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MARZIEH J. THURBER, M.D.

July 12, 2006

James D. Farmer  
Attorney at Law  
7330 Torquay Lane  
Houston, Texas 77074

Re: No. 1995-43235; *Harry L. Bowles v. George M. Bishop, Charles K. Peterson, and David E. Sharp, et al.*; in the 151st Judicial District Court, Harris County, Texas

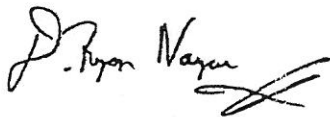
Dear Jim:

It was nice talking to you today and I was happy to update you on the case status. To summarize our conversation, George M. Bishop and Bishop & Associates have filed their own Motion for Summary Judgment, and the hearing for same has been set for August 14, 2006 at 11:30 A.M. Defendant Bishop Peterson & Sharp, P.C.'s Motion to Sever has also been set for that date and time.

In a related matter, it is recently come to my attention that you sent a letter dated June 22, 2006 to Texas Property Casualty Insurance Guaranty Association requesting information regarding the "date of initiation" of Defendant Bishop, Peterson & Sharp, P.C.'s insurance policy. As I am sure you are aware, the Court has entered an Order dated June 22, 2006 granting Defendant Bishop, Peterson & Sharp, P.C.'s Motion for Summary Judgment, and therefore, your request is now moot. I have attached a courtesy copy of the Court's June 26, 2006 Order for your reference.

As always, if you have any questions or concerns, please feel free to contact me at your convenience.

Sincerely,



D. Ryan Nayar  
DRN:mab\85.046

**EXHIBIT P**

James D. Farmer  
July 12, 2006  
Page 2

corr-Farmer 7.11.06.dm.wpd

cc: James D. Farmer  
P.O. Box 19798  
Houston, TX 77224

Barbara Marsh  
Texas Property and Casualty Insurance Guaranty Association  
9120 Burnet Road  
Austin, TX 78758

Re: Home Insurance Company, IN LIQUIDATION – Estate No. 827  
*Harry L. Bowles v. George M. Bishop, et al.*; Cause No. 1995-43235; In the  
151<sup>st</sup> Judicial District Court of Harris County

Claimant: Harry L. Bowles  
Insured: Bishop, Peterson & Sharp  
Claim No.: EL-38-27-60093-001  
Policy No: LPL-F-871578  
Policy Term: January 24, 1993 to January 24, 1994

**PERSONAL & CONFIDENTIAL**

George M. Bishop III  
6922 Alderney Drive  
Houston, Texas 77055

HARRY L. BOWLES

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IN THE DISTRICT COURT OF

VS.

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HARRIS COUNTY, TEXAS

§

§

GEORGE M. BISHOP, CHARLES K.

§

PETERSON, AND DAVID E. SHARP,

§

EACH IN THEIR INDIVIDUAL

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CAPACITIES; AND GEORGE BISHOP

§

& ASSOCIATES, AND

§

BISHOP, PETERSON & SHARP, P.C.,

§

EACH A PROFESSIONAL LAW

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CORPORATION, AND/OR AN

§

ASSUMED NAME OF THE NAMED

§

INDIVIDUALS

§

151st JUDICIAL DISTRICT

**DEFENDANT BISHOP, PETERSON & SHARP, P.C.'S  
RESPONSE TO PLAINTIFF'S RULE 12 MOTION TO SHOW AUTHORITY**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW a Defendant herein, BISHOP, PETERSON & SHARP, P.C., and summary judgment having already been granted in its favor but, out of an abundance of caution, offers the Court the following response to the Rule 12 Motion to Show Authority recently filed by Plaintiff, and would show all the following:

I.

The undersigned counsel for Defendant BISHOP, PETERSON & SHARP, P.C. thought he had seen it all in 35 years of practice, but this Motion to Show Authority demonstrates otherwise. As if the outrageous character of the litany of litigation Plaintiff Harry Bowles is responsible for, with all the attendant machinations, irresponsible accusations, and hopeless misstatement of the law was not enough, Plaintiff now questions

**EXHIBIT Q**

the authority of the attorneys for BISHOP, PETERSON & SHARP, P.C. to prosecute their defense. The motion would be almost humorous were it not for the unconscionable history behind this entire sad misuse of the judicial system.

## II.

It is difficult to ferret out the truth from the misstatements in the multiple pages in the motion entitled "History" and "Conclusions." Accordingly, the true facts which are pertinent to this motion will be set out here. The original litigation by Plaintiff Bowles which is still occupying the courts of this state began in Cause No. 91-025939, a suit referenced more simply as *Bowles v. Schwarz*. That suit was one by Harry Bowles against his business partner, Charles Schwarz, Jr. The trouble began in 1990 when Mr. Bowles, who was essentially running the company, gave himself a raise, resulting in his being fired by Schwarz. After a brief lawsuit between the two, which ended in a settlement, Schwarz later hired Bowles again (in what he has described as "a moment of weakness"). Ultimately, Bowles was fired again and filed his 1991 lawsuit. That litigation has taken many tortured turns and twists since that time.

In December of 1993 Bowles made a claim against the BISHOP, PETERSON & SHARP law firm over Bowles' representation by attorney George Bishop. In August of 1995 Bowles filed suit against Bishop, the firm, and other firm members. That lawsuit claims various causes of action arising out of the firm's representation of Bowles back in the original 1991 lawsuit. The Home Insurance Company insured the BISHOP, PETERSON & SHARP law firm during the policy period January 24, 1992 to January 24, 1993, and

coverage was renewed for another year until January 24, 1994. Under Section B-Coverage, in the subsection entitled Professional Liability and Claims Made Coverage, the Home Insurance Company obligated itself to pay on behalf of the firm all sums in excess of the deductible amount which the insured became legally obligated to pay as damages as a result of claims first made against the insured firm during the policy period and reported to the Company during that period.

In 1995 the Home Insurance Company ceased writing new business but continued to pay claims in due course. By Order of June 13, 2003, from the Superior Court of Merrimack County, State of New Hampshire, the Home Insurance Company was declared to be insolvent and an Order of Liquidation was entered. Thereafter, by Order dated June 26, 2003, the Home Insurance Company was designated by the Texas Commissioner of Insurance as an impaired insurer under Texas Insurance Code 21.28-C. That same article of the Texas Insurance Code created the Texas Property and Casualty Insurance Guaranty Association (“TPCIGA”) as a non-profit, unincorporated legal entity to serve as a safety net to reduce the financial loss potentially suffered by claimants and insureds when an insurance company becomes impaired. It was pursuant to that statute that the Guaranty Association properly assumed handling of this lawsuit, *Harry Bowles v. George Bishop, et al.*, Cause No. 1995-43235 pending in the 151st Judicial District Court of Harris County, Texas.

The Home Insurance Company had notice of Mr. Bowles’ claim against BISHOP, PETERSON & SHARP, P.C. prior to liquidation and the Liquidator forwarded the claim file to TPCIGA shortly after the insurance company was declared insolvent and was designated

under Texas law as an “impaired insured.” This claim was found to meet the threshold requirements for a “covered claim” under the Guaranty Act, although the claim is still subject to various policy and/or statutory provisions that might limit or exclude coverage, as well as any available defenses to the claim itself. Once TPCIGA assumed handling of this lawsuit pursuant to the statute discussed above, it retained the firm of Marshall & McCracken to defend the insured law firm further, as is entirely proper. For the Court’s convenience, copies of (1) Article 21.28-C (the Property and Casualty Insurance Guaranty Act), (2) the TPCIGA Summary of Rights and Obligations of Third-Party Claimants Under the Guaranty Act, and (3) the Texas Property and Casualty Insurance Guaranty Association Plan of Operation, are attached hereto, after proper authentication, as Exhibits A, B and C, respectively.

### III.

Attached for the Court’s further review is a proper and sworn Affidavit from attorney Amber A. Walker, Senior Claims Attorney for the Texas Property and Casualty Insurance Guaranty Association which offices at 9120 Burnet Road, Austin, Texas 78758. Ms. Walker’s Affidavit will confirm the accuracy of all the information set out above, including the insolvency of the Home Insurance Company (again, BISHOP, PETERSON & SHARP, P.C.’s former liability insurance carrier), its declaration pursuant to the statute as an “impaired insurer,” assumption of the handling of this case against the insured law firm by TPCIGA, and the official retention of the firm of Marshall & McCracken, P.C. to further represent the interests of the Defendant law firm.

In light of all the above, it is patently obvious that this Rule 12 Motion to Show Authority recently filed by Plaintiff has absolutely no grounds, is utterly inappropriate, and itself constitutes sanctionable harassment by an opposing party and his counsel who have been thoroughly apprized of all the above long before the frivolous Rule 12 Motion was ever penned or filed. This Defendant now gives formal notice to Plaintiff and his attorney that any such further groundless and vexatious motions will be met with a spirited Motion for Sanctions which documents their entire multi-year chronicle of disreputable behavior.

WHEREFORE, PREMISES CONSIDERED, Defendant BISHOP, PETERSON & SHARP, P.C. prays that, upon final hearing hereof, Plaintiff's Rule 12 Motion to Show Authority be in all things denied and that this Defendant have any and all other relief of any character to which it might be justly entitled.

Respectfully submitted,

**MARSHALL & MCCrackEN, P.C.**

By: 

John C. Marshall

SBN 13043000

D. Ryan Nayar

SBN 24035911

1990 Post Oak Boulevard, Suite 2400

Houston, TX 77056

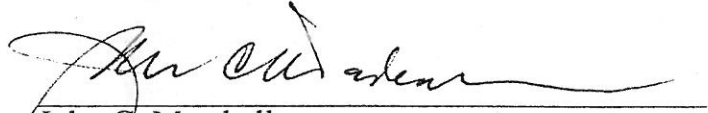
(713) 622-8944

FAX (713) 622-6786

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

## CERTIFICATE OF SERVICE

I hereby certify that i have caused a true and correct copy of the foregoing instrument to be served upon opposing counsel of record herein, James D. Farmer, Attorney at Law, 7330 Torquay Lane, Houston, Texas 77074 , by certified mail, return receipt requested, with a courtesy copy to James D. Farmer, P.O. Box 19798, Houston, TX 77224, on this 12<sup>th</sup> day of September, 2006.



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John C. Marshall



AFFIDAVIT

THE STATE OF TEXAS

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COUNTY OF HARRIS

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

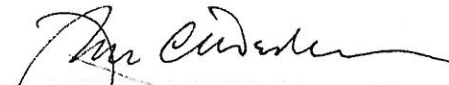
My name is John C. Marshall. I am over 18 years of age. I am one of the attorneys of record for Defendant Bishop, Peterson & Sharp, P.C. in No. 1995-43235; *Harry L. Bowles v. George M. Bishop, Charles K. Peterson, and David E. Sharp, et al.*; in the 151st Judicial District Court, Harris County, Texas. As such, I am duly authorized to make this affidavit. I have personal knowledge of each of the matters and facts set forth in the foregoing Response to Plaintiff's Rule 12 Motion to Show Authority, and they are true and correct. Additionally, the exhibits attached thereto are true and correct copies of the original documents, namely:

Exhibit "A": Article 21.28-C (the Property and Casualty Insurance Guaranty Act)

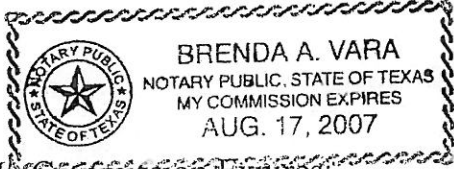
Exhibit "B" TPCIGA Summary of Rights and Obligations of Third-Party Claimants Under the Guaranty Act

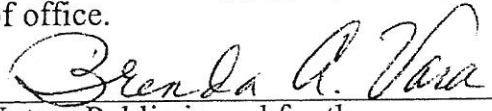
Exhibit "C" Texas Property and Casualty Insurance Guaranty Association Plan of Operation

Further affiant sayeth not.

  
\_\_\_\_\_  
John C. Marshall

SUBSCRIBED and SWORN TO, before me, on this the 12<sup>th</sup> day of September, 2006, to certify which witness my hand and seal of office.

  
My Commission Expires:

  
\_\_\_\_\_  
Notary Public in and for the  
State of Texas



to offer a copy of the original liability policy issued to the law firm by the Home Insurance Company.

## II.

What is becoming clearer and clearer, especially after yesterday's hearing, is that Bowles has no legitimate basis to question Marshall & McCracken's authority to represent BPS. The argument at hearing was, "they have not demonstrated their authority to act," which is itself incorrect. Note, as an initial matter, that Rule 12 requires that the challenging party "believe[] the suit or proceeding is being ... defended without authority." Tex. R. Civ. P. 12. It is also important to note that, even though Rule 12 also applies to defendants, its original purpose was to "discourage and to cause the dismissal of suits brought without authority. It was intended to aid in protecting defendants from *groundless suit*. It was thought that a person who was sued was entitled to know that *the named plaintiff* had in fact authorized the suit." *Mobile Homes of America, Inc. v. Easy Living*, 527 S.W.2d 847, 848 (Tex. Civ. App. – Ft. Worth 1975, no writ) (citation omitted).

That Bowles persists with his motion despite clear evidence (including an unchallenged affidavit from Amber Walker, who has confirmed Marshall & McCracken's authority to represent BPS) reveals the desperation behind his attempts to escape this Court's summary judgment.

## III.

Although Bowles has given this Court no reason to disbelieve Ms. Walker's unchallenged testimony, at the Court's suggestion, attached as Exhibit "A" is a copy of the declarations page and policy of insurance issued to Bishop, Peterson & Sharp, P.C. by the Home Insurance Company. Attached as Exhibit "B," then, is a copy of the June 26, 2003 Order from the Commissioner of the Texas Department of Insurance, officially designating

the Home Insurance Company as an “impaired insurer” under Texas Insurance Code article 21.28-C. Defendant has already provided to this Court a copy of Insurance Code article 21.28-C, including the enabling statute for the Texas Property and Casualty Insurance Guaranty Association (“TPCIGA”), and an affidavit from Amber Walker, who has confirmed that TPCIGA retained Marshall & McCracken to represent the law firm of Bishop, Peterson & Sharp. P.C. in the lawsuit filed by Harry Bowles.

The undisputed facts, then, are as follows:

1. Harry Bowles filed a would-be legal malpractice lawsuit against Mr. Bishop and BPS.
2. Bishop demanded a defense and indemnity from the law firm’s insurer, the Home Insurance Company.
3. The Home Insurance Company, during the pendency of this suit, was declared an “impaired insurer.”
4. Article 21.28-C of the Insurance Code authorizes (and, in fact, obligates) TPCIGA to defend the claims against insureds of “impaired insurers.”
5. TPCIGA honored its statutory obligation to provide a defense to BPS.
6. TPCIGA retained the law firm of Marshall & McCracken to represent BPS in the lawsuit brought by Plaintiff Harry Bowles.

#### IV.

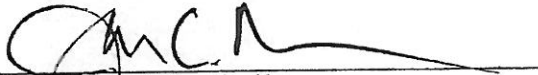
This Rule 12 motion is the latest of Plaintiff Harry Bowles’s desperate efforts to rid himself of the summary judgment against him. As is evidenced by his insistence upon having yesterday’s hearing recorded, this is probably not the last we will hear from Mr. Bowles. However, it is quite clear that Plaintiff’s Rule 12 motion must be denied. Mr. Bowles’ reluctance to accept reality, and dogged insistence upon insulting everybody on

the opposite side of the lawsuit notwithstanding, the undersigned law firm is clearly authorized to defend the law firm of Bishop, Peterson & Sharp, P.C. in this lawsuit.

WHEREFORE, PREMISES CONSIDERED, Defendant BISHOP, PETERSON & SHARP, P.C. respectfully prays that this Honorable Court deny Plaintiff's Rule 12 Motion to Show Authority, and grant any other and further relief to which this Defendant may show itself justly entitled.

Respectfully submitted,

**MARSHALL & MCCrackEN, P.C.**

By:   
John C. Marshall  
SBN 13043000  
James C. Marrow  
SBN 24013103

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

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

## CERTIFICATE OF SERVICE

I hereby certify that I have caused a true and correct copy of the foregoing instrument to be served upon opposing counsel of record herein, James D. Farmer, Attorney at Law, 7330 Torquay Lane, Houston, Texas 77074 , both by facsimile and certified mail, return receipt requested, with a courtesy copy to James D. Farmer, P.O. Box 19798, Houston, TX 77224, on this 19th day of September, 2006.



James C. Marrow

AFFIDAVIT

THE STATE OF TEXAS

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§  
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COUNTY OF HARRIS


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

My name is James C. Marrow. I am over 18 years of age. I am one of the attorneys of record for Defendant Bishop, Peterson & Sharp, P.C. in No. 1995-43235; *Harry L. Bowles v. George M. Bishop, Charles K. Peterson, and David E. Sharp, et al.*; in the 151st Judicial District Court, Harris County, Texas. As such, I am duly authorized to make this affidavit. I have personal knowledge of each of the matters and facts set forth in the foregoing Second Supplemental Response to Plaintiff's Rule 12 Motion to Show Authority, and they are true and correct. Additionally, the exhibits attached thereto are true and correct copies of the original documents, namely:


Exhibit "A": Declarations page and policy of insurance issued to Bishop, Peterson & Sharp, P.C. by the Home Insurance Company.

Exhibit "B": June 26, 2003 Order from the Commissioner of the Texas Department of Insurance, officially designating the Home Insurance Company as an "impaired insurer" under Texas Insurance Code 21.28-C.

Further affiant sayeth not.

  
James C. Marrow

SUBSCRIBED and SWORN TO, before me, on this the 19<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:

