

AFFIDAVIT

THE STATE OF TEXAS

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COUNTY OF TRAVIS

BEFORE ME, the undersigned authority, a Notary Public in and for the aforesaid jurisdiction, on this day personally appeared Amber A. Walker, known to me to be the person whose name is subscribed hereto, and who, being by me first duly sworn, on her oath deposes and says:

My name is Amber A. Walker. I am a licensed attorney in the State of Texas and am employed as a Senior Claims Attorney for the Texas Property and Casualty Insurance Guaranty Association ("TPCIGA"). I am over the age of twenty-one (21), have never been convicted of a felony or crime of moral turpitude, and am fully competent to testify. Except as otherwise specifically set forth herein, I have personal knowledge of the facts stated herein. All such facts are true and correct.

In my capacity as a Senior Claims Attorney for TPCIGA, I am well acquainted with Tex. Ins. Code art. 21.28-C (the "Guaranty Act") and the Guaranty Association. Moreover, I am familiar with the nature and history of Plaintiff's claim against Bishop, Peterson & Sharp, P.C.

Home Insurance Company ("Home") issued a legal liability policy to the law firm of Bishop, Peterson & Sharp, P.C. At some point after Mr. Bowles asserted his claim against Bishop, Peterson & Sharp, P.C. and related insureds, the insureds demanded a defense and indemnity from Home in accordance with the terms and conditions of the Home policy.

A New Hampshire court placed Home in liquidation on June 13, 2003. Thereafter, the Texas Commissioner of Insurance designated The Home Insurance Company an "impaired insurer" on June 26, 2003. In accordance with the provisions of Tex. Ins. Code Ann. art. 21.28-C, TPCIGA handles certain claims by and against insureds of impaired insurers.

Shortly after insolvency and the subsequent impairment, the Liquidator of Home Insurance Company forwarded this claim to TPCIGA for review as a possible "covered claim," as that term is defined in the Guaranty Act. The claim was assigned to claims examiner Barbara Marsh for handling. Ms. Marsh first reviewed the claim for TPCIGA on or about July 29, 2003. I first reviewed the claim for possible coverage issues on or about October 14, 2004. Because our investigation indicated that this claim might present a "covered claim," TPCIGA undertook to handle this claim on behalf of the now-dissolved insured law firm,

**EXHIBIT A**

while expressly reserving its rights to assert and rely upon any policy provisions or terms in the Guaranty Act that might limit coverage.

Prior to its insolvency, the Home Insurance Company had an agreement with George M. Bishop, a former partner of Bishop, Peterson & Sharp, P.C., that he would represent the named insured and related insureds in *Bowles v. George M. Bishop, et al.* until the amount of the policy deductible had been met. Once the insured's deductible had been met, TPCIGA secured the services of counsel in the Houston area to assume the defense of Bishop, Peterson & Sharp, P.C. Accordingly, TPCIGA retained the firm of Marshall & McCracken, P.C. to represent the named insured in this litigation.

By letter of August 11, 2006, I advised attorney James D. Farmer, counsel of record for Harry Bowles in the above-styled suit, that TPCIGA had been aware of Mr. Bowles' claim since shortly after the Home Insurance Company's demise and that it had retained Marshall & McCracken, P.C. to defend the Bishop, Peterson & Sharp, P.C. In that same letter, I also attempted to correct and explain a variety of other misstatements and/or misunderstandings apparent in correspondence received from Mr. Farmer, Mr. Bowles' attorney. A copy of that four-page letter is attached hereto as Exhibit "A."

Furthermore, any suggestion by Plaintiff that he was denied the opportunity to file a proof of claim is incorrect (see Exhibit E to Motion to Show Authority). A representative of Home Insurance Company, in liquidation, advised me on September 1, 2006 that the Liquidator sent Mr. Bowles notice of his right to file a proof of claim with the liquidation estate. Indeed, Mr. Bowles filed a proof of claim with the estate, although it referenced a shooting incident that was apparently unrelated to The Home Insurance Company and Bishop, Peterson & Sharp, P.C. Please note that a claim against the assets of the liquidation estate and a "covered claim" under the Guaranty Act are separate and distinct claims against separate entities.

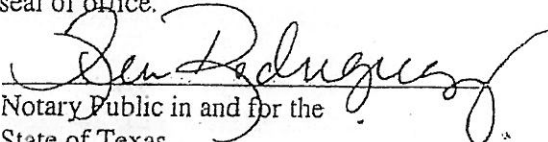
Like most liability policies, the Home policy provided that Home Insurance Company had the right and duty to defend claims that fell within the coverage of the policy. Section 8(b) of the Guaranty Act provides that TPCIGA "shall undertake to discharge the policy obligations of the impaired insurer, including the duty to defend insureds under a liability policy, to the extent that the policy obligations are covered claims under the Act." Accordingly, pursuant to the terms and conditions of the policy and the Guaranty Act, Marshall & McCracken, P.C. has complete and full authority to represent Defendant Bishop, Peterson & Sharp, P.C. in the above-captioned lawsuit.

Further affiant sayeth not.

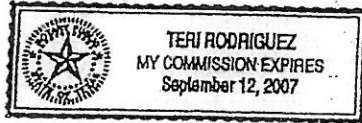


Amber A. Walker

SUBSCRIBED and SWORN TO, before me, on this the 7<sup>th</sup> day of September, 2006, to certify which witness my hand and seal of office.

  
Notary Public in and for the  
State of Texas

My Commission Expires:



A-5

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

HARRY L. BOWLES

Plaintiff,

VS.

CIVIL ACTION NO. 1:07CV740

HOME INSURANCE COMPANY  
IN LIQUIDATION (NY); AND TEXAS  
PROPERTY & CASUALTY INSURANCE  
GUARANTY ASSOCIATION

Defendants.

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AFFIDAVIT OF RONALD F. BARTA

STATE OF NEW YORK §  
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COUNTY OF NEW YORK §

BEFORE ME, the undersigned authority, on this date personally appeared RONALD F. BARTA, personally known to me, who, being by me first duly sworn upon his oath, deposed and stated the following:

1. My name is RONALD F. BARTA. I am a Senior Manager for The Home Insurance Company in Liquidation (improperly named as Home Insurance Company in Liquidation (NY)) ("HICIL"). I am over the age of eighteen (18) years, have never been convicted of a felony, and am fully competent to make this affidavit.

2. On June 11, 2003, The Home Insurance Company ("Home") was declared insolvent and an Order of Liquidation was entered by the Superior Court for the State of New Hampshire,

Merrimack County, said order having been vacated and superseded by Order of Liquidation dated June 13, 2003.

3. Home is a New Hampshire corporation with its statutory offices in Manchester, New Hampshire and its principal office in New York. Home is a New Hampshire insurance company subject to regulation by the New Hampshire Insurance Department.

4. In my capacity as Senior Manager for HICIL, I have responsibility for the files relating to the Professional Liability Insurance Policy issued by Home to Bishop Peterson & Sharp, P.C. (the "Insured Law Firm") effective January 24, 1992 to January 24, 1994, Policy No. LPL-F871578 ("Professional Liability Policy"). Additionally, in my capacity as Senior Manager for HICIL, I have responsibility for the files relating to the lawsuit filed against HICIL by Harry L. Bowles ("Bowles"). Included within the scope of the files for which I was and am responsible, are all materials relating to the claims of Bowles in the above-entitled and numbered cause. All the statements herein are within my personal knowledge, are derived from the file records of Home and/or HICIL and my review thereof, and are all true and correct.

5. I am one of the custodians of the claim file records of HICIL. Attached hereto are 7 pages of records from HICIL. These said 7 pages of records are kept by HICIL in the regular course of business, and it was the regular course of business of HICIL for an employee or representative of HICIL, with knowledge of the act, event, condition, opinion, or diagnosis, recorded to make the record or to transmit information thereof to be included in such record; and the record was made at or near the time or reasonably soon thereafter. The records attached hereto are the original or exact duplicates of the original.

*gr*

6. Home issued a Professional Liability Policy to the Insured Law Firm. The Professional Liability Policy is a claims made and reported policy. Under the Professional Liability Policy, a "claim" was defined as a "demand received by the insured for money or services, including the service of a suit..." (Professional Liability Policy, Sec. B).

7. Prior to the expiration of the Professional Liability Policy reporting period, Bowles forwarded letters to the Insured Law Firm expressing dissatisfaction with its work and demanding fee reductions.

8. The Insured Law Firm then notified Home regarding same within the policy period set forth above.

9. For purposes of the Professional Liability Policy and pursuant to its Discovery Clause, a claim was timely reported alleging acts or omissions that potentially invoked coverage under the Professional Liability Policy. Since the Professional Liability Policy is a third-party liability policy providing the Insured Law Firm with defense and indemnity benefits where coverage is otherwise afforded, this was all that was necessary to potentially invoke coverage under the policy at issue.

10. Although a lawsuit was not filed by Bowles against the Insured Law Firm until August of 1995, potential coverage had been invoked by notice of the claim and Home undertook to provide a defense subject to any reservation of rights raised by the pleadings.

11. Even if a defense had not been owed, which Home believed it was, Home was within its rights to afford same even if voluntarily.

12. Home was designated as an impaired insurer by the Texas Commissioner of Insurance on June 26, 2003, by Official Order in Case No. 03-0532.

13. Pursuant to the provisions of Subchapter G of the Texas Property and Casualty Insurance Guaranty Act (the "Act"), Home forwarded its entire claim file to the Guaranty Association because the pending lawsuit potentially constituted a covered claim under the Act.

14. Pursuant to the Act, the Guaranty Association undertook to discharge its statutory obligation to defend the Insured Law Firm.

15. Having forwarded the claim file to the Guaranty Association as it was required to do under the Act, Home has had no further direct involvement with the lawsuit by Bowles against the Insured Law Firm.

16. By virtue of paragraph (n) of the Order of Liquidation, "all persons are hereby permanently enjoined and restrained from...any act to collect, assess, or recover a claim against The Home, other than the filing of a proof of claim with the Liquidator...."

17. On or about August 13, 2003, Bowles filed a Proof of Claim form as a third-party claimant against a purported insured of Home. A true and correct copy of the Proof of Claim is attached hereto as Exhibit 1. The Proof of Claim alleged that Home's purported insured was an entity named Houston Real Estate a/k/a ETS Interests. Bowles alleged that he was a tenant of the policy holder and was shot on the policy holder's property.

18. On October 5, 2006, Bowles sent a letter to Thomas Kober with HICIL requesting an update on his Proof of Claim filed in 2003. A true and correct copy of the October 5, 2006 letter is attached hereto as Exhibit 2 and incorporated herein by reference.

19. On October 11, 2006, I sent a letter to Mr. Farmer, counsel for Plaintiff. Mr. Farmer was provided with a copy of the Order of Liquidation and advised that Bowles was enjoined from commencing or continuing any litigation against Home and if Bowles wished to make a claim

against Home, he would need to file a Proof of Claim. A true and correct copy of the October 11, 2006 letter is attached hereto as Exhibit 3 and incorporated herein by reference.

20. On October 16, 2006, I sent another letter to Mr. Farmer responding to Bowles's October 5, 2006 letter to Mr. Kober. A true and correct copy of the October 16, 2006 letter is attached hereto as Exhibit 4 and incorporated herein by reference. Mr. Farmer was advised that since Home had ceased writing liability policies in 1995 and there was no information that suggested that the entity identified in the Proof of Claim was an insured under a Home policy, HICIL was recommending to the Liquidator that the Proof of Claim be disallowed.

21. Bowles has never filed a Proof of Claim with respect to the Professional Liability Policy and the Insured Law Firm, although that is the only remedy available under the Order of Liquidation.

FURTHER, AFFIANT SAYETH NOT.

  
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RONALD F. BARTA

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned authority, on this  
15<sup>th</sup> day of November, 2007.

  
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Notary Public, State of New York

My Commission Expires:

4-30-2011

**THOMAS W. KOBER**  
Notary Public, State of New York  
No. 43-4542498  
Qualified in Richmond County  
Commission Expires April 30, 11  
2011



THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Docket No. 03-E-0106

In the Matter of the Rehabilitation of  
The Home Insurance Company

ORDER OF LIQUIDATION

This proceeding was commenced on March 4, 2003, upon the Verified Petition for Rehabilitation of Paula T. Rogers, Commissioner of Insurance for the State of New Hampshire (the "Commissioner"). The Commissioner filed the Verified Petition for Rehabilitation pursuant to RSA 402-C:15, seeking appointment as receiver of The Home Insurance Company ("The Home") for the purpose of rehabilitating and conserving the assets of The Home. On March 5, 2003, this Court entered an Order Appointing Rehabilitator, in which the Commissioner was appointed Rehabilitator of The Home. The Commissioner, as Rehabilitator, has now determined pursuant to RSA 402-C:19 that further attempts to rehabilitate The Home would be futile, that The Home is insolvent within the meaning of RSA 402-C:3 and RSA 402-C:20, II, and that it should be liquidated. On May 8, 2003, the Commissioner, as Rehabilitator, filed a Verified Petition for Order of Liquidation pursuant to RSA 402-C:5, RSA 402-C:19 and RSA 402-C:20 (the "Petition"), in which she has sought an order of liquidation for The Home, her appointment as Liquidator, and the requested permanent injunctions. After having heard and considered the facts set forth in the Petition, the Court finds that the law and facts are

as the Commissioner has alleged in the Petition and that there exists a present necessity for the entry of this order.

WHEREFORE, it is hereby ordered, adjudged and decreed that:

(a) The proceeding for the rehabilitation of The Home is hereby terminated pursuant to RSA 402-C:19;

(b) The Home is declared to be insolvent;

(c) Sufficient cause exists for an order to liquidate The Home;

(d) Paula T. Rogers, Commissioner of Insurance for the State of New Hampshire, and her successors in office, is hereby appointed Liquidator of The Home;

(e) The Liquidator shall cancel all in-force contracts of insurance and bonds effective as of 30 days after the date of this Order;

(f) The Liquidator is directed forthwith to take possession of the assets of The Home wherever located and administer them under the orders of the Court. The Liquidator is vested with title to all of the property, contracts and rights of action and all of the books and records of The Home, wherever located, and in whomever's possession they may be found;

(g) The Liquidator is directed to secure all of the assets, property, books, records, accounts and other documents of The Home (including, without limitation, all data processing information and records comprised of all types of electronically stored information, master tapes, source codes, passwords, or any other recorded information relating to The Home);

(h) The Liquidator is authorized to transfer, invest, re-invest and otherwise deal with the assets and property of The Home so as to effectuate its liquidation;

*William A. McEwen*

(i) The Liquidator is authorized to acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon or otherwise dispose of or deal with any property of the insurer at its market value or upon such terms and conditions as are fair and reasonable without prior permission of the Court in the ordinary course of business;

(j) The Home and its directors, officers, employees, agents, and representatives are prohibited from proceeding with the business of The Home, except upon the express written authorization of the Liquidator;

(k) The Home and its directors, officers, employees, agents, and representatives, and any persons acting in concert with The Home, are prohibited from disposing, using, transferring or removing any property of The Home, without the express written authorization of the Liquidator, or in any way (i) interfering with the conduct of the Liquidator or (ii) interfering with the Liquidator's possession and rights to the assets and property of The Home;

(l) Any bank, savings and loan association or other financial institution or other legal entity is prohibited from disposing of or allowing to be withdrawn in any manner property or assets of The Home, except under the express written authorization of the Liquidator or by further order of this Court.

(m) All actions and all proceedings against The Home whether in this state or elsewhere shall be abated in accordance with RSA 402-C:28 and RSA 402-C:5, except to the extent the Liquidator sees fit and obtains leave to intervene;

(n) To the full extent of the jurisdiction of the Court and the comity to which the orders of the Court are entitled, all persons are hereby permanently enjoined and restrained from any of the following actions:



(1) commencing or continuing any judicial, administrative, or other action or proceeding against The Home or the Liquidator;

(2) commencing or continuing any judicial, administrative, or other action or proceeding against The Home's, the Rehabilitator's or the Liquidator's present or former directors, officers, employees, agents, representatives, or consultants, including, without limitation, Risk Enterprise Management Limited and each of its officers, directors and employees, arising from their actions on behalf of The Home, the Rehabilitator or the Liquidator;

(3) enforcing any judgment against The Home or its property;

(4) any act to obtain possession of property of The Home or to exercise control over property of The Home;

(5) any act to create, perfect, or enforce any lien against property of The Home;

(6) any act to collect, assess, or recover a claim against The Home, other than the filing of a proof of claim with the Liquidator; and

(7) the setoff of any debt owing to The Home; provided, however, that notwithstanding anything in this Order to the contrary, nothing herein is intended nor shall it be deemed to stay any right of setoff of mutual debts or mutual credits by reinsurers as provided in and in accordance with RSA 402-C:34;

(o) The Court hereby seeks and requests the aid and recognition of any Court or administrative body in any State or Territory of the United States and any Federal Court or administrative body of the United States, any Court or administrative body in any Province or Territory of Canada and any Canadian Federal Court or

*William D. McInerney*

administrative body, and any Court or administrative body in the United Kingdom or elsewhere to act in aid of and to be complementary to this Court in carrying out the terms of the Order;

(p) All persons doing business with The Home on the date of the Liquidation Order are permanently enjoined and restrained from terminating or attempting to terminate such relationship for cause under contractual provisions on the basis of the filing of the petition to rehabilitate The Home, The Home's assent to the entry of the Rehabilitation Order, the entry of the Rehabilitation Order, the filing of this Petition, the entry of the Liquidation Order, the rehabilitation or liquidation proceedings for The Home, or The Home's financial condition during the rehabilitation or liquidation proceedings;

(q) All persons in custody or possession of any property of The Home are hereby directed and ordered to turn over any such property to the Liquidator;

(r) The Liquidator is authorized, in her discretion, to pay expenses incurred in the course of liquidating The Home, including the actual, reasonable, and necessary costs of preserving or recovering the assets of The Home, wherever located, and the costs of goods and services provided to The Home estate in this and other jurisdictions. Such costs shall include, but not be limited to: (1) reasonable professional fees for accountants, actuaries, attorneys and consultants with other expertise retained by the Department, the Commissioner or the Liquidator to perform services relating to the liquidation of The Home or the feasibility, preparation, implementation, or operation of a liquidation plan; (2) compensation and other costs related to representatives, employees or agents of The Home or its affiliates who perform services for The Home in liquidation;

and (3) the costs and expenses of and a reasonable allocation of costs and expenses associated with time spent by New Hampshire Insurance Department personnel and New Hampshire Department of Justice personnel in connection with the rehabilitation and the liquidation of The Home;

(s) The Liquidator is authorized to employ or continue to employ, to delegate authority to and fix the compensation of such appropriate personnel, including actuaries, accountants, consultants, special counsel, and counsel in this and other jurisdictions, as she deems necessary to carry out the liquidation of The Home and its worldwide operations, subject to compliance with the provisions of RSA 402-C, the supervision of the Liquidator, and of this Court. The Liquidator is authorized to continue at her sole discretion to retain the services of Risk Enterprise Management Limited, subject to court approval;

(t) The Liquidator is authorized to appoint, and determine the compensation and terms of engagement of, a special deputy to act for her pursuant to RSA 402-C:25, I.

(u) The actual, reasonable and necessary costs of preserving, recovering, distributing or otherwise dealing with the assets of The Home, wherever located, and the costs of goods or services provided to The Home estate under paragraph (i) of the Rehabilitation Order, during the Rehabilitation proceeding, and under paragraphs (r)-(t) and (v) of the Liquidation Order, during the Liquidation proceeding, shall be treated as "costs and expenses of administration," pursuant to RSA 402-C:44, I;

(v) The Liquidator is authorized and directed to work with any joint provisional liquidator or other person of comparable position appointed by a foreign

tribunal with respect to all or any portion of the estate of The Home located outside the United States (the "foreign estates") for the purpose of preserving, recovering and incorporating into the domiciliary estate all assets of The Home located outside the United States. The Liquidator is authorized to fund from the domiciliary estate the costs and expenses of administering the foreign estates;

(w) The Liquidator is directed to administer and make payments on all claims against The Home estate filed with the Liquidator in the domiciliary proceeding, including the claims of claimants residing in foreign countries (provided the assets of such foreign estate are transferred to the Liquidator), in accordance with New Hampshire's priority statute, RSA 402-C:44;

(x) The amounts recoverable by the Liquidator from any reinsurer of The Home shall not be reduced as a result of the prior rehabilitation proceeding or this liquidation proceeding or by reason of any partial payment or distribution on a reinsured policy, contract or claim, and each reinsurer of The Home is, without first obtaining leave of this Court, hereby enjoined and restrained from terminating, canceling, failing to extend or renew, or reducing or changing coverage under any reinsurance policy or contract with The Home. The Liquidator may, in her discretion, commute any contract with a reinsurer or reinsurers;

(y) To the full extent of the jurisdiction of the Court and the comity to which the orders of the Court are entitled, all actions or proceedings against an insured of The Home in which The Home has an obligation to defend the insured are hereby stayed for a period of six months from the date of the Order and such additional time as the Court may determine pursuant to RSA 404-B:18;

(z) Within one year of the entry of this Order, and then annually thereafter, the Liquidator shall file with the Court a financial report, as of the preceding December 31, in accordance with RSA 402-C:21, V, which shall include, at a minimum, the assets and liabilities of The Home and all funds received or disbursed by the Liquidator during the period;

(aa) The Liquidator shall have full powers and authority given the Liquidator under RSA 402-C of Title XXXVII, and under provisions of all other applicable laws, as are reasonable and necessary to fulfill the duties and responsibilities of the Liquidator under RSA 402-C of Title XXXVII, and under the Order, specifically including, but not limited to, each and every power and authority bestowed upon the Liquidator, under RSA 402-C:25, I-XXII, the provisions of which are incorporated by reference in their entirety into this Order, and the common law of New Hampshire; and

(bb) The deadline for the filing of claims pursuant to RSA 402-C:26, II, RSA 402-C:37, I, and RSA 402-C:40, II, shall be one year from the date of this Order.

Date: 6/13/03  
Time: \_\_\_\_\_

By: William S. McEwen  
Presiding Justice

*William S. McEwen*