO. 95-043235-

HARRY L. BOWLES,  
Plaintiff

VS.

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

Defendants

§ IN THE DISTRICT COURT OF  
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§ HARRIS COUNTY, TEXAS  
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§ 151<sup>ST</sup> JUDICIAL DISTRICT  
§

**ORDER GRANTING DEFENDANT DAVID E. SHARP'S  
MOTION FOR SUMMARY JUDGMENT**

Be it remembered that on this day came on to be considered Defendant David E. Sharp's Motion for Summary Judgment. After reviewing the Motions, the pleadings on file, the Plaintiffs' response, if any, and hearing the arguments of counsel, if any, this Court is of the opinion that the Motion for Summary Judgment is meritorious and should, in all things, be granted.

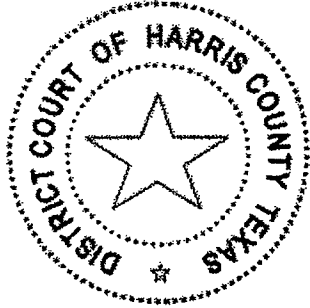
It is therefore, ORDERED that summary judgment be granted in favor of Defendant David E. Sharp as to all claims and causes of action brought by Plaintiff herein; and that Plaintiff take nothing of or from Defendant David E. Sharp in this case.

It is also ORDERED that all costs of court are taxed against the party incurring same.

SIGNED this \_\_\_\_\_ day of JUL 21 2009, 2009.

*(Handwritten signature)*  
\_\_\_\_\_  
JUDGE PRESIDING

LOREN JACKSON  
DISTRICT CLERK  
HARRIS COUNTY, TEXAS  
2009 JUN 19 4 51 PM  
61 NJR 6002  
DEPUTY  
BY JUN 19 2009



I, Loren Jackson, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date  
Witness my official hand and seal of office  
this July 29, 2009

Certified Document Number: 42860996 Total Pages: 1

LOREN JACKSON, DISTRICT CLERK  
HARRIS COUNTY, TEXAS

**In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail [support@hcdistrictclerk.com](mailto:support@hcdistrictclerk.com)**

*me*

1995-43235B

CAUSE NO. \_\_\_\_\_

HARRY L. BOWLES,  
Plaintiff

VS.

DAVID E. SHARP, INDIVIDUALLY  
Defendant

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IN THE DISTRICT COURT OF  
  
HARRIS COUNTY, TEXAS  
151<sup>ST</sup> JUDICIAL DISTRICT

*Severed from*

CAUSE NO. 95-43235

HARRY L. BOWLES,  
Plaintiff

VS.

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  
Defendants

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IN THE DISTRICT COURT OF  
  
HARRIS COUNTY, TEXAS  
  
151<sup>ST</sup> JUDICIAL DISTRICT

DAVID J. JACKSON  
CLERK  
HARRIS COUNTY CLERK  
HARRIS COUNTY, TEXAS

71:2 WA 42 JCS 600Z  
SEP 24 2009

DEPUTY BY \_\_\_\_\_

**ORDER GRANTING MOTION FOR SEVERANCE**

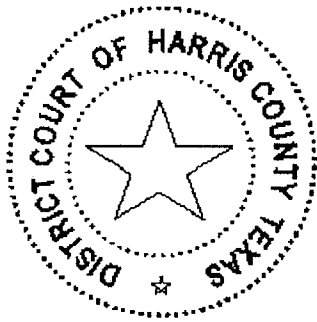
The Court has considered Defendant David E. Sharp's Motion for Severance and after reading the motion and response, if any, and having heard arguments of counsel, if any, the Motion is granted.

It is, THEREFORE ORDERED that the claims of Defendant David E. Sharp be severed from the original suit, and the Clerk of this Court is ordered and directed to docket the severed cause under Cause

No. 1995-4323 (B) with Plaintiff Harry L. Bowles identified as "Plaintiff" and Defendant David E. Sharp identified as "Defendant". Plaintiff's Original Petition, the Original Answer of David Sharp, Defendant David E. Sharp's Motion for Summary Judgment, and Plaintiff's Response shall be severed from the original case. Costs shall be paid by the party incurring such costs. Costs against Movant shall be assessed against counsel for Movant, Maryalycc Cox, MehaffyWeber, PC, 500 Dallas, Suite 1200, Houston, Texas 77002. As stated in the Order granting David E. Sharp's Motion for Summary Judgment entered July 21, 2009, Plaintiff's causes of action against Mr. Sharp are final and appealable as to Defendant David E. Sharp only.

SIGNED this \_\_\_\_\_ day of SEP 29 2009, 2009.

  
\_\_\_\_\_  
JUDGE PRESIDING



I, Loren Jackson, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date  
Witness my official hand and seal of office  
this October 5, 2009

Certified Document Number: 43491919 Total Pages: 2

LOREN JACKSON, DISTRICT CLERK  
HARRIS COUNTY, TEXAS

**In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail [support@hcdistrictclerk.com](mailto:support@hcdistrictclerk.com)**

1995 - 43235

HARRY L. BOWLES, § IN THE DISTRICT COURT  
 Plaintiff §  
 §  
 vs: § OF  
 §  
 GEORGE M. BISHOP, CHARLES K. §  
 PETERSON, AND DAVID E. SHARP, EACH § HARRIS COUNTY, TEXAS  
 IN THEIR INDIVIDUAL CAPACITIES; AND §  
 GEORGE BISHOP & ASSOCIATES, AND §  
 BISHOP, PETERSON & SHARP, P.C., EACH §  
 A PROFESSIONAL LAW CORPORATION, §  
 AND/OR AN ASSUMED NAME OF THE §  
 NAMED INDIVIDUALS § 151ST DISTRICT COURT

Defendants

AND

INTERVENOR TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION ("TPCIGA"); AND INTERVENOR ROGER A. SEVIGNEY, LIQUIDATOR, THE HOME INSURANCE COMPANY IN LIQUIDATION ("LIQUIDATOR")

FILED  
 LOREN JACKSON  
 DISTRICT CLERK  
 HARRIS COUNTY, TEXAS  
 2009 OCT -1 PM 3:01

BY \_\_\_\_\_ DEPUTY

**PLANTIFF'S SWORN MOTION PER RULE 12, T.R.C.P. CHALLENGING AUTHORITY OF ATTORNEY(S) REPRESENTING DEFENDANT SHARP TO APPEAR IN DEFENSE OF A PURPORTED PROFESSIONAL MALPRACTICE INSURANCE POLICY UNDER THE ADMINISTRATION OF THE TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION**

1. Comes Plaintiff Harry L. Bowles ("Bowles) to file his sworn motion under Rule 12, T.R.C.P to challenge the authority of the law firm MehaffyWeber, P.C. to represent defendant David E. Sharp in this litigation in defense of a purported professional



malpractice insurance policy being administered by the Texas Property and Casualty Insurance Guaranty Association ("TPCIGA").

2. Defendant Sharp's original answer to Bowles' petition invoked his right to a credit or setoff under the Texas Property and Casualty Insurance Guaranty Act, Article 21.28-C, Section 12.

3. This implicates TPCIGA as an Intervenor in this case because Sharp claims his liability under Bowles' lawsuit is covered by an insurance policy issued by a defunct insurance company that is being administered by TPCIGA.

4. In prior litigation in this case, beginning in August 2005, it was discovered that TPCIGA employed defense counsel for Bishop, Peterson & Sharp, P. C. in defense of Policy No. LPL-F871578 issued by The Home Insurance Company, a New Hampshire firm that went into liquidation on June 13, 2003.

5. All Home Insurance Company insurance contracts were cancelled effective July 13, 1994 by the Order of Liquidation issued by the Superior Court of Merrimack County, New Hampshire, and thereafter all claims against Home Policy No. LPL-F871578 became subject to the Rules of Liquidation of Insurance Companies under the New Hampshire Insurance Code.

6. TPCIGA's intervention in this lawsuit in August 2005 was challenged by Bowles' August 2006 Rule 12 Motion in this Court. It was also challenged in separate actions against TPCIGA and HICIL in a federal court, and is now the subject of litigation in the Merrimack County Superior Court in New Hampshire.

7. New discovery in the New Hampshire litigation has revealed that Bishop sent correspondence to Home Insurance on December 29, 1993 in which he stated that he

(George Bishop, aka George M. Bishop & Associates) had assumed representation of Bowles, a BPS client, after BPS was dissolved in the summer of 1993.

8. On Page 3 of Sharp's 6-19-2009 Motion for Summary Judgment, Footnote No. 3 reads in pertinent part as follows: **"George Bishop represented Plaintiff (Bowles) as a Shareholder with Bishop, Peterson & Sharp, P.C., and after attorneys Bishop, Peterson and Sharp ceased practicing law together, continued representing Plaintiff with the new firm, George M. Bishop & Associates."** (Attached as EXHIBIT A).

9. Neither Home nor Bowles was given notice of the dissolution of BPS in the summer of 1993 as required under the employment contract or by the terms of Policy No. LPL-F871578.

10. Bishop's December 29, 1993 letter to Home requested that Home consider Bowles' prospective legal malpractice lawsuit (later filed in August 1995) as a claim against Home Policy No. LPL-F871578 which policy included only coverage for attorney services provided by BPS. **The policy did not cover attorney services provided by George M. Bishop as a sole practitioner doing business as George M. Bishop & Associates.**

11. By letter dated January 10, 1994 Home Insurance informed Bishop that it was setting up a claim file for the Bowles' case, but that coverage would be determined **"under a full and complete reservation of its rights with respect to coverage"**.

12. In January 1996 both Peterson and Sharp wrote letters to Home Insurance requesting coverage of Bowles' August 1995 lawsuit against BPS under Home Policy No. LPL-F871578.

13. Home Insurance never exercised its "reservation of its rights with respect to coverage" to make a determination that Bowles' malpractice lawsuit constituted a "covered claim" under Policy No. LPL-F871578.

14. As has been stated in previous pleadings in this Court, pursuant to Section 462.102 of the Texas Property and Casualty Insurance Guaranty Act, Home could not transfer its "reservation of rights with respect to coverage" to TPCIGA to authorize TPCIGA to assume or succeed to a liability of Home or to stand in Home's place for any purpose. TPCIGA acted in violation of this statute.

15. The principals (shareholders) of BPS, including Sharp) were at all times aware that Home never made an unconditional commitment to BPS to provide a defense of Policy No. LPL-F87578 to cover Bowles' malpractice lawsuit filed in August 1995.

16. Bowles' complaints in his original and only petition filed in this Court are in regard to the services or lack of same provided by George M. Bishop & Associates over a 3-year period after BPS had been dissolved in the summer of 1993 and no longer represented Bowles.

17. All interested parties in this litigation (including the Liquidator for Home Insurance Company, HICIL officials and agents, the appointed Referee in the New Hampshire litigation, TPCIGA officials and agents, former BPS shareholders and agents, and, particularly, George M. Bishop) are fully aware that Home Policy No. LPL-F871578 was rendered inapplicable by its Exclusions Clause to cover Bowles' malpractice lawsuit when BPS was dissolved in the summer of 1993 and George M. Bishop, dba George M. Bishop & Associates, assumed representation of Bowles.

18. **Section C – Exclusions** reads as follows:

I. This policy does not apply:

(a) to any **judgment or final adjudication** based upon or arising out of any dishonest, deliberately fraudulent, criminal, maliciously or deliberately wrongful acts or omissions committed by the Insured;

(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 in connection 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.

(f) to any claim made by a present, former or prospective partner, officer, director, stockholder employee or employee of the Insured unless such claim arises out of the professional services of the Insured in a lawyer-client relationship except as otherwise excluded under Exclusion (h).

(h) to any claim based upon or arising out of the work performed by the Insured . . . with respect to any corporation . . . association . . . business enterprise or other venture . . . 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.

19. It is totally obvious that Home Insurance Company could not commit to coverage of Bowles' prospective lawsuit in January 1994 based on Section C - (b) by the fact that Bowles' lawsuit includes a claim against a business enterprise (George M. Bishop & Associates) that is not named in the Declarations and that is (or was) owned and controlled by an Insured party individually.

20. It is totally obvious that Policy No. LPL-F871578 never applied to cover Bowles' lawsuit because, per Section C - (h), it was a claim based upon or arising out of work performed by the Insured (Bishop) with regard to a business enterprise not named in the Declarations (George M. Bishop & Associates) in which Bishop had a beneficial interest.

## CONCLUSIONS

21. Sharp's liability under Bowles' lawsuit is not covered by the Home professional malpractice insurance policy LPL-F871578.
22. Sharp's invocation of a "right to a credit or setoff under the Texas Property and Casualty Insurance Guaranty Act Article 21.28-C, Section 12" is a false pleading made knowingly in furtherance of a fraudulent conspiracy against Bowles involving George M. Bishop, HICIL officials, and TPCIGA officials initiated in August 2005.
23. The law firm Mehaffy Weber is an agent employed by TPCIGA to defend an insurance policy (Home Policy No. LPL-F771578) that has absolutely no application to Bowles' lawsuit in this Court.
24. TPCIGA is an unauthorized interloper in this litigation, acting by and through an agreement with Intervenor Home Insurance Company in Liquidation, whereby defense counsel in Houston were employed by TPCIGA to intervene in this lawsuit without any authority based on an applicable and active insurance policy.
25. This Court has no jurisdiction to rule on and decide issues concerning whether or not Sharp is an insured policy holder under Home Policy No. LPL-F871578 eligible to have defense counsel provided for him by either Home or TPCIGA to defend against Bowles' legal malpractice lawsuit.
26. Said jurisdiction lies with the Superior Court of Merrimack County, New Hampshire, which, through Bowles' disputed claim litigation in that court, is in the process of deciding the question.

27. Pursuant to Rule 12, T.R.C.P., the MehaffyWeber law firm must provide proof of authority to defend Sharp against Bowles' lawsuit under Home Policy No. LPL-F871578, and to obtain credit or setoff under the Texas Property and Casualty Insurance Guaranty Act.

#### REQUEST FOR RELIEF

28. Bowles requests this Rule 12 motion be set for hearing and for a determination by the Court and order that the MehaffyWeber law firm has no authority to appear in this action in this Court in defense of Home Insurance Policy No. LPL-F871578.

29. Bowles requests a finding by the Court that Sharp's pleading for compensation under the Texas Property and Casualty Insurance Guaranty Act constitutes insurance fraud involving both Sharp and TPCIGA, and that neither Sharp nor MehaffyWeber are eligible for compensation under that statute.

30. Bowles requests the Court act on and grant Bowles' previously-filed August 19, 2009 Rule 329 b motion to strike all defendants' pleadings and all orders rendered since August 26, 2005 and act on Bowles' October 23, 2006 Motion for Summary Judgment.

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

Respectfully submitted,



Harry L. Bowles

Attorney Pro Se and of Record

307 Big Hollow Lane

Houston, TX 77042

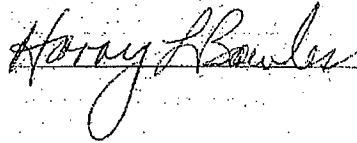
713-784-886  
713-983-6122 - FAX

Tel 713-983 6779 Fax 713-983-6722

Attachment

**CERTIFICATE OF SERVICE**

I, Harry L. Bowles, certify that on this FIRST DAY OF OCTOBER, 2009 a true and correct copy of the foregoing Rule ~~400~~<sup>12</sup> Motion was sent by first class or priority mail to Maryalyce Cox, Mehaffy Weber P.C., One Allen Center, 500 Dallas Street, Suite 1200., Houston, Texas 77002; to George M. Bishop, 6922 Alderney Drive, Houston, Texas 77055; 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.

  
\_\_\_\_\_

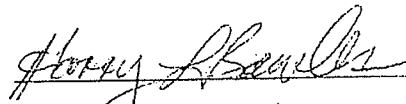
STATE OF TEXAS                    §  
COUNTY OF HARRIS               §

VERIFICATION

COMES HARRY L. BOWLES to make this sworn statement::

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 in Cause No. 1995-43235 in the Harris County Courts.

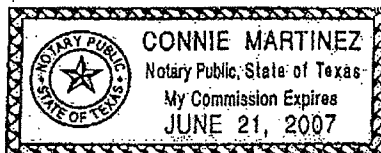
I affirm that I have participated in the preparation of the attached Rule 12 Motion to Show Authority. I attest that I have personal knowledge of the matters contained therein. I express my belief that the Marshall & McCracken, P.C. law firm has engaged and is engaged in prosecution of a defense against my lawsuit without authority to do so. I certify that the information presented is true and correct to the best of my knowledge and belief.

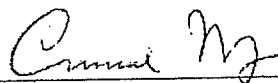
  
\_\_\_\_\_  
Harry L. Bowles

ATTESTATION

SWORN AND SUBSCRIBED TO before me, the undersigned authority, on this

28 day of August, 2006 in Harris County, Texas.



  
\_\_\_\_\_  
Notary Public - State of Texas



HARRY L. BOWLES,  
Plaintiff

VS.

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  
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NAME OF THE NAMED INDIVIDUALS  
AS A LAW FIRM, ET AL

Defendants

§ IN THE DISTRICT COURT OF  
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§ HARRIS COUNTY, TEXAS  
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§ 151<sup>ST</sup> JUDICIAL DISTRICT  
§

**DEFENDANT DAVID E. SHARP'S MOTION FOR SUMMARY JUDGMENT**

**TO THE HONORABLE JUDGE OF SAID COURT:**

COMES NOW, David E. Sharp, Defendant in the above-entitled and numbered cause (hereinafter referred to as "Defendant"), and respectfully requests this Honorable Court to render summary judgment in favor of said Defendant in accordance with Rule 166a of the Texas Rules of Civil Procedure, and as grounds therefore, Defendant would respectfully show unto the Court as follows:

**I.**

**INTRODUCTION**

This is a legal malpractice case filed in 1995, but Defendant was just served with the lawsuit in May 2009.<sup>1</sup> Defendant is entitled to summary judgment as a matter of law

<sup>1</sup> Defective purported service was received in April 2009, and quashed by this Court on May 27, 2009. Under Rule 122, service is deemed to have occurred, as this Court's Order reflects, so as to make

for several reasons: 1) plaintiff's claims are barred by the statute of limitations, because Plaintiff waited *14 years* to serve Defendant; 2) a claim of legal malpractice is a compulsory counterclaim to a claim for attorneys' fees, but as explained below, plaintiff failed to counterclaim for legal malpractice in the underlying action after Defendant's law firm intervened for its fees; 3) Defendant is sued because he practiced law with the law firm Defendant Bishop, Peterson & Sharp, P.C; however, because that firm has already received a final judgment in the case, Plaintiff's claims against Defendant David E. Sharp are barred by *res judicata*; 4) as a shareholder in a professional corporation Defendant David E. Sharp is not liable for any professional errors, omissions, negligence, incompetence or malfeasance on the part of others in the corporation; 5) plaintiff waived his right to seek recovery from Defendant David E. Sharp by waiting some *14 years* to serve him.

## II.

### BACKGROUND

This case has a long history before service of Defendant David E. Sharp. Plaintiff filed this lawsuit in 1995 alleging that the Defendant, two lawyers with whom he practiced law, and his former law firm, Bishop, Peterson & Sharp, P.C. were negligent in representing him in the lawsuit styled *Harry L. Bowles v. Charles N. Schwarz, Jr., et;* Cause No. 1991-25939 (the underlying action).<sup>2</sup> George Bishop, who was then practicing as George M. Bishop & Associates, filed a Motion to Withdraw as counsel for

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Defendant's appearance date by June 22, 2009, the Monday following 20 days after this Court's Order quashing the defective purported service.

<sup>2</sup> See Original Petition, on file with this Court.

Plaintiff in Cause No. 1991-25939 on April 8, 1994.<sup>3</sup> On April 11, 1994, the Court granted Mr. Bishop's Motion to Withdraw.<sup>4</sup> On April 19, 1994, Bishop, Peterson & Sharp, P.C. filed a Third-Party Intervention in the underlying cause for its attorney fees.<sup>5</sup> On May 6, 1994, Plaintiff responded to Bishop, Peterson & Sharp, P.C.'s Third-Party Intervention by filing his own Petition in Intervention.<sup>6</sup> In his Petition in Intervention, Plaintiff contested Bishop, Peterson & Sharp, P.C.'s legal costs, but wholly failed to counterclaim based on any alleged legal malpractice or negligence, as required by law. *See Goggin v. Grimes*, 969 S.W.2d 135, 138 (Tex. App.—Houston [14<sup>th</sup> Dist.] 1998, no pet.). Finally, on August 31, 1995, Plaintiff brought this separate suit claiming legal malpractice, or negligence, in Bishop, Peterson & Sharp, P.C.'s handling of the underlying action (Cause No. 1991-25939).

### III.

#### SUMMARY JUDGMENT STANDARD

In a traditional summary judgment case, the issue is whether the movant has met its summary judgment burden by establishing that no genuine issue of material fact exists and that the movant is entitled to judgment as a matter of law. *See Tex. R. Civ. P. 166a(c); Cate v. Dover Corp.*, 790 S.W.2d 559, 562 (Tex. 1990); *City of Houston v. Clear Lake Basin Auth.*, 589 S.W.2d 671, 678 (Tex. 1979). A defendant is entitled to summary judgment if the summary judgment evidence establishes, as a matter of law, that at least one element of the plaintiff's cause of action cannot be established, *See*

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<sup>3</sup> *See* Motion to Withdraw, attached as Exhibit A. George Bishop represented Plaintiff as a Shareholder with Bishop, Peterson & Sharp, P.C., and after attorneys Bishop, Peterson and Sharp ceased practicing law together, continued representing Plaintiff with his new firm, George M. Bishop & Associates.

<sup>4</sup> *See* Order Granting Motion to Withdraw, attached as Exhibit B.

<sup>5</sup> *See* Third-Party Intervention, attached as Exhibit C.

<sup>6</sup> *See* Plaintiff's Petition in Intervention, attached as Exhibit D.

HARRY L. BOWLES,  
Plaintiff

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IN THE DISTRICT COURT OF

VS.

HARRIS COUNTY, TEXAS

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

151<sup>ST</sup> JUDICIAL DISTRICT

Defendants

**DEFENDANT DAVID E. SHARP'S ANSWER TO PLAINTIFF'S PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Defendant David E. Sharp and files this, his Original Answer to Plaintiff's Petition, and in support thereof, respectfully shows unto this Court as follows:

**I.**

**General Denial**

Defendant David E. Sharp herein avails himself of the opportunity provided by Rule 92 of the Texas Rules of Civil Procedure to file a general denial herein; and in compliance with said Rule, Defendant denies each and every, all and singular, the material allegations contained in Plaintiff's live pleadings and all cross-actions which have been or may be filed herein, and states that these are matters that should be proven by Plaintiff as required by law; and Defendant would require strict proof thereof.

II.

Affirmative Defenses

1. For further answer, if such be necessary, and pleading in the alternative, Defendant affirmatively alleges that the matters complained of by Plaintiff are barred by the statute of limitations.
2. For further answer, if such be necessary, and pleading in the alternative, Defendant affirmatively alleges that the matters complained of by Plaintiff are barred by *res judicata*.
3. For further answer, if such be necessary, and pleading in the alternative, Defendant affirmatively pleads the defenses of waiver, accord and satisfaction, release, collateral estoppel and failure of consideration.
4. For further answer, if such be necessary, and pleading in the alternative, Defendant affirmatively alleges that the matters complained of by Plaintiff are barred by the doctrine of laches.
5. For further answer, if such be necessary, Defendant invokes his right to a credit or setoff under the Property and Casualty Insurance Guaranty Act, Art. 21.28-C, Sec. 12.

III.

Conclusion and Prayer

For these reasons, David E. Sharp prays that Plaintiff takes nothing by his action, that Defendant be awarded his costs of court, and for such other and further relief to which he may show himself justly entitled.

Respectfully submitted,

MEHAFFYWEBER, P.C.

By: Maryalyce W. Cox

Arthur R. Almqvist  
Texas Bar No. 01108800  
Maryalyce W. Cox  
Texas Bar No. 24009203  
One Allen Center  
500 Dallas, Suite 1200  
Houston, Texas 77002  
Telephone: (713) 655-1200  
Facsimile: (713) 655-0222

**ATTORNEYS FOR DEFENDANT,  
DAVID E. SHARP**

**CERTIFICATE OF SERVICE**

This will certify that a copy of the forgoing document was furnished to all counsel of record on this the 19<sup>th</sup> day of June, 2009, pursuant to the Texas Rules of Civil Procedure.

Maryalyce W. Cox  
Maryalyce W. Cox

1995 - 43235

HARRY L. BOWLES,	§	IN THE DISTRICT COURT
Plaintiff	§	
	§	
vs.	§	OF
	§	
GEORGE M. BISHOP, CHARLES K.	§	
PETERSON, AND DAVID E. SHARP, EACH	§	HARRIS COUNTY, TEXAS
IN THEIR INDIVIDUAL CAPACITIES; AND	§	
GEORGE BISHOP & ASSOCIATES, AND	§	
BISHOP, PETERSON & SHARP, P.C., EACH	§	
A PROFESSIONAL LAW CORPORATION,	§	
AND/OR AN ASSUMED NAME OF THE	§	
NAMED INDIVIDUALS	§	151ST DISTRICT COURT

Defendants

AND

INTERVENOR TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION ("TPCIGA"), AND INTERVENOR ROGER A. SEVIGNEY, LIQUIDATOR, THE HOME INSURANCE COMPANY IN LIQUIDATION ("LIQUIDATOR")

**ORDER**

CAME ON TO BE HEARD ON THIS DATE the Rule 12 motion by Plaintiff Harry L. Bowles challenging the authority of the MehaffyWeber law firm to represent defendant David E. Sharp in this litigation in defense of Home Insurance Policy No. LPL-F871578. This Court is of the opinion that the motion should in all things be GRANTED.

**FINDINGS:**

1. The Court finds that Defendant Sharp's pleading in his original answer regarding his right to a credit or setoff under the Texas Property and Casualty Insurance Guaranty Act

implicates the Texas Property and Casualty Insurance Guaranty Association ("TPCIGA") as a third-party defendant and Intervenor in this case.

2. The Court finds that the MehaffyWeber law firm appeared in this case to represent Defendant Sharp in defense of Home Insurance Policy No. LPL-F781578 with TPCIGA's agreement that Bowles' malpractice lawsuit is a "covered claim" under the policy and that credit and setoff would result in compensation from TPCIGA.

3. The Court finds that the question of TPCIGA's authority to intervene in this action in defense of Home Insurance Policy No. LPL-F871578 is under litigation in the Superior Court in Merrimack County, New Hampshire, which has primary jurisdiction.

4. Subject to a confirming decision by the New Hampshire Superior Court, this Court finds that Home Policy No. LPL-F871578 was never applicable to this case to the effect that all pleadings and orders issued in this case as a result of the intervention of TPCIGA as a third-party defendant on August 26, 1995, including the instant filing by Defendant David E. Sharp, must be stricken from the record and declared void and without legal effect.

5. This Court recognizes the above named Intervenor as third-party defendants in this case subject to their right to file objections.

6. This Court finds it has no jurisdiction to issue judgments regarding any parties and issues pending resolution of the questions before the Superior Court in New Hampshire regarding applicability of Policy No. LPL-F871578 as authorization for the appearance of TPCIGA and MehaffyWeber to defend said policy.

7. This Court finds that no appealable final judgments consistent with Rule 301, T.R.C.P. can be issued pending resolution of matters before the New Hampshire Superior Court and



without the appearance of TPCIGA and Home Insurance Company in Liquidation as Intervenors to litigate their right to interfere in this litigation in defense of Home Policy No. LPL-F871578.

THIS COURT ORDERS THAT:

1. The MehaffyWeber law firm produce proof that it has authority under the Texas Property and Casualty Insurance Guaranty Act to appear before this Court in defense of Home Insurance Policy No. LPL-F871578.
2. All pleadings and orders issued in this case as a result of the intervention of TPCIGA as a third-party defendant on August 26, 1995, including the instant filing by Defendant David E. Sharp, must be stricken from the record and declared void and without legal effect, subject to proof from Intervenors HICIL and TPCIGA that their intervention in this action was justified under Policy No. LPL-F871578 and justified under the Order of Liquidation and justified under the rules of the New Hampshire Insurance Code governing liquidation of impaired insurance companies.


So Ordered on this \_\_\_\_\_ Day of \_\_\_\_\_, 2009

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Judge Presiding

Exhibit U

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

FILED  
2008 JAN -2 PM 2:52  
CLERK US DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY   
DEPUTY

HARRY L. BOWLES,  
Plaintiff,

-vs-

Case No. A-07-CA-740-SS

HOME INSURANCE COMPANY IN  
LIQUIDATION (NY) and CASUALTY  
INSURANCE GUARANTY ASSOCIATION,  
Defendants.

ORDER

BE IT REMEMBERED on the 2<sup>nd</sup> day of January 2008 the Court reviewed the file in the above-styled cause, specifically Plaintiff Harry Bowles' Motion to Dismiss without prejudice under Federal Rule of Civil Procedure 41. Noting that each defendant has waived service of process and no defendant has filed an answer in the case, the Court finds Plaintiff has an "absolute right to dismissal" under Rule 41(a). *Harvey Specialty & Supply, Inc. v. Anson Flowline Equip., Inc.*, 434 F.3d 320, 324 (5th Cir. 2005). Because no answer has yet been filed, "[t]he court ha[s] no power or discretion to deny plaintiffs' right to dismiss or to attach any condition or burden to that right." *Williams v. Ezell*, 531 F.2d 1261, 1264 (5th Cir. 1976).

Accordingly,

It is ORDERED that the above-styled case is DISMISSED without prejudice, with each party to bear its own costs.

SIGNED this the 2<sup>nd</sup> day of January 2008.

  
SAM SPARKS  
UNITED STATES DISTRICT JUDGE

Exhibit V

FILED

2009 APR 23 AM 11:28

CLERK OF DISTRICT COURT  
WESTERN DISTRICT OF TEXAS

BY Kew  
DEPUTY

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

**HARRY L. BOWLES,**  
**Plaintiff,**

-vs-

Case No. A-08-CA-808-SS

**HOME INSURANCE COMPANY IN  
LIQUIDATION (N.H.) and TEXAS PROPERTY  
AND CASUALTY INSURANCE GUARANTY  
ASSOCIATION,**  
**Defendants.**

**ORDER OF DISMISSAL**

BE IT REMEMBERED on this the 22<sup>nd</sup> day of April 2009 there was presented to the Court the Notice of Voluntary Dismissal [#17] filed by the plaintiff in the above-styled and numbered cause, and after consideration of the same, the Court enters the following orders:

IT IS ORDERED that the Notice of Voluntary Dismissal [#17] is GRANTED in all respects and this lawsuit is hereby DISMISSED without prejudice.

IT IS FURTHER ORDERED that all costs are adjudged against Harry L. Bowles, for which let execution issue.


IT IS FINALLY ORDERED that all pending motions in this cause are dismissed as moot.

SIGNED this the 22<sup>nd</sup> day of April 2009.

*Barnes*  
UNITED STATES DISTRICT JUDGE

Exhibit W

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

FILED  
2009 APR -2 PM 4:08  
CLERK OF DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY  DEPUTY

HARRY L. BOWLES,  
Plaintiff,

-vs-

Case No. A-08-CA-808-SS

HOME INSURANCE COMPANY IN  
LIQUIDATION (N.H.) and TEXAS PROPERTY  
AND CASUALTY INSURANCE  
GUARANTY ASSOCIATION,  
Defendants.

**ORDER**

BE IT REMEMBERED on this day the Court reviewed the file in the above-styled cause, and specifically Plaintiff Harry L. Bowles ("Bowles") Motion for a Permanent Injunction [contained within #1], Defendant Texas Property and Casualty Insurance Guaranty Association ("TPCIGA")'s Motion to Dismiss for Lack of Jurisdiction [#4], TPCIGA's Motion to Dismiss for Failure to State a Claim [#5], Defendant Home Insurance Company in Liquidation (N.H.) ("HICIL")'s Motion to Dismiss for Lack of Subject Matter Jurisdiction [#6], HICIL's Motion to Dismiss for Failure to State a Claim or Alternatively Motion for Judgment on the Pleadings [#7], Bowles' Motion for a Temporary 90-day Suspension of Litigation [#11], HICIL's response thereto [#12], TPCIGA's response thereto [#13], and Bowles' reply [#14]. Having considered the aforementioned documents, the case file as a whole, and the applicable law, the Court enters the following order.

**BACKGROUND**

**I. Factual Background**

The relevant facts of this case are convoluted, and entirely impossible to extract from Bowles' pleadings alone. But the undisputed facts laid out by Defendants indicate the story begins in New Hampshire where, on June 11, 2003, Home Insurance Company ("Home"), a New Hampshire insurance company, was declared insolvent. *See* Home's Mot. Dismiss [#6] at Tab A. Defendant Home Insurance Company in Liquidation (N.H.) ("HICIL") is the liquidating agency for the Home Insurance Company.<sup>1</sup> Shortly thereafter, an Order of Liquidation for HICIL was issued by the Superior Court for the State of New Hampshire, Merrimack County. Under the Order of Liquidation, all persons are permanently enjoined from any act to collect, assess, or recover a claim against HICIL other than by filing a Proof of Claim with the Liquidator. *See id.* at Ex. C, Tab F, ¶ n.

Prior to its insolvency, Home Insurance Company had issued a professional liability policy (the "Policy") to Bishop, Peterson, & Sharp (the "Insured Law Firm"). Defendants allege while the Insured Law Firm was under the coverage of the Policy, Bowles sent letters to the firm expressing his dissatisfaction with its work and demanding fee reductions. Under the Policy, a "claim" was defined as a "demand received by the insured for money or services, including the service of a suit." *Id.* Thus, the Insured Law Firm reported a claim to Home of acts or omissions that potentially invoked coverage under the Policy, based on Bowles' letters. Defendants assert because the Policy is a third-party liability policy, which provides the Insured Law Firm with defense and indemnity benefits where coverage is otherwise afforded, this notice of a potential covered claim was all that was necessary to potentially invoke coverage under the Policy.

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<sup>1</sup>Accordingly, all reference to acts or events prior to the Order of Liquidation refer to Home, and all references to acts or events post the Order of Liquidation refer to HICIL.

The Policy was entered into in January of 1992, and was ultimately set to expire on February 6, 1994. Bowles filed suit (the "Malpractice Suit") against the Insured Law Firm and one of its partners, Bishop, in August of 1995 in Harris County, Texas.<sup>2</sup> Bowles claims he never made a legal malpractice complaint of any kind against the Insured Law Firm and its President ("Bishop") for malpractice prior to the Policy's expiration on February 6, 1994. *See* Compl. at ¶ 15. However, Defendants represent the Insured Law Firm's claim was timely reported during its coverage under the Policy, and have filed affidavits asserting the same, because Bowles' earlier letters to the Insured Law Firm invoked notice of a potential claim. *See* Barta, Walker Affs. According to Defendants, Home thereafter undertook to provide a defense in the Malpractice Suit, subject to any reservation of rights raised by the pleadings.

On June 26, 2003, HICIL (formerly Home) was designated as an "impaired insured" by the Texas Commissioner of Insurance, and thus had to forward its entire claim file to Defendant Texas Property and Casualty Insurance Guaranty Association ("TPCIGA") under Subchapter G of the Texas Property and Casualty Insurance Act (the "Act"), as the Malpractice Suit potentially constituted a "covered claim" under the Act. Under the Act, TPCIGA thereafter had a statutory duty to defend the Insured Law Firm, and HICIL had no further direct involvement in the Malpractice Suit.

Bowles now claims TPCIGA exceeded its statutory authority by retaining defense counsel to defend the Insured Law Firm in the Malpractice Suit, and submitted a false affidavit in connection with that suit. He further complains this conduct by TPCIGA and an alleged bias on the part of the

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<sup>2</sup>Specifically, the case is Cause No. 1995-43235, in the 151<sup>st</sup> District Court in Harris County, Texas.

trial judge in favor of Bishop (the other defendant in the Malpractice Suit) resulted in the improper entry of take nothing summary judgments in favor of the Insured Law Firm, and later in favor of Bishop. Compl. at ¶¶ 18-40.<sup>3</sup>

Bowles did not file a Proof of Claim with respect to the Insured Law Firm until February 4, 2008 (the “2008 Bishop Proof of Claim”). On October 22, 2008, HICIL’s Liquidator sent a Notice of Determination with respect to the 2008 Bishop Proof of Claim (the “Notice of Determination”), disallowing it on the basis that his claims had previously been adjudicated in the Insured Law Firm’s favor, and Bowles had not been awarded any damages against it. The notice set forth the steps Bowles could take if he wanted to dispute the determination.

On October 27, 2008, Bowles filed the present lawsuit against HICIL and TPCIGA (collectively, “Defendants”). On December 20, 2008, he filed an objection to the Notice of Determination in the New Hampshire proceeding, which will be heard by a court-appointed referee pursuant to the Order Establishing Procedures Regarding Claims, with review available of any decision made by the referee in the Merrimack County Superior Court and the New Hampshire Superior Court.

## **II. Bowles’ Contentions**

In his complaint, Bowles requests “injunctive relief from fraud and conspiracy involving an expired and void insurance policy.” *See* Compl. [#1]. Bowles claims the “express purpose of [his] lawsuit is to obtain a judgment from this Court holding that Defendants [], in conspiracy with Bishop, officiously intermeddled in Bowles’ underlying private legal malpractice lawsuit [the

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<sup>3</sup>Plaintiff alleges specifically that the trial court’s bias in favor of Bishop arose from Bishop’s political activity on behalf of the Republican Party and by virtue of his marriage to a Harris County District Judge. *See* Compl. at ¶¶ 19-21.

Malpractice Suit] against Bishop and [the Insured Law Firm].” *Id.* at ¶ 3. Bowles requests a permanent injunction to prohibit Defendants from continuing their activity as “interlopers” in the Malpractice Suit, and specifically a “cease and desist order” enjoining Defendants from any activity in connection with the Malpractice Suit. *Id.* at ¶¶ 4, 30. Bowles further requests a finding Defendants engaged in fraud and conspiracy, a finding they violated state law by using a false document and committing perjury in a legal proceeding, and seeks money damages for a litany of claims, including fraud, conspiracy, tortious interference and document tampering. *Id.* at ¶¶ 4, 69-71.

In his recent motion for suspension, Bowles further requests a 90-day suspension of the above-styled lawsuit to allow the New Hampshire Superior Court to resolve matters “critical to the litigation in this Court.” *See* Pl.’s Mot. for Temp. Susp. [#11] at ¶ 37. Bowles acknowledges there is a disputed claim proceeding in progress in the Merrimack County Superior Court, based on his objections to the Liquidator’s rejection of his 2008 Proof of Claim (in the Notice of Determination). *Id.* at ¶¶ 2, 11. Bowles claims the determination to be made in the Merrimack County Superior Court involves “fact issues of primary importance” in this Court, and thus asserts there is “an issue of parallel jurisdiction.” *Id.* at ¶ 2.

#### ANALYSIS

Defendants have each filed a motion to dismiss for lack of subject matter jurisdiction and for failure to state claim upon which relief can be granted. *See* Mots. Dismiss [#4, 5, 6, 7]. Plaintiff has not responded to any of the four motions within the allotted time, and therefore under Local Rule CV-7, the Court may grant the motions as unopposed. Nevertheless, the Court has considered each motion on its merits.



The Court finds, after reviewing all the pleadings in this case, that Bowles by signing his complaint has violated Rule 11 of the Federal Rules of Civil Procedure. Under Rule 11, when Bowles signs pleadings in this case, he must, under the law, be certifying to the best of his knowledge, information, and belief formed after an inquiry reasonable under the circumstances that (1) his pleadings are not being presented for any improper purpose such as to harass or cause unnecessary delay or needless increase in the cost of litigation; (2) that his claims and legal contentions are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or for establishing new law; and (3) that his allegations of factual contentions have evidentiary support or will likely have evidentiary support after a reasonable opportunity for further investigation or discovery. FED. R. CIV. P. 11(b). The Court finds Bowles has violated Rule 11, specifically because his claims and legal contentions are not warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or for establishing new law. The Court so finds for the following reasons.<sup>4</sup>

**I. Plaintiff has asserted no valid cause of action**

First, Bowles has alleged no basis for a valid cause of action against either of the Defendants. Instead, Bowles has alleged a litany of indecipherable complaints against them, including (as far as the Court can tell) claims of fraud, conspiracy, officious intermeddling, tortious interference, perjury,

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<sup>4</sup>The Court is, of course, cognizant of its duty when reviewing a plaintiff's complaint to construe the plaintiff's allegations as liberally as possible. *Haines v. Kerner*, 404 U.S. 519, 92 S. Ct. 594 (1972). This is especially true given the Plaintiff's pro se status in the present case, as "a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 127 S.Ct. 2197, 2200 (2007) (internal citation omitted) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)). However, a plaintiff's pro se status also does not offer him "an impenetrable shield, for one acting pro se has no license to harass others, clog the judicial machinery with meritless litigation and abuse already overloaded court dockets." *Ferguson v. MBank Houston, N.A.*, 808 F.2d 358, 359 (5th Cir. 1986).

obstruction of justice, document tampering, damage to his property rights and “right of access” to the courts, and violations of Texas Penal Code § 37.09. *See, e.g.* Compl. at ¶ 68. But Bowles has yet, in all of his long, tortured pleadings, to explain why Defendants’ provision of a defense to the Insured Law Firm under the Policy presents any basis for a claim by Bowles—a third party claimant—against them, or what duty Defendants have or had to Bowles.

Many of the causes of action alleged by Bowles are not recognized in Texas or under federal common law. *See, e.g. Martin v. Morgan Drive Away, Inc.*, 665 F.2d 598, 605 n.5 (5th Cir. 1982) (recognizing there is no federal common law claim of “champerty” or officious intermeddling); *McCloskey v. San Antonio Traction Co.*, 192 S.W. 1116, 1119-20 (Tex. Civ. App. 1917) (recognizing there is no claim for officious intermeddling under Texas law); *Trevino v. Ortega*, 969 S.W.2d 950, 953 (Tex. 1998) (recognizing there is no independent tort for perjury or spoliation); *Kale v. Palmer*, 791 S.W.2d 628, 632 (Tex. App.—Beaumont 1990) (same); *Ondemir v. Bexar Cty. Clerk*, 2001 WL 1136074 at \*2 (Tex. App.—San Antonio, 2001) (not designated for publication) (recognizing obstruction of justice is not a civil cause of action, but a criminal act subject to prosecution under the Texas Penal Code.”). Furthermore, Bowles alleges a violation of a Texas Penal Code § 37.09, but does not assert any basis for his apparent belief he may bring a civil action based on an alleged violation of a penal statute. In fact, he cannot, as the penal statute in question does not expressly create a private cause of action. *See Reeder v. Daniel*, 61 S.W.3d 359, 362 (Tex. 2001) (“the fact that the Legislature enacts a criminal statute does not necessarily mean that this Court may recognize a civil cause of action predicated upon that statute.”).

Similarly, Bowles’ constitutional claims are nonsensical: even taking his allegations as true, he has no “right of access” or due process claim based on them. He is correct in his implication a

cause of action is a property right protected by the Fourteenth Amendment, and access to courts is a protected interest based on the First Amendment right to petition and the Fifth and Fourteenth Amendment due process clauses. *Ryland v. Shapiro*, 708 F.2d 967, 972-73 (5th Cir. 1983). But the constitutional right of access to courts is a facilitative right “designed to ensure that a citizen has the opportunity to exercise his or her legal rights to present a cognizable claim to the appropriate court, and if that claim is meritorious, to have the court make a determination to that effect and order the appropriate relief.” *Foster v. City of Lake Jackson*, 28 F.3d 425, 430 (5th Cir. 1994). The Fifth Circuit has found the right of access “to be implicated where the ability to file suit was delayed, or blocked altogether.” *Id.* In other words, the Fifth Circuit characterizes the right of access as encompassing the right to *initiate suit*. *Id.* at n. 7. The right of access does *not* guarantee a certain outcome or “particular form of remedy,” or a right to proceed without one’s claims being contested. *Gibbes v. Zimmerman*, 290 U.S. 326, 332 (1933).

Bowles’ constitutional claim that he was denied right of access or due process is therefore without merit. He does not allege he was unable to pursue his claims against the Insured Law Firm—his complaint shows quite the opposite, in fact. His allegations are principally that the Insured Law Firm was afforded a defense in the Malpractice Suit, and the judge in that case ultimately (and allegedly unfairly) ruled against him.<sup>5</sup> But because it is abundantly clear from his allegations Bowles was able to initiate suit against the Insured Law Firm and his right to do so was not impaired in any way by either of the Defendants, he has not stated a claim for violation of his due process or right of access to the courts.

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<sup>5</sup>Specifically, it is undisputed a final take nothing judgment was entered with respect to Bowles’ claims against the Insured Law Firm, and an interlocutory take nothing summary judgment has been entered with respect to his claims against Bishop in the Malpractice Suit.

Furthermore, no cause of action for a violation of *any* alleged constitutional right can exist against Defendants under § 1983 unless Bowles has alleged facts which would comprise “state action” on the part of Defendants.<sup>6</sup> See *Monroe v. Pape*, 365 U.S. 167, 184 (1961); *Dennis v. Sparks*, 449 U.S. 24, 27 (1980). Bowles makes a single conclusory assertion Defendants “engaged in joint actions under color of law in conspiracy with a state actor, either a state district judge or judges, or in conspiracy with an agent or agency of the state,” Compl. at ¶ 8, but he alleges no specific facts indicating Defendants willfully participated in joint action with the state or its agents to deprive him of his constitutional rights. It is well-settled that conclusory allegations of conspiracy, without specific facts, are insufficient to state a claim for relief under § 1983. See, e.g. *Young v. Biggers*, 938 F.2d 565, 569 (5th Cir. 1991) (“Plaintiffs who assert conspiracy claims under civil rights statutes must plead the operative facts upon which their claim is based. Bald allegations that a conspiracy existed are insufficient.”).

Bowles also has not alleged a cause of action for conspiracy under 42 U.S.C. § 1985.<sup>7</sup> A civil conspiracy claim pursuant to § 1985 requires a showing that: (1) two or more persons conspired to obstruct justice in a state court proceeding, and (2) race or class-based animus motivated the conspirators. *Daigle v. Gulf State Utilities Co.*, 794 F.2d 974, 979 (5th Cir. 1986). The statutory

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<sup>6</sup>Nevertheless, the Court analyzed Bowles’ constitutional claims on the merits in the preceding paragraphs simply to show he has not alleged a viable constitutional claim against Defendants, whether they colluded with state actors or otherwise.

<sup>7</sup>The relevant portion of § 1985(2) provides:

[O]r if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws[.]

language of § 1985 has been interpreted by the Supreme Court to mean that some racial or otherwise class-based discriminatory animus must drive the conspirators' actions. *Griffin v. Breckenridge*, 403 U.S. 88, 91 (1971). Because there is absolutely no allegation in Bowles' complaint that he is a member of any protected class or Defendants acted with any racial or otherwise class-based, invidiously discriminatory animus, Bowles' allegations do not support a claim for conspiracy under § 1985.<sup>8</sup>

Indeed, Bowles has not even alleged how he could possibly be in privity with Defendants, such that they owed him a duty of any kind. TPCIGA is not an insurer, and does not engage in the business of insurance. TEX. INS. CODE § 462.102. It is a distinct entity created by statute, with only one duty to a third party claimant: to pay the full amount of a "covered claim." *See id.* § 462.302 ("[TPCIGA]'s liability is limited to the payment of covered claims."). In the present case, Bowles does not state a claim for recovery of a covered claim from TPCIGA—instead, Bowles' claims against it are based entirely on his assertions TPCIGA exceeded its statutory authority by retaining defense counsel to defend the Insured Law Firm in the Malpractice Suit and submitted a false affidavit in connection with that suit. *See Compl.* at ¶ 68. In other words, his claims are expressly based on his contention his malpractice claims against the Insured Law Firm were *not* covered under the Policy issued by Home Insurance. *See Compl.* at ¶¶ 15-17. Bowles' allegations make it clear he is not seeking payment of a "covered claim" from TPCIGA, and therefore he does not state a valid claim for recovery from TPCIGA.

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<sup>8</sup>Again, Bowles' allegations are conclusory and almost impossible to untangle. But even given the widest reading possible, it is clear they do not state a claim for conspiracy under § 1985.

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. *See* HICIL's Mot. Dismiss at Ex. C, Tab F ("Order of Liquidation"), ¶ (n)(1). Bowles himself recognizes the existence of the provision, although he challenges "its hypocrisy in permanently banning actions against" HICIL. Pl.'s Mot. Temp. Susp. at ¶ 30. He contends this Court should not extend comity to the New Hampshire court's order simply because the order "works to protect tortfeasors from prosecution for fraud and deceit while preventing victims from seeking and obtaining relief." *Id.* at ¶ 31. 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).

Article IV, Section 1 of the United States Constitution requires each state to give full faith and credit to the public acts, records, and judicial proceedings of every other state. The full faith and credit clause requires a valid judgment from one state be enforced in other states regardless of the laws or public policy of the other states. *Underwriters Nat'l Assurance Co. v. North Carolina Life & Accident & Health Ins. Guar. Ass'n*, 455 U.S. 691, 714 (1982). Injunctions against suits in other states that may interfere with the receivership process have been afforded full faith and credit by the United States Supreme Court. *See id.* (ordering North Carolina court to grant full faith and credit to injunction against bringing or prosecuting suits entered by Indiana receivership court).

Similarly, in *Bard v. Charles R. Myers Ins. Agency*, 839 S.W.2d 791 (Tex. 1992), the Texas Supreme Court found an order from a Vermont receivership contained an injunction prohibiting the prosecution of any action against the carrier, and thus the court found it proper to grant full faith and credit and dismiss a Texas state action brought against an insurance carrier for conspiracy. The court

found “the intent of the Vermont receivership court is clear—claims were to be brought against the estate according to the procedures set out in the liquidation order and in no other way. The type of injunction entered by the Vermont court is fundamental in assuring that this single procedure is maintained.” *Id.* at 795. The court noted the liquidation order and Texas public policy required the claim be asserted in the receivership proceeding in Vermont. *Id.*

Bowles has not given the Court any reason to doubt that granting full faith and credit to the Order of Liquidation of the New Hampshire court is proper. Indeed, he has filed a motion asking to stay the present case in order to have certain matters essential to this case to be addressed by the referee in New Hampshire, with whom he has filed more than one proof of claim. *See, e.g.* Pl.’s Mot. Temp. Susp. at ¶ 19. Under the Order of Liquidation, Bowles is enjoined and restrained from bringing suit against HICIL except in accordance with the procedures set up by the Merrimack Superior Court; therefore, in accordance with that order, he cannot state any valid claim against HICIL over which this Court has jurisdiction. *See* Order of Liquidation.

## **II. This Court does not have subject matter jurisdiction**

Not only has Bowles failed to allege a meritorious claim against either Defendant, he has failed to state a valid basis for either diversity jurisdiction or federal question jurisdiction as well. Without doing so, he cannot proceed in this Court.

It is axiomatic that “[f]ederal courts are courts of limited jurisdiction.” *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). The courts derive the power to perform their judicial function solely from the grants of authority found in the Constitution and the various jurisdictional statutes passed by Congress. *Id.* Thus, the Court is constrained to adjudicate only those cases within the parameters of the jurisdiction vested in it by the Constitution and the

Congress. The Court begins with a presumption that a suit lies outside its jurisdiction and places the burden of establishing subject matter jurisdiction on the party seeking to have the case heard in the federal forum. *Howery v. Allstate Ins. Co.*, 243 F.3d 912, 916 (5th Cir. 2001).

District courts have original jurisdiction of “all civil actions arising under the Constitution, laws, or treaties of the United States,” as well as jurisdiction over civil actions where complete diversity exists and the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs. 28 U.S.C. §§ 1331, 1332(a). As discussed previously, Bowles’ claims arising under the Constitution or federal law—his due process and right of access claims—are entirely without merit, and thus do not support a finding of federal question jurisdiction.<sup>9</sup> Therefore, the Court turns to the question of whether it has diversity jurisdiction. *See Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987) (holding either diversity of citizenship or federal-question jurisdiction is required to support a district court’s subject matter jurisdiction”).

For the purposes of diversity jurisdiction, the jurisdictional statute has long been interpreted to mandate a rule of “complete diversity.” *See, e.g., Caterpillar, Inc. v. Lewis*, 519 U.S. 61, 68 (1996). Complete diversity requires the citizenship of each plaintiff be diverse from the citizenship of each defendant. *Id.* TPCIGA asserts it is a resident of Texas, as is Bowles, and therefore there is no diversity of citizenship jurisdiction under 28 U.S.C. § 1332.<sup>10</sup> Bowles alleges TPCIGA is a

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<sup>9</sup>The mere recitation of a constitutional violation does not suffice to establish federal question jurisdiction if “the contention is frivolous or patently without merit.” *Murphy v. Inexco Oil Co.*, 611 F.2d 570, 573 (5th Cir. 1980). If the constitutional provision invoked is “clearly immaterial and is invoked solely for the purpose of obtaining jurisdiction or if the claim is wholly insubstantial and frivolous,” a court is without federal question jurisdiction. *Holland/Blue Streak v. Barthelemey*, 849 F.2d 987, 989 (5th Cir. 1988).

<sup>10</sup>Specifically, TPCIGA asserts (in accordance with its creating statute) it is a “nonprofit unincorporated legal entity...composed of all member insurers,” and thus it is the citizen of every



state agency, but even if his contention is true complete diversity does not exist in this case. “[S]uits against state agencies are considered suits against the state, except where the agency is endowed with such a separate and distinct existence that its activities are not those of the State,” and “a State cannot be made a party defendant in a federal district court by a private litigant based upon diversity of citizenship.” *Johnson v. Texas Dep’t of Corrections*, 373 F. Supp. 1108, 1109 (S.D. Tex. 1974).

Finally, even if Bowles were able to establish a basis for this Court’s jurisdiction, the primary thrust of Bowles’ complaint is the adverse results he suffered in the Malpractice Suit at the hands of the Harris County district judge. His complaint is thus, in large part, simply an attack on the judgment of the state court. The *Rooker/Feldman* doctrine provides that federal district courts lack jurisdiction to entertain collateral attacks on state court proceedings, or claims inextricably intertwined with reviewing the validity of such judgments. *Liedtke v. State Bar of Texas*, 18 F.3d 315, 317 (5th Cir. 1994). Therefore, “[i]f a state trial court errs the judgment is not void, it is to be reviewed and corrected by the appropriate state appellate court.” *Id.*

The casting of a complaint in the form of a civil rights action cannot circumvent this rule, as absent specific law to the contrary federal district courts are courts of original jurisdiction, and lack appellate jurisdiction to review, modify, or nullify final orders of state courts. *Id.*; and see *Jordaan v. Hall*, 275 F.Supp.2d 778, 789 (N.D. Tex. 2003). In *Jordaan*, the district judge imposed Rule 11 sanctions where he determined the complaint was “nothing more than a thinly veiled attempt to circumvent the state appellate process and to collaterally attack—in the guise of a federal civil rights action—the validity of a state court divorce decree and other related orders.” *Jordaan*, F.Supp.2d

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state where its insurer members are citizens, including Texas. See TEX. INS. CODE § 462.051.

at 789. The judge determined “[a] reasonable amount of research” certainly would have revealed to the plaintiff the *Rooker-Feldman* jurisdictional bar to filing such claims in a United States district court. *Id.* In the present case, the Court likewise finds any reasonable amount of research would have revealed to Plaintiff his claims were improperly brought in a United States district court.

#### CONCLUSION

For the plethora of reasons detailed in the foregoing order, the Court finds Plaintiff Harry Bowles’ complaint and his claims and legal contentions therein are entirely frivolous, and are not warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law, in clear violation of Federal Rule of Civil Procedure 11.

IT IS THEREFORE ORDERED that Plaintiff Harry Bowles, by filing his Complaint, has violated Rule 11 of the Federal Rules of Civil Procedure and, therefore, has twenty-one (21) days in which to either: (1) file a new complaint against Defendants pursuant to Rule 8 of the Federal Rules of Civil Procedure,<sup>11</sup> or (2) file a voluntary dismissal of this lawsuit against all defendants. Otherwise, sanctions will be applied by the Court pursuant to Rule 11, including a money judgment for the attorney’s fees incurred by all parties sued, and this judgment will be rendered against Bowles with a writ of execution issued against him. At the end of the twenty-one day period, the Court will also, pursuant to its inherent authority,

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<sup>11</sup>Rule 8 specifically states that “a pleading shall contain (1) a short and plain statement of the grounds upon which the Court’s jurisdiction depends . . . , (2) a short and plain statement of the claim showing that the pleader is entitled to relief . . . , and (3) a demand for judgment for the relief the pleader seeks.” The rule further demands that each averment of the pleading must be simple, concise, and direct.

issue such other sanctions as are necessary and proper if Bowles has not filed an amended complaint asserting valid causes of action or a voluntary dismissal.

SIGNED this the 2<sup>nd</sup> day of April 2009.

  
\_\_\_\_\_  
SAM SPARKS  
UNITED STATES DISTRICT JUDGE

No. **03-0532**

*OFFICIAL ORDER*  
*of the*  
COMMISSIONER OF INSURANCE  
*of the*  
STATE OF TEXAS  
AUSTIN, TEXAS

Date: JUN 26 2003

Subject Considered:

THE HOME INSURANCE COMPANY  
NEW HAMPSHIRE

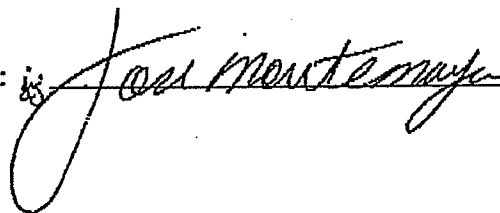
DESIGNATION AS AN IMPAIRED INSURER UNDER  
TEXAS INSURANCE CODE 21.28-C

General remarks and official action taken:

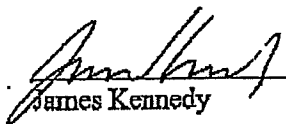
On this day came on for consideration by the Commissioner of Insurance the matter of The Home Insurance Company, organized under the laws of the State of New Hampshire, doing the business of insurance in the State of Texas. On June 13, 2003, the Superior Court of Merrimack County, New Hampshire entered an Order of Liquidation in Docket No. 03-E-0106 finding The Home Insurance Company to be insolvent.

Based upon the finding of insolvency by the Superior Court, and having considered the purposes of TEX. INS. CODE ANN. art. 21.28-C, the Commissioner of Insurance finds that The Home Insurance Company should be, and is hereby, designated as an impaired insurer as that term is defined in TEX. INS. CODE ANN. art. 21.28-C §5(9).

JOSÉ MONTEMAYOR  
COMMISSIONER OF INSURANCE

By: 

Reviewed by:

  
James Kennedy

**THE STATE OF NEW HAMPSHIRE**

**MERRIMACK, SS.**

**SUPERIOR COURT**

**Docket No. 03-E-0106**

**In the Matter of the Liquidation of  
The Home Insurance Company**

**Docket No. 03-E-0112**

**In the Matter of the Liquidation of  
US International Reinsurance Company**

**LIQUIDATOR'S SECOND REPORT**

I, Paula T. Rogers, Commissioner of Insurance ("Commissioner"), as Liquidator ("Liquidator") of The Home Insurance Company ("The Home") and US International Reinsurance Company ("USI Re") (collectively, the "Companies"), hereby submit my second report on the liquidations of the Companies, as of July 31, 2003, in accordance with RSA 402-C:25.

1. Organization of liquidation operation. Upon entry of the Orders of Liquidation for the Companies on June 13, 2003, I appointed Peter A. Bengelsdorf as Special Deputy Liquidator. Since that time, the Special Deputy Liquidator has worked to organize and establish a cost-effective stand-alone operation to conduct the liquidation of the Companies. This requires assembling a liquidation staff and preparing facilities, including computer systems.

2. The planned structure of the liquidation staff is set forth on the organization chart attached as Exhibit A. To date, eighty-four employees have been engaged, and I anticipate that when fully staffed in September 2003 the liquidation will

have between ninety-five and one hundred employees. In order to engage staff, it is appropriate to have an indemnification policy similar to the indemnification provisions found in corporate bylaws. I have accordingly issued the confirmation of indemnification attached as Exhibit B.

3. To most effectively prepare facilities in Manchester, New Hampshire, and New York, New York, and arrange for the orderly and efficient transfer of and access to records and information of The Home and USI Re, including data contained on computer systems, I have entered an asset transfer agreement and a short-term transition services agreement with Risk Enterprise Management, the company that had administered the run-off of the Companies since 1995. Those agreements are more fully described in the motion for approval of the two agreements filed on July 25, 2003, (and approved by order of this Court on August 6, 2003). Installation of the computer systems and transfer of records and data are ongoing.

4. Additional notice mailing. In my first report, I summarized the mailings and publication notice that had been given pursuant to the Order Approving Notice entered June 11, 2003. Since that time additional mailing lists have been prepared for potential claimants, policyholders, ceded reinsurers and vendors as shown on Exhibit C. That second mailing will be made in August.

5. Transfer of files to guaranty associations. Before The Home was placed in liquidation, my representatives engaged in discussions with a coordinating committee of insurance guaranty associations concerning procedures for an orderly transfer of the claim files that would likely be subject to guaranty fund protection to the appropriate guaranty associations and funds for handling. (The coverage written by USI Re,

reinsurance, is not eligible for guaranty fund coverage.) Since the Home Order of Liquidation entered, approximately 6,500 claim files have been transferred to forty-one state guaranty funds or their designated claim handling facility. Approximately 2,750 claim files concerning environmental and mass tort claims are being held pending direction from guaranty funds. Shipment of those files is expected to commence shortly. Approximately 500 other miscellaneous claims remain with the Liquidator including so-called surplus lines claims. Since the Home Order of Liquidation, approximately 125 new claims have been reported and another twenty-five reopened. These claims have either been shipped to the appropriate guaranty fund or are presently in the process of being shipped.

6. Reinsurance commutations. Since the entry of the Orders of Liquidation, discussions have continued concerning potential commutation agreements with certain reinsurers in order to convert the assets of the estates to cash. In July, 2003, I requested approval of procedures for review of material commutation agreements as well as approval for three such commutation agreements. The Court approved the proposed procedures and the three commutations on July 23, 2003. Liquidation staff are presently engaged in negotiations with one other reinsurer, and they are consulting with representatives of certain insurance guaranty associations about that potential commutation, subject to confidentiality agreements.

7. UK branch proceeding. On my application, Joint Provisional Liquidators for The Home's branch operation in the United Kingdom were appointed by the High Court of Justice in England ("UK Court") on May 8, 2003. My representatives are engaged in discussions with the Joint Provisional Liquidators concerning how best to

coordinate the UK and US proceedings to protect the interests of The Home's creditors on a worldwide basis.

8. Canadian branch proceeding. A Canadian Liquidator for The Home's branch operation in Canada was appointed by the Ontario Superior Court of Justice ("Canadian Court") on June 26, 2003. Representatives of the Liquidator, the Canadian Liquidator and a Canadian insurance company are presently negotiating an assumption reinsurance agreement by which The Home's Canadian obligations will be assumed by the insurance company for a payment from The Home's Canadian special deposits. Once the agreement has been prepared and approved by all parties, it will be presented to the Court and the Canadian Court for approval. The assets of the The Home's Canadian branch substantially exceed its obligations. We therefore hope to ultimately receive a significant reversion from the Canadian branch.

9. Engagement of Independent Accountants. I have engaged the accounting firm of Ernst & Young to conduct audits of the Companies' financial statements as of December 31, 2003.

10. Future reports. Subject to further direction from the Court, I plan to submit reports as follows:

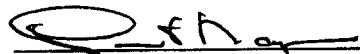
a. Monthly reports. I plan to file narrative monthly status reports on the progress of the liquidation pursuant to RSA 402-C:25 on or about the fifteenth of each month.

b. Annual and Quarterly financial reports. I will file a financial report as of the preceding December 31 including the assets and liabilities of the Companies and all funds received or disbursed by the Liquidator during the year on or



before June 13, 2004 and annually thereafter in accordance with RSA 402-C:21, V, and the Orders of Liquidation. That annual report will be audited. Unaudited financial statements will be prepared on a quarterly basis (usually seventy-five days after the close of the quarter), and those quarterly statements will be filed as part of the monthly report following their preparation.

Respectfully submitted,

  
Paula T. Rogers, Liquidator

August 11, 2003

STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

In the Matter of the Liquidation of  
The Home Insurance Company  
Docket No. 03-E-0106  
In the Matter of the Liquidation of  
US International Reinsurance Company

**CERTIFICATE OF SERVICE**

I, Peter C.L. Roth, do hereby certify that on August 14, 2003 I served a true copy of the foregoing, upon the attached Service List, by first class mail, postage prepaid.

Dated: August 14, 2003

  
\_\_\_\_\_  
Peter C.L. Roth

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BOX # 1

	CLAIM NUMBER	INSURED	DOL
✓1	0850-600764	Bishop, Peterson & Sharp	12-29-93
2 vol 2	586-0-669384	Paginey Network	11-15-94
✓3	569-0-105593	Service Corp International	5-1-83
4	569-0-105594		5-1-84
5	569-0-105595		5-1-85
6	569-0-105596		5-1-86
7			(listed on folder as "93-96")
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BOX PACKED BY Frankie Olds  
 TEL# 770-325-5023  
 DATE 6-20-03

RECEIVED BY C. Fields 4/23  
 FOR \_\_\_\_\_ GA  
 TEL# \_\_\_\_\_