

**THE STATE OF NEW HAMPSHIRE**

**MERRIMACK, SS.**

**SUPERIOR COURT**

**Docket No. 03-E-0106**

**In the Matter of the Liquidation of  
The Home Insurance Company**

**LIQUIDATOR'S OBJECTION TO CLAIMANT  
HARRY L. BOWLES' SECOND MOTION TO RECOMMIT**

Roger A. Sevigny, Insurance Commissioner, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), hereby objects to the "Claimant's Second Motion to Recommit and for Court Order Voiding, Nullifying and Rescinding All Orders and Proceedings regarding Claim Number CLMN712396-01 for Fraud" ("Second Motion to Recommit") submitted by Claimant Harry L. Bowles ("Claimant") with respect to Disputed Claims Docket 2008-HICIL-41. For the reasons set forth below, Claimant's Second Motion to Recommit should be denied as untimely and or, alternatively, because the motion is precluded under principles of res judicata and collateral estoppel by the final order entered in the prior proceedings on his claim.

**Background**

1. The Claimant's Second Motion to Recommit was filed on or about February 28, 2011. It seeks to recommit the Order on the Merits issued by the Referee on January 4, 2010 in 2008-HICIL-41. Second Motion to Recommit ¶ 1.

2. That Order on the Merits, together with the Referee's subsequent Order on Claimant's Demand for Referee's Ruling on Claimant's Motion for Summary Judgment issued by the Referee on February 11, 2010, were the subject of the "Claimant's Motion to Recommit Based on Newly Discovered Facts and Evidence of Massive Fraud and Deceit in Dealing by the

Liquidator in Conspiracy with Others” (the “First Motion to Recommit”), which was dated April 12, 2010 and filed some time thereafter.

3. The Liquidator objected to the First Motion to Recommit in the Liquidator’s Objection to Claimant Harry L. Bowles’ Motion to Recommit (“Liquidator’s First Objection”) filed on April 27, 2010. In that objection, the Liquidator contended that the First Motion to Recommit should be denied on two grounds: (a) it was untimely, and (b) for the reasons stated in the Referee’s orders. Liquidator’s First Objection at 3-5.<sup>1</sup>

4. The Court denied the First Motion to recommit by order dated June 3, 2010. The order stated: “Motion DENIED on both grounds asserted in the objection.” A copy of the Clerk’s Notice of Decision dated June 8, 2010 enclosing the order is attached as Exhibit A to this Objection.

## **ARGUMENT**

### **I. The Second Motion to Recommit Should Be Denied as Untimely.**

5. The Second Motion to Recommit should be denied because it was filed long after the 15-day period established in the order governing such motions in this liquidation proceeding has run. That order provides that “[w]ithin fifteen (15) days from the date the Referee’s report is filed with the Court, the Claimant... shall have the right to file a Motion to Recommit.” Restated and Revised Order Establishing Procedures Regarding Claims Filed with The Home Insurance Company in Liquidation dated January 19, 2005 (“Claims Procedures Order”) ¶ 20(a).

6. The Second Motion to Recommit was filed over a year after the Referee’s Order on the Merits and the Referee’s subsequent Order on Claimant’s Demand for Referee’s Ruling on Claimant’s Motion for Summary Judgment. Indeed, the Court held that the First Motion to

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<sup>1</sup> The Referee’s orders and other materials concerning the proceedings before the Referee were submitted to the Court as exhibits to the Liquidator’s First Objection, which is incorporated by reference.

Recommit filed ten months ago was untimely in its June 3, 2010 Order. The Second Motion to Recommit is accordingly untimely and should be denied on that ground alone.

7. The Second Motion to Recommit could be viewed as a motion for reconsideration of the First Motion to Recommit, as the Claimant “again requests this Court examine the sole issue in question, which is Did TPCIGA violate this Court’s June 13, 2003 Order of Liquidation when it initiated a defense of Home Insurance Policy No. LPL-F871578 in Texas in August 2005?” Second Motion to Recommit ¶ 1 (emphasis added). If so, it is untimely as outside the 10 day period for motions for reconsideration under Superior Court Rule 59-A. It thus may be properly denied on this ground alone. See Bennett v. Town of Hampstead, 157 N.H. 477, 486 (2008).

**II. The Second Motion to Recommit Should Be Denied Because It Seeks To Relitigate Matters Previously Decided Against The Claimant.**

8. The untimely motion should also be denied because it seeks “readjudication” of Claimant’s proof of claim and the Order on the Merits. Second Motion to Recommit ¶ 1. Since the June 8, 2010 order denying the First Motion to Recommit was the final resolution of Claimant’s claim in the Home liquidation, and the Claimant did not timely appeal within the 30 days provided by Supreme Court Rule 7(1)(A), he is now precluded from raising the claim again by principles of res judicata. “Res judicata precludes the litigation in a later case of matters actually decided, and matters that could have been litigated, in an earlier action between the same parties for the same cause of action.” Kalil v. Town of Drummer Zoning Bd. of Adjustment, 159 N.H. 725, 730 (2010) (citations omitted). “The doctrine applies when three elements are met: (1) the parties must be the same or in privity with one another, (2) the same cause of action must be before the court in both instances; and (3) a final judgment on the merits must have been rendered in the first action.” Id. Res judicata applies here because the Claimant

and Liquidator have previously litigated the same cause of action (Claimant's proof of claim) to a final judgment on the merits (the Court's June 8, 2010 order, which he did not appeal).

Claimant accordingly may not seek to litigate further any matters concerning his claim, whether or not he actually raised them before.

9. In this case, the Claimant did previously raise the issue he now seeks to litigate. He is thus also precluded by collateral estoppel from seeking a new determination of whether "TPCIGA violate[d] this Court's June 13, 2003 Order of Liquidation when it initiated a defense of Home Insurance Policy No. LPL-F871578 in Texas in August 2005?" (Second Motion to Recommit ¶ 1). "For collateral estoppel to apply, the issue subject to estoppel must be identical in each action, the first action must have resolved the issue finally on the merits, and the party to be estopped must have appeared as a party in the first action, or have been in privity with someone who did so." In re Wingate, 149 N.H. 12, 15 (2002) (citations omitted). "Further, the party to be estopped must have had a full and fair opportunity to litigate the issue, and the finding must have been essential to the first judgment." Id.

10. The issue Claimant seeks to litigate was previously raised and resolved against him by the Referee and the Court. The First Motion to Recommit alleged that TPCIGA violated the Order of Liquidation. First Motion to Recommit ¶ 15 (seventh unnumbered bullet point), ¶ 16 (second unnumbered bullet point); Claimant's Response to Liquidator's Objection to Claimant Harry L. Bowles motion to Recommit filed on or about May 10, 2010 ¶ 4 (first through third unnumbered bullet points), ¶ 14 (second unnumbered bullet point). The Court rejected the Claimant's argument in the June 8, 2010 order, which denied the First Motion to Recommit based on the reasons stated in the Liquidator's First Objection. That objection incorporated the reasons set forth in the Referee's orders, and the Referee had rejected Claimants' argument:

The Liquidator sent files of potential claims to various Guaranty Associations after the liquidation. In so doing, the Liquidator was complying with statutes and the Liquidation Order. Pursuant to statute, TPCIGA was required to act on Home's behalf once Home was placed in liquidation. Therefore, when the claims were filed by Mr. Bowles against BPS, it was TPCIGA which was required to, and did, provide a defense to BPS and its shareholders.

Referee's Order on the Merits at 5 (emphasis added).<sup>2</sup> Since the issue Claimant now seeks to have determined was actually litigated in proceedings before the Referee followed by review by the Court and was finally resolved against him by the June 3, 2010 order, he is barred from raising it again.

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<sup>2</sup> The Liquidator had explained the relationship between the Liquidator and TPCIGA at pages 20-21 of the Liquidator's Section 15 Submission dated November 5, 2009 (attached to the Liquidator's First Objection).

**CONCLUSION**

For the foregoing reasons, the Court should deny the Claimant's Second Motion to Recommit.

Respectfully submitted,

ROGER A. SEVIGNY, COMMISSIONER  
OF INSURANCE OF THE STATE OF  
NEW HAMPSHIRE, SOLELY AS  
LIQUIDATOR OF THE HOME  
INSURANCE COMPANY,

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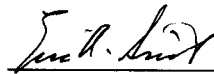
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March 8, 2011

**Certificate of Service**

I hereby certify that a copy of the foregoing Liquidator's Objection to Claimant Harry L. Bowles' Second Motion to Recommit was mailed this 8th day of March, 2011, by first class mail, postage prepaid, to all persons on the attached service list.



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NH Bar ID No. 16952

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

In the Matter of the Liquidation of  
The Home Insurance Company  
Docket No. 03-E-0106

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NOTICE OF DECISION

ERIC A SMITH, ESQ  
RACKEMANN SAWYER & BREWSTER  
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Case Name: **In the Matter of Rehabilitation of The Home Insurance Company**  
Case Number: **217-2003-EQ-00106**

Please be advised that on June 03, 2010 Judge Smukler made the following order relative to:

Disputed Claims Docket-Claimant's (Harry L. Bowles) Motion to Recommit Based on Newly Discovered Facts & Evidence of Massive Fraud & Deceit in Dealing by the Liquidator in Conspiracy With Others: "Motion DENIED on both grounds asserted in the objection."

[Proposed] Order Approving Settlement Agreement with Wyeth: "Approved" copy attached.

[Proposed] Order Approving Settlement Agreement with Sauget Estate & Others: "Approved" copy attached.

[Proposed] Order Approving Settlement Agreement with UGI: "Approved" copy attached.

June 08, 2010

William S. McGraw  
Clerk of Court

(484)

C: John F O'Connor, ESQ; Carey Almond, ESQ; Lawrence J Eisenstein, ESQ; Gerald J Petros, ESQ, Christopher H.M. Carter, ESQ; Melinda S Gehris, ESQ; John A Hubbard; Jim Darnell, ESQ; Richard Mancino, ESQ; Joseph G Davis, ESQ; Albert P Bedecarre, ESQ; Adebowale Osijo, MBA; Marc E Rosenthal; Mark J Steger, Partner; J. David Leslie, ESQ; Roger A Sevigny, Commissioner of Ins.; Pieter Van Tol, ESQ; Gary S Lee, ESQ; Adam Goodman, ESQ; Gail M Goering, ESQ; Eric A Haab, ESQ; Mary Ann Etzler, ESQ; David H Simmons, ESQ; Thomas M McHugh, ESQ; David M Spector, ESQ; Dennis G LaGory, ESQ; Peter Bengelsdorf; Lisa S Wade, ESQ; Stephan P Parks, ESQ; Michael Cohen, ESQ; Kathleen E Schaff, ESQ; Peter G. Callaghan, ESQ; George T. Campbell, III; Martin P. Honigberg, ESQ; Edmond J. Ford, ESQ; J. Christopher Marshall, ESQ; Peter C.L. Roth, ESQ; Paul W. Kalish, ESQ; Ellen M. Farrell, ESQ; Timothy E. Curley, ESQ; Andrew Livernois, ESQ; Harry L. Bowles

THE STATE OF NEW HAMPSHIRE  
MERRIMACK S.S. SUPERIOR COURT

BEFORE THE COURT-APPOINTED REFEREE  
IN RE THE LIQUIDATION OF HOME INSURANCE COMPANY

DISPUTED CLAIMS DOCKET

In Re Liquidator Number: 2008-HICIL-41  
Proof of Claim Number: CLMN712396-01  
Claimant: Harry L. Bowles

CLAIMANT'S MOTION TO RECOMMIT BASED ON NEWLY DISCOVERED  
FACTS AND EVIDENCE OF MASSIVE FRAUD AND DECEIT IN DEALING  
BY THE LIQUIDATOR IN CONSPIRACY WITH OTHERS

1. On January 4, 2010 Referee Melinda Gehris signed an 8-page Order on the Merits, which order purportedly addresses and adjudicates the issues raised in the subject litigation and passes these to the Court for approval. The Order was issued prior to the Referee's action on Bowles' Motion for Summary Judgment dated November 16, 2009 to which Liquidator's counsel refused to substantively respond.
2. The primary basis for Claimant's Motion for Summary Judgment was the applicability of the Exclusions Clause of Home Policy No. LPL-F871578 as a bar to coverage of Bowles' malpractice lawsuit against Bishop, Peterson & Sharp, P.C. and against George M. Bishop and George M. Bishop & Associates, the latter two defendants being sole proprietorships in no way eligible for insurance coverage under the Home policy.
3. In his response to the Motion for Summary Judgment the Liquidator denied that Home

6/3/10  
Motion DENIED on  
both grounds asserted  
in the objection.  
Zur 7.04. [Signature]

Posted  
5/6/10