

AFFIDAVIT OF THOMAS C. SCHULTZ

STATE OF WEST VIRGINIA,

COUNTY OF OHIO, TO-WIT:

The affiant, having first been duly sworn, states as follows:

1. My name is Thomas C. Schultz. I am an attorney licensed to practice law in West Virginia. My office address is 40 - 12th Street, Suite 333, Wheeling, WV 26003. I represent Misty Stapel as a defendant/counterclaimant in a suit that was filed against her on June 27, 2000, on behalf of The Home Insurance Company in the United States District Court for the Northern District of West Virginia entitled *The Home Insurance Company v. Misty Dawn Stapel, et al.*, Civil Action No. 5:00-CV-99. This suit was scheduled to be tried in July, 2003, but is presently stayed due to The Home Insurance Company's Rehabilitation. I also represent Misty Dawn Stapel as a plaintiff in a civil action in the United States District Court for the Northern District of West Virginia entitled *Stapel v. Risk Enterprise Management, Limited, et al.*, Civil Action No 5:03-CV-33, filed March 3, 2003, which suit is not stayed, as The Home Insurance Company is not a party thereto.

2. I have read the Emergency Ex Parte Motion to Intervene of Misty Dawn Stapel and Partial Objection to Order of Liquidation and Temporary and Permanent Injunction as to any Release of Liabilities of Risk Enterprise Management Limited, prepared by David M. Gottesman, Esq., to be filed in the Superior Court of the State of New Hampshire, Docket No. 03-E-0106. The allegations contained in

the Motion are true and correct, to the best of my knowledge, information and belief.

3. On March 7, 2003, I advised Alex Feldvebel of the New Hampshire Insurance Commissioner's office, of claims against Risk Enterprise Management in West Virginia and of a conflict of interest on the part of Risk Enterprise Management and alerted him that the charges of acts and omissions against Risk Enterprise Management in West Virginia include fraud as well as potential criminal conduct. I sent him a letter enclosing documentation and making inquiries about whether Risk Enterprise Management had disclosed the conflict. After notifying Mr. Feldvebel, I received no communication from his office.

4. On March 10, 2003, I informed Peter Roth, Esq., of the New Hampshire Attorney General's office, of claims against Risk Enterprise Management in West Virginia and of a conflict of interest on the part of Risk Enterprise Management and alerted him that the charges of acts and omissions against Risk Enterprise Management in West Virginia include fraud as well as potential criminal conduct. I sent documentation to Mr. Roth along with my letter and I made inquiries. I received no communication from Mr. Roth's office.

5. On May 7, 2003, a proposed settlement was reached in *The Home Insurance Company v. Misty Dawn Stapel, et al.*, Civil Action No. 5:00-CV-99. Under the terms of the proposed settlement, upon

2 attached hereto, letter dated May 29, 2003 to Larry Blalock confirming this agreement.)

7. On June 4, 2003, I received The Home Insurance Company's Motion for Extension of Stay filed in *The Home Insurance Company v. Misty Dawn Stapel, et al.*, Civil Action No. 5:00-CV-99. Attached to HOME's motion were several exhibits, including a copy of the proposed "revised" Order of Liquidation. This was the first notice I had that a proposed Order of Liquidation would be presented to the New Hampshire Court seeking to restrain and enjoin suits against Risk Enterprise Management and others, in addition to merely restraining and enjoining suits against the insolvent insurer.

8. Upon review of the revised Order of Liquidation, I perceived that the additional language inserted into the revised order sought to insulate Risk Enterprise Management from liability in suits such as *Stapel v. Risk Enterprise Management, Limited, et al.*, Civil Action No 5:03-CV-33 and purported to insulate any other agent or representative of The Home Insurance Company from any such liability. It therefore appeared to me that persons and entities other than The Home Insurance Company were seeking to benefit themselves and position themselves improperly by manipulating the terms of an Order of Liquidation that should be for the protection of the insurance-buying public only and that the proposed revised order threatens to prejudice Misty Stapel and threatens to violate

public policies of the State of West Virginia. Accordingly, I contacted David M. Gottesman, Esq., on June 5, 2003 and requested his assistance.

9. Because no agreement could be reached with the New Hampshire Attorney General's office, Mr. Gottesman and I agreed that he would seek emergency intervention in New Hampshire on behalf of Misty Dawn Stapel.

10. Under West Virginia law, it is clearly permissible for Misty Stapel to have filed an independent tort action against Risk Enterprise Management and the other defendants in *Stapel v. Risk Enterprise Management, Limited, et al.*, Civil Action No 5:03-CV-33 even if some of the acts alleged were within the scope of an agency relationship with The Home Insurance Company. In West Virginia, "[a]n agent or employee can be held personally liable for his own torts against third parties and this personal liability is independent of his agency or employee relationship." Syl. Pt 5, in part, *Courtless v. Jolliffe*, 203 W. Va. 258, 507 S.E.2d 136(1998), Syl. Pt. 3, *Musgrove v. Hickory Inn, Inc.*, 168 W. Va. 65, 281 S.E.2d 499 (1981).

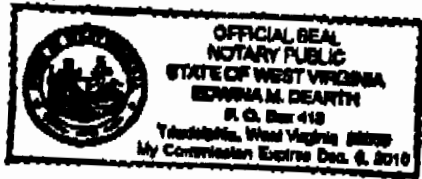
11. *Stapel v. Risk Enterprise Management, Limited, et al.*, Civil Action No 5:03-CV-33 is (and should remain) entirely independent of The Home Insurance Company and its Rehabilitation or Liquidation proceedings.

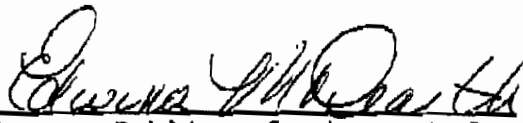
12. Further the affiant saith not.

The facts contained in this affidavit are true except where they are stated to be upon information and belief and where they are stated to be upon information and belief, the affiant believes them to be true.


Thomas C. Schultz

Taken, sworn to, and subscribed to before me this 8th day of June, 2003.




Notary Public of, in and for the State of West Virginia

My Commission Expires:

Dec 6, 2010