

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
Claimant Name: Harry L. Bowles
Policyholder Account: Class II

ORDER

A further telephonic structuring conference in this matter was held on June 15, 2009 at 11:00 a.m. Eastern Standard Time. Mr. Bowles did not join the telephonic structuring conference. Due to Mr. Bowles' absence, there was no oral argument on the pleadings. The Referee now makes this Order based on the written pleadings and the first telephonic conference held on May 13, 2009.

The Referee has reviewed the pleadings filed by Mr. Bowles and the Liquidator regarding the issues to be addressed. Mr. Bowles makes several claims. Mr. Bowles claims that Home improperly denied his third party claim under a Home policy issued to Bishop, Peterson & Sharp, P.C. ("BPS"). Mr. Bowles also claims that Home improperly provided a defense to BPS in Mr. Bowles' lawsuit against that firm. Mr. Bowles further asserts that he is entitled to discovery before any issues are addressed by the Referee. Mr. Bowles requests an evidentiary hearing regarding his claims. Mr. Bowles has also requested bifurcation of the issues of coverage and damages.

The Liquidator has denied Mr. Bowles' claim for damages alleged as a result of alleged professional misconduct by BPS under the professional liability policy issued to BPS. The Liquidator has suggested that Mr. Bowles be directed to file a new proof of claim regarding his allegations that Home improperly provided a defense to BPS in the litigation by Mr. Bowles against that firm. The Liquidator objects to providing responses to Mr. Bowles' discovery requests at this time. The Liquidator asserts that the preliminary issues to be addressed are the denial of Mr. Bowles' claim under the Home policy, as well as the effect of the litigation between Mr. Bowles and BPS in Texas, and that these issues can be decided without the need for discovery or an evidentiary hearing.

The Referee has considered the order in which issues should be addressed in this case. First, the Referee will consider whether the disallowance of Mr. Bowles' claim under the Home policy was proper. Second, in most, if not all of the pleadings filed by Mr. Bowles in the Liquidation, he has raised the issue of whether the Liquidator improperly provided a defense to BPS. To require Mr. Bowles to file a new and separate proof of claim on this issue would significantly delay the process. The Referee finds that this claim can be addressed by the Referee along with disallowance of Mr. Bowles' claim under the Home policy. In addition, the Liquidator has raised the issue of the effect of the litigation in Texas on these two claims. The Referee agrees that issue must also be addressed.

The Referee will address the following issues at this time:

- A. Whether the disallowance of Mr. Bowles' claim by the Liquidator was proper based on the language of the Home policy issued to Bishop, Peterson and Sharp, P.C.;
- B. Whether Mr. Bowles is entitled to recovery on his claim that Home improperly provided a defense to Bishop, Peterson and Sharp, P.C.; and
- C. Whether the principle of res judicata bars any claim by Mr. Bowles.

Once a determination has been made on these three issues, the Referee will consider whether additional issues must be addressed.

Discovery

Mr. Bowles asserts that he is entitled to discovery before any issues are briefed for the Referee, including the issue of whether Mr. Bowles' claim falls within the jurisdiction of the Referee. The Liquidator argues that discovery on this issue is not appropriate at this time, but should be reviewed after a determination of whether the claim falls within the jurisdiction of the Referee. The Referee has reviewed the discovery requests sent by Mr. Bowles to the Liquidator as well as the pleadings related to those requests.

Mr. Bowles has sent Requests for Admission and Requests for Production of Documents to the Liquidator. The Referee orders Home to provide documents responsive to the following requests for documents by Mr. Bowles:

- b. Copies of any claims made by Bowles against BPS and related insureds;
- c. Copies of any POCs or demands for defense and indemnity from Home made by any "insureds" in Home Insurance Policy No. LPL-F871578;
- e. Copies of all documents whereby the Liquidator of Home Insurance Company forwarded a Bowles' claim to TPCIGA for handling under provisions of Home Insurance Policy No. LPL-F871578;
- j. A copy of the employment contact (sic) or agreement whereby TPCIGA retained Houston law firm Marshall & McCracken, P.C. to intervene in defense of Home Insurance Policy No. LPL-F871578 in Cause No. 1995-43235 pursuant to authority from the Liquidator to do so.

The Liquidator need not provide further discovery at this time. The Referee will re-evaluate the remainder of Mr. Bowles' request for production of documents and requests for admission after ruling on the three issues to be briefed.

Schedule

By July 1, 2009, the Liquidator is ordered to produce to Mr. Bowles any documents responsive to Mr. Bowles' discovery requests b, c, e, and j, set forth above.

Mr. Bowles has until August 14, 2009 to file a brief addressing these issues:

- A. Whether the disallowance of Mr. Bowles' claim by the Liquidator was proper based on the language of the Home policy issued to Bishop, Peterson and Sharp, P.C.;
- B. Whether Mr. Bowles is entitled to recovery on his claim that Home improperly provided a defense to Bishop, Peterson and Sharp, P.C.; and
- C. Whether the principle of res judicata bars any claim by Mr. Bowles.

The Liquidator may file a brief addressing the same issues by September 30, 2009. Should Mr. Bowles choose to file a reply brief, he must do so by October 13, 2009. Any reply by the Liquidator must be filed by October 27, 2009.

Evidentiary Hearing

If either party would like to present oral argument on the three issues to be briefed, that party may file a motion requesting that such a hearing be scheduled. Any motion for oral argument must be filed by October 13, 2009. Any hearing regarding these issues will take place in the Merrimack County Superior Court. The Referee will consider a request by motion for a telephonic evidentiary hearing to be scheduled at the convenience of the Referee and the parties in lieu of the in person hearing upon request of either party. Any such telephonic hearing will be recorded.

Bifurcation

Mr. Bowles has moved for bifurcation. The claims are bifurcated. Any proceedings regarding the value of Mr. Bowles' claims will be contemplated after the proceedings related to coverage issues are completed.

So ordered.

June 15, 2009
Date

Melinda S. Gehris
Referee, Melinda S. Gehris