

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: 2009-HICIL-44
Proof of Claim Number: CLMN711647
Claimant Name: Adebowale O. Osijo
Claimant Number: CDV-2007-745
Policy or Contract
Number: _____
Date of Loss: _____

LIQUIDATOR'S RESPONSE TO CLAIMANT'S MOTION FOR
CLARIFICATION OF THE REFEREE'S JULY 7, 2009 ORDER

Roger A. Sevigny, Insurance Commissioner, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), hereby responds to the Claimant's Motion for Clarification of the Referee's July 7, 2009 Order.

1. The issue to be briefed and the order of briefing were discussed during the telephonic structuring conference held on July 6, 2009. As discussed, the Referee's order specified that the parties shall brief "the issue of whether the decisions of any court preclude Mr. Osijo's claims made in the Liquidation Proceeding." During the conference, the Referee expressed the view that it would be appropriate for the Liquidator to file the first brief, the Liquidator and Claimant agreed, and the Referee directed that briefing proceed in that order. After the hearing, however, the Claimant asked by email to file the first brief, the Liquidator agreed, and the Referee's July 7, 2009 order provided for briefing in accordance with Claimant's request.

2. The Claimant's motion for clarification is essentially a request for guidance as to the substance of the issue presented and how to brief it. While such matters are generally for the

parties to determine, the Liquidator offers the following regarding the three points raised in Claimant's motion:

a. The question whether res judicata is consistent with due process is part of the question whether the decisions of any court preclude Mr. Osijo's claim. The Liquidator's position is that preclusion is consistent with due process.

b. The decisions that preclude Mr. Osijo's claim were preliminarily identified in the Liquidator's April 15, 2009 Consolidated Objection to (1) Claimant's Request for an Evidentiary Hearing and (2) Claimant's Motion to Compel Production of Documents and Responses to Interrogatories. The decisions of principal importance have also been included in the Case File provided on May 5, 2009.


c. In the Liquidator's view, both claim and issue preclusion are subsumed within the question to be briefed specified in the Referee's order.

3. The most practical way to proceed would be for the Liquidator to file the first brief, as the Referee originally suggested. The issue will then be framed for response. If the Referee were inclined to direct that the Liquidator file the first brief, the Liquidator requests in light of other pending matters and vacation schedules that the brief be due no earlier than August 28, 2009.

Respectfully submitted,

ROGER A. SEVIGNY, COMMISSIONER
OF INSURANCE OF THE STATE OF
NEW HAMPSHIRE, SOLELY AS
LIQUIDATOR OF THE HOME
INSURANCE COMPANY,
By his attorneys,
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July 13, 2009

Certificate of Service

I hereby certify that a copy of the foregoing response was emailed to the Claimant on July 13, 2009.



Eric A. Smith