

**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 BRIEF ADDRESSING ISSUES AS REQUESTED

IN REFEREE'S AUGUST 19, 2009 ORDER

I

Introduction

1. The most recent scheduling order by the Referee is dated August 19, 2009, in which Bowles was requested to submit a brief concerning three topics by September 14, 2009, and the Liquidator was requested to respond by October 14, 2009.
2. Since August 19, there have been several developments of relevance to this proceeding, one being in regard to the submission in the Texas 151st District Court by David E. Sharp, **an insured under Home Policy No. LPL-F871578**, of an original answer to Bowles' malpractice lawsuit on June 19, 2009 that included a motion for summary judgment.
3. Sharp's answer, attached as **Exhibit A**, includes the same affirmative defense that employed by defendant Bishop, Peterson & Sharp, P.C. when that defendant submitted a second

answer to the lawsuit in 2005, namely that Sharp is entitled to credit and setoff under the Texas Property and Casualty Insurance Guaranty Act, thus asserting his claim to malpractice liability insurance coverage under Home Insurance Policy No. LPL-F871578.

4. Sharp's Motion for Summary Judgment in the Texas court was based on the same set of alleged facts and law employed by defendant BPS and by Defendants George M. Bishop and George M. Bishop & Associates that resulted in summary judgments against Bowles in that Court on June 22, 2006 and on April 12, 2007, respectively.

5. Subsequently, the new presiding judge in the Texas 151st Court (Judge Englehart) proceeded to grant defendant Sharp's motion for summary judgment on July 21, 2009 against Bowles as had his predecessor (Judge Baker) in rulings for defendants BPS, George M. Bishop and George M. Bishop & Associates.

6. Subsequently as well, Bowles filed on October 1, 2009 a Rule 12 motion challenging the authority of defendant Sharp's counsel to appear in defense of Home Insurance Policy No. LPL-F871578 and challenging the Court's jurisdiction to issue orders based on the intervention of TPCIGA and the Liquidator for Home Insurance into the litigation.

7. The response of the attorney for defendant Sharp to the Rule 12 motion (attached as **EXHIBIT B**) is of interest for its failure to refer to any insurance policy whereby the attorney was authorized to invoke intervention by TPCIGA. This is consistent with the refusal of the Marshall & McCracken law firm in 2006 to produce a copy of Home Policy No. LPL-F871578 to show authority under the Texas Insurance Guaranty Act.

8. Consistent with the action taken by Judge Baker on September 27, 2007, Judge Englehart summarily rejected Bowles' Rule 12 motion on October 12, 2009 without inquiry into

TPCIGA's alleged authority to intervene in defense of Home Insurance Policy No. LPL-F871578.

9. The Texas court thereby rejected Bowles' contention that the Merrimack Superior Court has sole jurisdiction over the vital issue of whether or not Home Insurance Policy No. LPL-F871578 was applicable to cover Bowles' lawsuit against BPS and all other defendants in Cause No. 1995-43235.

10. The issue of jurisdiction to decide applicability of the policy to Bowles' lawsuit is now before the Referee for determination and is included in two of the three topics the Referee has requested briefing about, which are:

- A. Whether the disallowance of Mr. Bowles' claim by the Liquidator was proper based on the language of the Home policy issued to Bishop, Peterson & Sharp, P.C.
- B. Whether Mr. Bowles is entitled to recovery on his claim that Home improperly provided a defense to Bishop, Peterson & Sharp, P.C., and
- C. Whether the principle of *res judicata* bars any claim by Mr. Bowles.

II

Argument Re Issue A – Propriety of Claim Rejection

11. The Referee's request is highly ambiguous and difficult to comprehend because the policy does not include language that addresses allowance or disallowance of claims pursuant to the New Hampshire Insurance Code or the Order of Liquidation. Bowles' response may therefore be similarly equivocal.

12. It is obvious that if, as asserted by HICIL'S Mr. Barta and by TPCIGA's Ms. Walker in sworn affidavits, that if Home Insurance "undertook" to provide a defense of the policy when Bowles' lawsuit was filed on the basis of the company's "potential" liability, then the language of the policy is irrelevant. This is true because the policy defines only "covered claims" and **does not define a "potential covered claim"**. If the premise "potential covered claims" had validity,

there could be no language in any insurance policy issued by any company to circumscribe or limit the insurance company's liability.

13. The term "potential covered claim" is an illegal ad hoc device conceived expressly by Mr. Barta and or Ms. Walker or others (possibly convicted felon George M. Bishop) to further a fraudulent scheme to justify an illegal intervention by Home and TPCIGA into Bowles' lawsuit in open violation of the language in the policy limiting coverage **solely to "covered claims"**.

14. Home official Ronald F. Barta in his affidavit stated two rationalizations for Home having undertaken coverage and provided a defense against Bowles' lawsuit: (a) that it was pursuant to the Discovery Clause in the policy; and (b) that the company was "within its rights to afford same even if voluntarily".

15. The Discovery Clause in Policy No. LPL-F871578 is very specific as to the requirements for application of the Clause. To be applicable, an insured party must provide to the company a notice when the insured party first becomes aware that a specific act, error or omission in rendering professional services for which coverage is otherwise provided has been committed. The act must be described, and the injury or damage which has or may result must be stated as well as the circumstances by which the insured first became aware of such act, error or omission. The notice under the Discovery Clause is subject to investigation by the company, and must not violate Part I and II of the claims section of the policy.

16. The Referee, in agreement with the Liquidator's opposition to Bowles' discovery request, has refused to permit disclosure of the alleged Discovery Clause Notice received by Home. Thus, Bowles cannot address this vitally important matter concerning an act of professional malfeasance by BPS that resulted in damage to the client.

17. As to the assertion by Mr. Barta that, even if coverage and provision of defense counsel to BPS against Bowles' lawsuit was not owed, Home had the right to provide same on a voluntary basis, this can only be assumed to be an admission by Home that the policy was not applicable, but that Home was suborned by some undisclosed means (possibly bribery) to provide counsel to defend the policy.

18. Inasmuch as defense of the policy may have been at a cost of hundreds of thousands of dollars, this alleged right of Home Insurance to voluntarily provide coverage where none is owed has absolutely no validity. It is, in fact, an expression of a criminal mindset, signifying that the administration of company business by its officials was without reference to any rules of ethical conduct and responsibilities to policy holders and to laws governing insurance operations in the entire United States.

19. All expenditures by Home to defend policies where a defense is not owed constitute a reduction of assets of the estate available for distribution to creditors by the Liquidator. The Liquidator and the Liquidator's counsel (including the New Hampshire Department of Justice) cannot be seen on pain of public exposure to support and defend Mr. Barta's thesis that Home had a right to voluntarily provide defense counsel for BPS even though this benefit was not owed. This "rob Peter to pay Paul" concept must be emphatically rejected and renounced.

20. The rejection of Bowles claim was based on the Liquidator's recognition that the 151st District Court in Texas had issued final judgments of dismissal of Bowles' lawsuit against BPS, and that, therefore, Bowles has no standing to file a claim with the Liquidator for coverage under Home Policy No. LPL-F871578.

21. **Bowles response to the rejection is and has been that the Liquidator had and has no authority to take judicial notice of the decisions by the judges in Texas because Home**

Insurance and TPCIGA officials (wittingly or unwittingly) were co-conspirators in a scheme of fraud and deceit against Bowles whereby a sham legal proceeding was initiated in which Bowles' rights to due process were totally disregarded and in which the result was a foregone conclusion because of the bias (by subornation) of the court.

22. As stated in Bowles' response to insured David E. Sharp's Motion for Summary Judgment of which all parties received copies:

No Court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgment of a court, no order of a Minister, can be allowed to stand if it had been obtained by fraud. Fraud unravels everything. (Denning LJ), citing *Lazarus Estates Ltd. v. Beasley* [1956] 1QB 702 from the UK; and

The U.S. Supreme Court, state courts and courts around the world have upheld the common law maxim: **Fraud vitiates everything**. Sample cases are: *In re Jose Alejandro Penafiel*, No. 05-0213, Texas Supreme Court (2001) – Texas law holds that fraud vitiates every transaction tainted by fraud; and *United States v. Throckmorton*, 98 US 61,70 (1878) – Fraud vitiates the most solemn contracts, documents and even judgments.

23. Thus, the response to the Referee's request for briefing on whether or not the rejection of Bowles' claim by the Liquidator was proper based on the language in the policy is that it was not proper because Home Insurance committed itself to coverage of the claim while knowing that it was a party to a conspiracy involving a fraudulent scheme in Texas in direct violation of the terms and conditions in the policy and in violation of the Insurance Code of the State of New Hampshire and this Court's June 13, 2003 Order of Liquidation.

III

Argument Re Issue B – Claim for Improperly Providing Defense of Policy

24. Bowles' briefing of this topic consists of the proposed findings of fact and rulings of law distributed to the Referee, to the Liquidator, to the Court and to TPCIGA on September 14, 2009.

A copy is attached as **EXHIBIT C**.

25. There has been no response from the Liquidator or from TPCIGA regarding the September FFCL issued by Bowles.

26. The primary irrefutable fact is that Home Insurance Policy No. LPL-F871578 had no applicability to Bowles' prospective lawsuit or to his actual lawsuit pursuant to Section C – Exclusions, Subsections I (a), (b), (c), and (h), and that Home was fully aware of the inapplicability some 18 months prior to August 1995 when the lawsuit was filed.

27. It is undeniable that Bowles' claim that Home and TPCIGA improperly provided defense counsel, either in 1995 or in 2005, to defend Policy No. LPL-F871578 for BPS and for George M. Bishop dba George M. Bishop & Associates is absolutely valid.

28. The damages caused by this tortious interference and tortious abuse of process are exacerbated and compounded by the fact that the insurance company and TPCIGA acted knowingly and intentionally in conspiracy with others to execute a fraudulent scheme to secure false judgments in the Texas court against Bowles by summary judgment in violation of all applicable laws and of his constitutional rights to justice by due process of law.

IV

Argument Re Issue C – Whether the Principle of *Res Judicata* Bars Any Claim by Bowles

29. As stated above, American and Texas law holds that fraud vitiates all things, vitiate meaning per Black's Law Dictionary:

To impair; to make void or voidable; to cause to fail of force or effect. To destroy or annul, either entirely or in part, the legal efficacy and binding force of an act or instrument; as when it is said that fraud vitiates a contract.

30. As stated in a previous pleading submitted to this Court, the fraud to which Bowles has been subjected in all courts regarding all matters connected to convicted felon George M. Bishop since November 1992 has been unrelenting and uninhibited by any regard for moral or ethical or legal principles. All courts have submitted to subordination of office (bribery).

31. The right to obtain a set aside of judgments for fraud in Texas finds expression in Texas Rules of Civil Procedure Rule 329b (f), stating:

On expiration of the time within which the trial court has plenary power, a judgment cannot be set aside by the trial court except by bill of review for sufficient cause, filed within the time allowed by law; provided that the court may at any time correct a clerical error in the record of a judgment and render judgment nunc pro tunc under Rule 316, and may also sign an order declaring a previous judgment or order to be void because signed after the court's plenary power had expired.

32. This court's recognition that the summary judgment orders sought and obtained by TPCIGA's employed counsel in defense of Home Policy No. LPL-F871578 was the result of fraud and conspiracy will invoke Bowles' right to void those orders by Bill of Review. Any belief or suggestion to the contrary must be seen as anarchic and agreement that judicial corruption cannot be challenged.

33. The ultimate fraud in this case is the Liquidator's rejection of Bowles' claim based on the summary judgments issued by the 151st Court in Houston for BPS against Bowles in June 2006 and for George M. Bishop dba George M. Bishop & Associates in April 2007.

34. These judgments were obtained by fraud involving unauthorized intervention into Bowles' lawsuit in August 2005 by the Liquidator (aka Home Insurance Company in Liquidation – HICIL) and TPCIGA to defend Home Policy No. LPL-F871578.

35. The Liquidator's taking of judicial notice of proceedings in the Texas court indicates that the New Hampshire Insurance Commissioner, who is the Liquidator, fails and refuses to recognize New Hampshire statutory law (the New Hampshire Insurance Code) and this Court's

Order of Liquidation as controlling to void and nullify the result of the intervention, namely, the summary judgments issued against Bowles without due process in violation of Bowles' constitutional right of access to the courts to obtain a redress of grievances.

36. This Court cannot be seen as recognizing a scheme of fraud and conspiracy in New York and Texas as overriding New Hampshire statutory law and this Court's Order of Liquidation in regard to the liquidation of The Home Insurance Company.

The Res Judicata Fraud

37. In rejecting Bowles' subject claim, the Liquidator alleges that *res judicata* prevents Bowles from making any claims because BPS obtained a summary judgment in Texas against Bowles in June 2006 based on a **Third-Party Intervention and Petition in Intervention** by BPS in Cause No. 1991-25939 that occurred in April and May 1994 in the 190th District Court in Texas. (See BPS Motion for Summary Judgment dated November 18, 2005 and BPS Third-Party Intervention attached as **EXHIBIT D**).

38. **Res judicata is defined in law as a thing judicially acted upon or decided that constitutes a bar to any subsequent action involving the same claim, demand or cause of action.**

39. **The Texas 190th Court ruled that BPS had obtained a Rule 97(a) judgment against Bowles dated July 14, 1994 and severed the judgment from Cause No. 1991-25939 into Cause No. 1991-25939-A by order dated April 10, 1995. This was stated to be a final judgment in favor of BPS in the 190th Court.** (See severance order attached **EXHIBIT E**).

40. **However, there was an intentional and critical failure of disclosure by the Home-TPCIGA attorney. . Cause No. 1991-25939 -A did not remain a final judgment in the 190th**

Court. On November 1, 1995 George Bishop filed a second suit in intervention in Cause No. 1991-25939 to claim unpaid attorney fees. (See Bishop filing attached EXHIBIT F).

41. To settle this second suit in intervention by Bishop, Cause No. 1991-25939-A was ordered transferred to the 55th District Court on May 28, 1996 by Administrative Judge Sharolyn Wood. (See transfer order attached EXHIBIT G).

42. On June 25, 1996 Charles N. Schwarz (defendant in Cause No. 1991-25939) filed a Plea in Intervention in Cause No. 1991-25939-A disputing the claims made by Bishop for distribution of funds. (See Schwarz pleading attached EXHIBIT H).

43. On August 9, 1996 there was a transfer by Administrative Judge Sharolyn Wood of Cause No. 1991-25939 as an active case from the 334th District Court into the 55th District Court, the same court in which Cause No. 1991-25939-A resided. (See transfer order attached EXHIBIT I).

44. On August 30, 1996 the Texas 55th District Court entered its order adjudicating the Plea in Intervention in Cause No. 1991-25939-A filed by Charles N. Schwarz and distributing funds, and simultaneously ordering a distribution of funds in the registries of the various courts. (See copy of order attached EXHIBIT J).

45. The exhibits in the above paragraphs 37 through 44 irrefutably prove that the grounds on which BPS filed its successful Motion for Summary Judgment on November 18, 2005 are false and fraudulent for reason that Cause No. 1991-25939-A (which grew out of the Bishop and BPS Petition in Intervention) was never subjected to a final judgment prior to Bowles having filed his malpractice suit.

46. This vital fact voided and nullified its employment to support the court's Rule 97(a) Res Judicata judgment. It is prima facie evidence of fraud by failure of disclosure.

47. All this information and the documents were placed before the court in Texas in Bowles' Motion for Summary Judgment filed against George M. Bishop on October 23, 2006, **which motion was ignored and refused consideration** while Bishop's false Motion for Summary Judgment in April 2007 was granted based on the same set of facts and law by which BPS obtained its summary judgment in June 2006.

48. It is obvious that HICIL aka the Liquidator and TPCIGA were and are fully aware that the attorney they employed to defend Home Policy No. LPL-F871578 could only prevail in the Texas court by employing fraud and deceit, and that they therefore refused to come forward as third-party defendants.

49. Inexplicably, the Liquidator, who is the Insurance Commissioner of the State of New Hampshire, and officials of Texas Property and Casualty Insurance Guaranty Association, a quasi-state agency, engaged in this horrific subornation of a Texas court by blatant conspiratorial fraud and deceit. The only logical explanation is that there was subornation of office involved.

50. Further, the *res judicata* scam by which Bowles was victimized is merely one aspect of the overall conspiracy and fraud accompanying the subornation of the Texas court to render false summary judgments for BPS. The above does not even go into the subterfuge engaged in by Bishop to obtain insurance coverage from Home Insurance.

51. **A capstone to all this fraud and corruption is that on April 29, 1999 Judge Sherry Radack of the 55th District Court issued an Order of Dismissal For Want of Prosecution dismissing Cause No. 1991-25939-A, apparently at the suggestion of George M. Bishop.** (See copy of order attached as **EXHIBIT K**).

52. The record in the Texas courts show conclusively that neither Cause No. 1991-25939 nor Cause No. 1991-25939-A were ever terminated by appealable final judgments consistent with

Rule 301, T.R.C.P. Exhibit I attached proves specifically that Cause No. 1991-25939 remained active in August 1996, contrary to the fraudulent rulings by the Texas courts that the case was terminated by summary judgment on February 12, 1996.

53. A blatant fraud given credence by the Liquidator in denying Bowles' claim lies in that BPS provided legal services to Bowles. Clearly, all services were provided by George M. Bishop under his solo law practice, George M. Bishop & Associates, a law practice never insured by Home Insurance. This is proven by the fact that BPS never submitted a bill of expenses to Bowles on BPS letterhead. (See Bishop expense billing in Exhibit D).

54. Nevertheless, the Rule 97(a) summary judgment against Bowles rendered in July 1994 was issued on the basis that the bill of expenses submitted on George M. Bishop & Associates letterhead were expenses incurred by BPS. BPS had been dissolved a year earlier and had rendered no services to Bowles. Home and TPCIGA and their attorney defending Policy No. LPL-F871578 were aware of this from Bishop's letter dated December 29, 1993.

55. The sole reason that Bishop joined BPS as a party to the employment contract with Bowles and falsely maintained BPS as a purported party to the Settlement Agreement in Cause No. 1991-25939 was to defraud The Home Insurance Company. When the company cancelled the malpractice policy for his chronic professional misconduct, the company nevertheless illegally granted coverage indicating that a secret deal had been made that was not disclosed to Bowles. The company and TPCIGA cannot escape being held as unethical and morally corrupt based on the record.

Conclusion

56. Should the parties chose to respond, Bowles requests the Liquidator's response to this brief be by Liquidator's counsel and by separate counsel representing HICIL's Mr. Barta in New York and by TPCIGA's counsel in Texas.

57. Above considered, it is the duty of the Referee to report to the Court that a huge injustice has been perpetrated against claimant Harry L. Bowles through a fraudulent conspiracy involving The Home Insurance Company, and HICIL, and TPCIGA and others in Texas.

58. Company officials committed severe violations of the New Hampshire Insurance Code and the Court Order of Liquidation. There was malfeasance, nonfeasance and misfeasance, and breaches of fiduciary duty, by these officials and the misconduct was done knowingly and with malice in planned conspiracy with felon George M. Bishop.

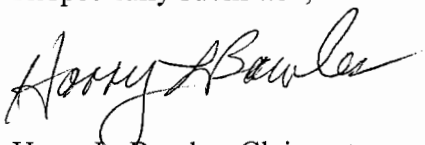
59. Bowles suffered damages and has a right to seek compensation for the Liquidation Estate and from TPCIGA for tortious conduct, including, but not limited to conspiracy, fraud, unauthorized interference in official proceedings, abuse of process, and breach of fiduciary duty.

60. Should the Liquidator and the Referee have doubts about the ability of George M. Bishop to suborn Texas courts and officials to his benefit, Bowles demands the right to submit to the court a file of public and private information supporting the allegations of subornation of judicial and government officials involved in this case.

61. The fraud in this case has been proven and Bowles urges an immediate order validating his claim. In the alternative, considering the fraud that rises to the level of an interstate RICO operation with hundreds of thousands of dollars funded by State agencies to protect a convicted felon in person of Bishop, Bowles requests the referee to agree to submission of the case to the U.S. Justice department for investigation. The Justice department has subpoena power to obtain

all records appropriate for a complete investigation into Bowles allegations of an interstate RICO operation by judicial and government officials to benefit a convicted felon.

Respectfully submitted,



Harry L. Bowles, Claimant

306 Big Hollow Lane

Houston, Texas 77042

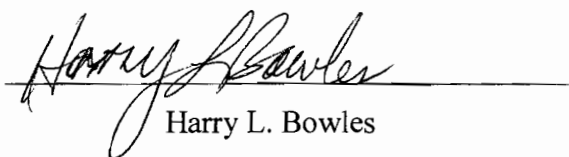
Tel 713-983-6779

Fax 713-983-6722

Attachments

CERTIFICATE OF SERVICE

Harry L. Bowles, certify that on this TWENTY SEVENTH DAY OF OCTOBER, 2009 a true and correct copy of the foregoing was sent by mail and to Mr. Eric A. Smith, Rackemann, Sawyer & Brewster, 160 Federal Street, Boston, MA 02110-1700; to Mr. J. Christopher Marshall, Civil Bureau, NH Dept. Of Justice, 33 Capitol Street, Concord, New Hampshire 03301-6397; to Ms. Melinda S. Gehris, 501 Hall Street, Bow, New Hampshire 03304; and to Daniel Jordan, Law Office of Daniel Jordan, 4807 Spicewood Springs Road, Building One, Suite 1220, Austin, Texas 78759. Copies of all documents were transmitted to the Liquidation Clerk, HICIL, Merrimack County Superior Court, P.O. Box 2880, Concord, NH 03302-2880, as well as to George M. Bishop, to David E. Sharp's attorneys MehaffyWeber, P.C. and to the 151st Court in Houston.



Harry L. Bowles

CAUSE NO. 95-043235

HARRY L. BOWLES,

Plaintiff

VS.

GEORGE M. BISHOP, CHARLES K. PETERSON, AND DAVID E. SHARP, EACH IN THEIR INDIVIDUAL CAPACITIES

and

GEORGE BISHOP AND ASSOCIATES, AND BISHOP, PETERSON AND SHARP, P.C., EACH A PROFESSIONAL LAW CORPORATION AND/OR AN ASSUMED NAME OF THE NAMED INDIVIDUALS AS A LAW FIRM, ET AL

Defendants

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

151ST JUDICIAL DISTRICT

DEFENDANT DAVID E. SHARP’S ANSWER TO PLAINTIFF’S PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Defendant David E. Sharp and files this, his Original Answer to Plaintiff’s Petition, and in support thereof, respectfully shows unto this Court as follows:

I.

General Denial

Defendant David E. Sharp herein avails himself of the opportunity provided by Rule 92 of the Texas Rules of Civil Procedure to file a general denial herein; and in compliance with said Rule, Defendant denies each and every, all and singular, the material allegations contained in Plaintiff’s live pleadings and all cross-actions which have been or may be filed herein, and states that these are matters that should be proven by Plaintiff as required by law; and Defendant would require strict proof thereof.

EXHIBIT A

II.

Affirmative Defenses

1. For further answer, if such be necessary, and pleading in the alternative, Defendant affirmatively alleges that the matters complained of by Plaintiff are barred by the statute of limitations.

2. For further answer, if such be necessary, and pleading in the alternative, Defendant affirmatively alleges that the matters complained of by Plaintiff are barred by *res judicata*.

3. For further answer, if such be necessary, and pleading in the alternative, Defendant affirmatively pleads the defenses of waiver, accord and satisfaction, release, collateral estoppel and failure of consideration.

4. For further answer, if such be necessary, and pleading in the alternative, Defendant affirmatively alleges that the matters complained of by Plaintiff are barred by the doctrine of laches.

5. For further answer, if such be necessary, Defendant invokes his right to a credit or setoff under the Property and Casualty Insurance Guaranty Act, Art. 21.28-C, Sec. 12.

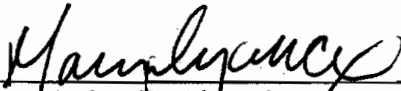
III.

Conclusion and Prayer

For these reasons, David E. Sharp prays that Plaintiff takes nothing by his action, that Defendant be awarded his costs of court, and for such other and further relief to which he may show himself justly entitled.

Respectfully submitted,

MEHAFFYWEBER, P.C.

By: 

Arthur R. Almqvist
Texas Bar No. 01108800
Maryalyce W. Cox
Texas Bar No. 24009203
One Allen Center
500 Dallas, Suite 1200
Houston, Texas 77002
Telephone: (713) 655-1200
Facsimile: (713) 655-0222

**ATTORNEYS FOR DEFENDANT,
DAVID E. SHARP**

CERTIFICATE OF SERVICE

This will certify that a copy of the forgoing document was furnished to all counsel of record on this the 19th day of June, 2009, pursuant to the Texas Rules of Civil Procedure.


Maryalyce W. Cox

CAUSE NO. 95-043235-B

HARRY L. BOWLES,

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IN THE DISTRICT COURT OF

VS.

HARRIS COUNTY, TEXAS

DAVID E. SHARP

151ST JUDICIAL DISTRICT

**DEFENDANT DAVID E. SHARP'S RESPONSE TO PLAINTIFFS' RULE 12
MOTION TO SHOW AUTHORITY**

COMES NOW, Defendant David E. Sharp, and files this response to Plaintiff's Rule 12 Motion to Show Authority and would respectfully show the Court as follows:

I.

Plaintiff's motion is untimely, moot, and has been waived. This Court granted Defendant David E. Sharp's Motion for Summary Judgment on July 21, 2009, attached as Exhibit A. This Court granted a severance of David E. Sharp's claims on September 29, 2009, attached as Exhibit B.

II.

Rule 12 states that "A party in a suit or proceeding **pending in a court of this state** may ... cause the attorney to be cited before the Court and show his authority to act." Tex. R. Civ. Proc. 12 (emphasis added). Defendant has been granted summary judgment and this cause of action is no longer pending before the court. Further, the rule contemplates such motions being filed before the case has been decided on its merits. *See id.* ("The motion may be heard and determined at any time before the parties have announced ready for trial..."). Further, even if successful, the remedy to a successful Rule 12 motion is refusal of the attorney to appear and the striking of pleadings, none of which would have any effect on this Defendant. *See id.* Plaintiff's motion is therefore

EXHIBIT B

untimely filed, the issue is moot, and Plaintiff waived any such contention for failure to file his motion prior to resolution of this case.

III.

Further, Rule 12 requires that the motion to show authority include a "sworn written motion stating that he believes the suit or proceeding is being prosecuted or defended without authority." Tex. R. Civ. Proc. 12. While Plaintiff did attach an affidavit to his motion, the affidavit is irrelevant to the undersigned counsel. The affidavit does not mention the undersigned counsel or her firm. While Plaintiff's motion complains of MehaffyWeber, PC's representation of David E. Sharp, the attached affidavit states that "I express my belief that the Marshall & McCracken law firm has engaged in prosecution of a defense against my lawsuit without authority to do so." Marshall & McCracken have not appeared or attempted to appear on behalf of David E. Sharp in this cause of action. The affidavit is therefore irrelevant, the motion is not sworn as to MehaffyWeber, PC, and Plaintiff's Motion as to MehaffyWeber, PC is not sworn in compliance with Rule 12.

IV.

MehaffyWeber, PC and the undersigned counsel have the authority to defend David E. Sharp in this lawsuit. See attached affidavit of Maryalyce Cox. MehaffyWeber, PC and the undersigned counsel have represented Mr. Sharp since this case was first filed, filed an original answer on his behalf in June 2009, and filed the motion for summary judgment which was granted by the Court. See Tex. R. Civ. Proc. 13 (regarding effect of signing of pleadings and motions). Plaintiff's Motion is therefore without merit and should be denied.

V.

For the foregoing reason, Defendant David E. Sharp respectfully requests that Plaintiff's Rule 12 Motion to Show Authority be denied and for such other relief to which it is justly entitled.

Respectfully submitted,

MEHAFFYWEBER, P.C.

By: 

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500 Dallas, Suite 1200
Houston, Texas 77002
Telephone: (713) 655-1200
Facsimile: (713) 655-0222

**ATTORNEYS FOR DEFENDANT
DAVID E. SHARP**

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing instrument was served upon Plaintiff Harry Bowles on the 7th day of October, 2009, in accordance with the Texas Rules of Civil Procedure.


Maryalyce W. Cox

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 Submission Of Proposed Findings Of Fact And Rulings Of Law

Per Section 18 Of Procedures Regarding Claims Filed With HICIL

I

Proposed Findings Of Fact And Rulings of Law

The Referee recognizes the following as facts in evidence and rulings of law:

1. Bowles hired **the law firm BPS and George M. Bishop** to represent him in Cause No. 1991-25939 by contingency fee contact dated November 6, 1992.
2. At the time BPS was an insured under Home Policy No. LPL-F871578, purchased by BPS effective January 24, 1992.
3. Policy No. LPL-F871578 was renewed in January 1993 for an additional one-year period ending on January 24, 1994.
4. George M. Bishop was the president of BPS and was an insured under Policy No. LPL-F871578 along with attorney-shareholders Charles Peterson (deceased) and David E. Sharp.

EXHIBIT C

5. George M. Bishop was an insured under Policy No. LPL-F871578 **only when providing legal services to Bowles for, and in the name of, BPS.**
6. George M. Bishop's solo law practice was conducted under the business name, George M. Bishop & Associates.
7. George M. Bishop dba George M. Bishop & Associates was never an insured party under Home Policy No. LPL-F871578.
8. The BPS law firm was dissolved in the summer of 1993 on a date unknown, but either in June, July, August, or September of that year.
9. With respect to representation of Bowles before the 190th Court in 1993 and 1994, all attorney services were rendered by George M. Bishop & Associates.
10. On October 23, 1993 in Cause No. 1991-25939 there was a Settlement Agreement reached in an oral hearing in the 190th District Court in Houston, Texas in which Bishop testified that he (not BPS) was due one-third of the funds scheduled to be distributed to Bowles, his client, under their contingent fee agreement.
11. The contingency fee was reduced from contracted fee of 40 percent to 33 percent as a result of the Settlement Agreement because there was to be no further litigation as a result of the Agreement.
12. By letter to the Home Insurance Company Claim Dept. dated December 29, 1993, Bishop advised Home that BPS was dissolved "this past summer" and that he had since been representing BPS as a sole practitioner dba George M. Bishop & Associates. (See Exhibit marked L-2).

13. Bowles was never notified in the summer of 1993 that BPS was no longer a party to the November 6, 1992 employment contract. This information came to Bowles in a discovery document from the Liquidator tendered to Bowles on or about June 30, 2009.

14. Section A – II of Policy No. LPL-F781578 titled Firm Changes requires that: “Any material change among the partners or stockholders of the Named Insured during the policy period should be reported to the Company **immediately** and the Company given the right to decline to continue coverage or to charge an additional premium therefore”.

15. Home Insurance, like Bowles, was not notified immediately of the dissolution of BPS in violation of the Home Insurance contract, but received notification only on December 29, 1993, six months later, and did not waive its right to decline to continue coverage.

16. Failure by BPS president Bishop to immediately inform Bowles and Home of the dissolution of the firm constituted breach of the employment contract as well as breach of the insurance contract, nullifying both contracts.

17. By letter dated December 29, 1993 to Ms. Darlene Bugaj of John R. Ray & Sons in Houston concerning Home Policy No. LPL-F871578, Bishop requested Home be advised of a possible future claim against either **BPS or against himself** by Bowles “so that I might have coverage for this claim”.

18. By letter dated January 10, 1994, (Exhibit L-52) Home Insurance Company official Oscar Allen advised Bishop that Home was accepting his notice of a possible future claim by Bowles and was creating a file in Bishop’s behalf.

19. Home’s Mr. Allen stated that Home would review coverage once it received a narrative report from Bishop, and accepted the notice of claim “**under a full and complete reservation of its rights with respect to coverage**”.

20. Home never responded to the requests by BPS shareholders, Bishop, Peterson and Sharp with a positive, unconditional statement in writing that Bowles' probable future lawsuit would constitute a covered claim by Bishop under Policy No. LPL-F871578, with no reservations by Home's of its right to deny coverage should BPS be in violation of key provisions of the insurance contract nullifying coverage under specific conditions and circumstances.

21. Key provisions of the insurance applicable to make the policy inapplicable to provide insurance coverage of Bowles lawsuit against BPS and George M. Bishop are the following:

Section C – Exclusions

I. This policy does not apply:

(a) to any **judgment or final adjudication** based upon or arising out of any dishonest, deliberately fraudulent, criminal, maliciously or deliberately wrongful acts or omissions committed by the Insured;

(b) to any claim **made by or against** any business enterprise not named in the Declarations which is owned by the Insured or in which the insured is a partner or employee, or which is controlled operated or managed by the Insured, either individually or in a fiduciary capacity, including the ownership maintenance or use of any property in connection therewith, or to any claim made against the Insured solely because the insured is a partner, officer, director, stockholder employee or employee of any firm or corporation not named in the Declarations.

(f) to any claim made by a present, former or prospective partner, officer, director, stockholder employee or employee of the Insured unless such claim arises out of the professional services of the Insured in a lawyer-client relationship except as otherwise excluded under Exclusion (h).

(h) to any claim based upon or arising out of the work performed by the Insured . . . with respect to any corporation . . . association . . . business enterprise or other venture . . . of any kind or nature in which any Insured has any pecuniary or beneficial interest, irrespective of whether or not an attorney-client relationship exists, unless such entity is named in the Declarations.

Section F – Claims

I. **Notice of Claims:** As a condition precedent to the right to the protection afforded by this insurance, the Insured shall, as soon as practicable, give to the Company written notice of any claim made against the Insured.

In the event suit is brought against the Insured, the Insured shall immediately forward to the Company every demand notice, summons or other process received directly or by the Insured's representatives.

V. **False or Fraudulent Claims:** If any Insured shall commit fraud in proffering any claim as regards amount or otherwise, this insurance shall become void as to such Insured from the date such fraudulent claim is proffered.

22. Bishop's December 29, 1993 notice of a future claim **by Bowles** against Policy No. LPL-F871578 fits squarely into the policy's exclusion of claims described by "Exclusion (b)" because Bowles' lawsuit filed in August 1995 is a claim against both the employed BPS, the Named Insured, and against co-counsel George M. Bishop & Associates, the latter being a non-insured party under Policy No. LPL-F871578.

23. Bishop's December 29, 1993 notice of a future claim **by Bowles** against Policy No. LPL-F871578 fits squarely into the policy's exclusion of claims described by "Exclusion (h)" because Bowles' August 1995 lawsuit arose out of work performed by George M. Bishop as a solo practitioner dba as George M. Bishop & Associates, an entity not named in the Declarations in Policy No. LPL-F871578.

24. Pursuant to a sworn affidavit by Home Insurance and HICIL official Ronald F. Barta, Home Insurance Company did review and grant coverage of Bowles' claims against BPS and against George M. Bishop, of which there were two: (a) a notice dated July 6, 1994 complaining of the professional misconduct by George Bishop and by BPS in violation of the Texas Deceptive Trade Practice-Consumer Protection Act, and (b) Bowles' August 31, 1995 lawsuit filed in the 151st Court in Houston filed against BPS and against co-counsel Bishop as a solo practitioner dba as George M. Bishop & Associates (as shown on Bishop's letterhead stationary).

25. In the week of April 6, 1994 Bishop filed a motion for his (Bishop's) withdrawal as Bowles' counsel based on (a) Bowles' alleged refusal to follow his counsel's instructions, (b)

Bowles' refusal to advise Bishop "of what goals he hopes to achieve, and (c) Bowles' terroristic threat on April 6, 1994 "to kill the court-appointed Receiver, Mr. Joe H. Reynolds.

26. Bishop's motion to withdraw was granted within an April 11, 1994 Order granting (without notice and without a trial) a permanent anti-association injunction against Bowles requested by the Receiver based on Bishop's sworn testimony and that of Mr. Robert Blaine, an alleged witness, that Bowles made a terroristic threat against the Receiver. The Injunction Order was issued without the Court's consideration of Bowles' and his spouse's sworn affidavits denying the allegations.

27. A subsequent deposition by Bowles of Robert Blaine exposed the fact that he had not overheard or witnessed a terroristic threat by Bowles and that Blaine had committed perjury at hearing on April 11, 1994.

28. Thus, it is a fact that In March and April 1994 Bishop fraudulently orchestrated a conspiratorial scheme whereby Bowles was falsely "convicted" of criminal conduct by a civil court without legally proper notice, hearing or trial, and whereby Bowles was simultaneously barred by a temporary injunction issued April 11, 1994 from access to the courts to prosecute his claims in Cause No. 1991-25939 and to defend himself against the conspiracy to confiscate his property in violation of statutory and constitutional law.

29. The April 11, 1994 temporary injunction was made permanent as a final adjudication without notice to Bowles and without trial on the merits as an item in an Order Approving Actions Of and Discharging Receiver issued by the 190th District Court in Cause No. 1991-25939 on April 10, 1995. The Order was approved by George M. Bishop of the law firm George M. Bishop & Associates.

30. Bishop's conduct in conspiring against Bowles in April 1994 and in April 1995 resulting in a final judgment holding Bowles a permanent terroristic threat to court officials and others is a prominent part of Bowles's August 1995 legal malpractice lawsuit filed against BPS and against George M. Bishop & Associates.

31. The April 10, 1995 permanent injunction order against Bowles fits squarely into Section C, subsection (a) of the list of claims to which Policy No. LPL-F871578 does not apply because it was based upon and arose out of a dishonest, deliberately fraudulent, malicious and deliberately wrongful act committed by an Insured party, namely BPS represented by its counsel, George M. Bishop & Associates.

32. The April 11, 1994 order granting Bishop's withdrawal as Bowles' counsel included no reference to the withdrawal of BPS as Bowles' counsel, showing that BPS had been dissolved a year earlier and was no longer involved as counsel for Bowles in Cause No. 1991-25939.

33. The culminating point of BPS's gross professional misconduct (by and through its counsel George M. Bishop & Associates) occurred in March and April 1995 when Bowles' gave all parties and the Court notice dated March 31, 1995 of his withdrawal from the Settlement Agreement, which, by Texas law, terminated all litigation of matters regarding the Settlement Agreement and automatically remanded the case back to its status prior to the October 23 date of the Settlement Agreement.

34. **BPS (as an Intervenor represented by Bishop) recognized that Bowles' March 31, 1995 notice of withdrawal from the Settlement Agreement was legal and proper in his May 25, 1995 pleading in response to the opposition's Motion for Summary Judgment.**

35. It is a fact that Bowles' withdrawal from the Settlement Agreement immediately terminated all further litigation with respect to the Settlement Agreement pending a possible

future breach of contract suit against Bowles by the opposition or by BPS or by **Bishop in separate actions in other courts.**

36. There never was a breach of contract action filed against Bowles after his withdrawal from the Settlement Agreement and no prosecution of a breach of contract action in accordance with due process of law requirements.

37. Although knowing that Bowles' withdrawal from the Settlement Agreement on March 31, 1995 suspended all litigation in Cause No. 1991-25939, BPS, **acting through George M. Bishop & Associates as its counsel**, thereafter joined in a conspiracy with the opposition to fraudulently continue the litigation as if the Settlement Agreement had been duly executed and funds distributed equitably, all without Bowles' participation due to his having been permanently enjoined from access to justice by Bishop's treachery against his client.

38. Any and all litigation in Cause No. 1991-25939 that took place **after March 31, 1995**, and all judgments and orders issued by the 190th, the 334th, and 55th District Courts (including the culminating final order of distribution of funds by the 55th District Court dated August 30, 1996) were based upon and arose out of acts and omissions by BPS and George M. Bishop that were dishonest, deliberately fraudulent, criminal, and maliciously wrongful.

39. Home became fully aware and cognizant of BPS's false and fraudulent professional misconduct as Bowles' legal counsel when Bowles filed his lawsuit against BPS and George M. Bishop & Associates in August 1995

40. Mr. Barta's testimony in his November 2007 affidavit is that, when Bowles' malpractice lawsuit was filed in August 1995, Home "undertook to provide a defense subject to any reservation of rights raised by the pleadings".

41. Mr. Barta's sworn statement includes the claim that Home had a right to provide a defense, even if it was not owed.

42. Home had no right to provide defense counsel for BPS even if it was not owed as this would constitute a deliberately dishonest and deliberately fraudulent act, the effect being to nullify the insurance contract under Section C -I, subsection (a).

43. The assertion that Home had a right to provide BPS with defense counsel even if it was not owed constitutes irrefutable evidence of HICIL's (and the Liquidator's) bad faith in dealing and a criminal state of mind that it is proper to "rob Peter to pay Paul". This is totally and absolutely unacceptable, and requires a full retraction.

44. Mr. Barta declares that, pursuant to the Order of Liquidation, any person desiring to collect, assess or recover a claim against The Home can do so only by filing a proof of claim with the Liquidator. Thus, it is a fact that both HICIL and the Liquidator recognize that the control of the liquidation process rests with the Superior Court's June 13, 2003 Order of Liquidation and the New Hampshire Insurance Code.

45. This is in accordance with the Liquidator's statement in the Gardner case, Docket 03-E-0106 regarding the liquidation process as follows: "The statutes contemplate that there may be multiple proceedings with respect to a single insurer, with the domiciliary liquidator having the primary role in marshalling assets and **determining claims** and making distributions from general assets".

46. Section 462.102 Of the Texas Property and Casualty Insurance Guaranty Act states that TPCIGA cannot assume or succeed to a liability of an impaired insurer, and cannot stand in place of an impaired insurer for any purpose, i.e., to determine coverage status of a claim against a policy.

47. It is a conclusion of law that TPCIGA's determination that Bowles' lawsuit was a "possible covered claim against Home Policy No. LPL-F871578" was in violation of its authority to make such a determination under governing law in both New Hampshire and Texas.

48. It is a fact that Mr. Barta and the Liquidator each admit that Bowles had never filed a Proof of Claim with respect to Home Policy No. LPL-F871578 on or before June 13, 2005.

49. It is a fact that Bowles' Third-Party Proof of Claim with respect to Home Policy No. LPL-F871578 was filed on February 4, 2008 in the amount of \$3,100,000.

50. **The Liquidator has admitted that not one insured party under Home Policy No. LPL-F871578 has ever filed a Proof of Claim for coverage of Bowles' lawsuit against BPS, Bishop, Sharp, Peterson, and against George M. Bishop & Associates.**

51. Chapter 402-C:28 of the New Hampshire Insurance Rehabilitation and Liquidation Code states that **"Whenever in the Liquidator's judgment, protection of the estate of the insurer necessitates intervention in an action that is pending outside this state, with approval of the court he may intervene in the action"**.

52. Cause No. 1995-43235 in Texas never involved a claim by Bowles or by BPS or by Bishop against the estate of Home Insurance that necessitated intervention by Home because (1) Policy No. LPL-F871578 was inapplicable to Bowles' lawsuit by operation of Section C – Exclusions, Subsection (a); (2) Policy No. LPL-F871578 was not applicable to cover Bowles' lawsuit by operation of Section C – Exclusions, Subsections (b) and (h).

53. On the **June 13, 2003 date of the Order of Liquidation** there was no litigation ongoing in Texas in which Home Insurance or TPCIGA or any law firm had appeared in defense of BPS under Policy No. LPL-F871578.

54. RSA 402-C:26 of Title XXXVII of the New Hampshire Insurance Code requires the Liquidator to give notices of liquidation as soon as possible after the date of liquidation to all persons known or reasonably expected to have claims against the insurer, including all policy holders.

55. Bowles received no 402-C:26 notice from the Liquidator.

56. It is a conclusion of law that the Liquidator's failure to provide Bowles with a Rule 402-C:26 notice is proof that Home Insurance never considered Bowles' malpractice lawsuit in Texas to represent either a covered claim or a possible covered claim against Policy No. LPL-F871578.

57. Section 462.213 of the Texas Property and Casualty Insurance Guaranty Act (paraphrased) states that "Except for workers compensation claims, an individual claim may not exceed \$300,000.

58. The minimum amount of damages claimed by Bowles in his malpractice lawsuit against Bishop, et al was \$1,500,000.

59. It is a conclusion of law that the act by HICIL officials or by the Liquidator of transferring the Bowles' claim file to TPCIGA for determination was a violation of Bowles' right to seek full compensation for his losses from the Home estate.

60. The sworn statement by HICIL's Mr. Barta that HICIL and the Liquidator lost all direct involvement in matters concerning Bowles' lawsuit when the Bishop claim file was transmitted to TPCIGA is knowingly self-serving, perjurious, false and fraudulent.

61. Pursuant to Section (j) of the Order of Liquidation, all Home directors, officers, employees, agents and representatives were prohibited from proceeding with Home business on June 13, 2003 without the express written authorization of the Liquidator.

62. The act by HICIL officials whereby the Bishop claim files were forwarded to TPCIGA on or about June 30, 2003 was a violation of Section (j) of the Order of Liquidation because the Liquidator issued no express written authorization to Home employees and agents that this be done.

63. The Texas Property and Casualty Insurance Guaranty Act includes no provision requiring a Liquidator to forward claim files to TPCIGA for determination as to coverage where Home has not made an unconditional determination that the claim is a covered claim under the terms of the policy.

II

CONCLUSIONS

64. The litigation in Causes 1991-25939 and 1995-43235 have been, and continue to be, steeped in unrelenting fraud and corruption and uninhibited professional malfeasance.

65. Home Policy No. LPL-F871578 was never applicable to provide insurance coverage for BPS by operation of Section C – Exclusions, subsections I (a), (b), (c) and (h). Accordingly, if for no other reasons, all authority by Home officials or by TPCIGA to intervene in Cause No. 1995-43235 in defense of the policy was voided and nullified.

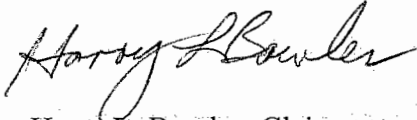
66. BPS breached the insurance contract by failing to give notices due under Section F – Claims in Policy No. LPL-F871578. This nullified both the BPS employment contract with Bowles and the BPS insurance contract with The Home Insurance Company.

67. Bowles is entitled to recover on his claim that Home, by and through TPCIGA, improperly provided defense counsel to BPS in Cause No. 1995-43235.

68. *Res judicata* cannot apply to Bowles' claim because (a) the summary judgment of June 2006 was the result of fraud, which, under Texas law vitiates all things related to said fraud, and

(b) because, under Texas law, the litigation of Cause No. 1995-43235 has not been subjected to final judgment by a judgment disposing of all issues and parties.

Respectfully submitted,



Harry L. Bowles, Claimant

306 Big Hollow Lane

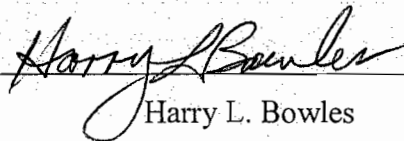
Houston, Texas 77042

Tel 713-983-6779

Fax 713-983-6722

CERTIFICATE OF SERVICE

Harry L. Bowles, certify that on this FOURTEENTH DAY OF SEPTEMBER, 2009 a true and correct copy of the foregoing was sent by FAX to Mr. Eric A. Smith, Rackemann, Sawyer & Brewster, 160 Federal Street, Boston, MA 02110-1700; to Mr. J. Christopher Marshall, Civil Bureau, NH Dept. Of Justice, 33 Capitol Street, Concord, New Hampshire 03301-6397; to Ms. Melinda S. Gehris, 501 Hall Street, Bow, New Hampshire 03304; and to Daniel Jordan, Law Office of Daniel Jordan, 4807 Spicewood Springs Road, Building One, Suite 1220, Austin, Texas 78759. Copies of all documents were also transmitted to the HICIL Liquidation Clerk by e-mail at help@hicilclerk.org.



Harry L. Bowles

NO. 1995-43235

HARRY L. BOWLES

VS.

GEORGE M. BISHOP

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§

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

151st JUDICIAL DISTRICT

DEFENDANT BISHOP, PETERSON & SHARP, P.C.'S
MOTION FOR SUMMARY JUDGMENT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, DEFENDANT, BISHOP, PETERSON & SHARP, P.C., (“Defendant”) and asks this Court to enter Judgment in its favor on all claims and causes of action raised against it by Plaintiff, Harry L. Bowles (“Plaintiff”) herein, or alternatively, that this Court at least enter Judgment in its favor on specific elements and claims as outlined below, and respectfully shows as follows:

I.
Background

In this lawsuit, Plaintiff alleges that the Defendant firm was negligent in representing Plaintiff Bowles in *Harry L. Bowles v. Charles N. Schwarz, Jr., et al*; Cause No. 1991-25939. (See Exhibit “A” – Plaintiff’s Original Petition). George Bishop, a named partner in the law firm of Defendant, Bishop, Peterson & Sharp, P.C., filed a Motion to Withdraw as counsel for Plaintiff Bowles in Cause No. 1991-25939 on April 8, 1994. (See Exhibit “B” – Motion to Withdraw). The Court granted Mr. Bishop’s Motion to Withdraw on April 11, 1994. (See Exhibit “C” – Order Granting Motion to Withdraw).

EXHIBIT D

Defendant Bishop, Peterson & Sharp filed a Third-Party Intervention on April 19, 1994 for its attorney fees. (See Exhibit "D" – Third-Party Intervention). Plaintiff responded to Defendant's Petition in Intervention by filing his own Petition in Intervention on May 6, 1994. (See Exhibit "E" – Plaintiff's Petition in Intervention). While Plaintiff contested Defendant's legal costs, he completely failed to counterclaim based upon any supposed legal malpractice or negligence, as required. *Goggin v. Grimes*, 969 S.W.2d 135, 138 (Tex. App. – Houston [14th Dist.] 1998, no pet.). Finally, on August 31, 1995, Plaintiff brought this separate suit claiming for the first time legal malpractice, or negligence, in the firm's handling of the prior Cause No. 1991-25939.

II. Grounds for Relief

Defendant's Motion for Summary Judgment is brought under Tex. R. Civ. P. 166a on the following ground:

A claim of attorney malpractice is a compulsory counterclaim to a claim for attorneys' fees and this action, therefore, is barred by *res judicata*.

Based on this Rule of Law, Bishop, Peterson & Sharp is entitled to Judgment as a matter of law on all claims brought by Plaintiff Bowles. The summary judgment evidence upon which Defendant relies is as follows:

- (1) Plaintiff's Original Petition;
- (2) Motion to Withdraw;
- (3) Order Granting Motion to Withdraw;

- (4) Third Party Intervention; and
- (5) Plaintiff's Petition in Intervention.

III. Argument and Authorities

As a general rule, a judgment on the merits in a suit on one cause of action is not conclusive of a subsequent suit on a different cause of action except as to issues of fact actually litigated and determined in the first suit. *CLS Associates, Ltd. v. AB*, 762 S.W.2d 221, 223 (Tex. App.-Dallas 1988, no writ) (citing *Griffin v. Holiday Inns of America*, 496 S.W.2d 535, 538 (Tex. 1973)). An exception to this general rule provides that *res judicata* bars litigation of *all issues* connected with a cause of action which, with the use of all diligence, might have been tried, as well as those which were actually tried. *Id.* (citing *Ogletree v. Crates*, 363 S.W.2d 431, 435 (Tex. 1963)). A claim of attorney malpractice has been held to be a compulsory counterclaim to a claim for attorneys' fees under Rule 97(a) of the Texas Rules of Civil Procedure. *Id.* at 224. Rule 97(a) states:

A pleading shall state as a counterclaim any claim within the jurisdiction of the Court, not the subject of a pending action, which at the time of filing the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the Court cannot acquire jurisdiction; provided, however, that a Judgment based upon a settlement or compromise of a claim of one party to the transaction or occurrence prior to a disposition on the merits somehow operate as a bar to the continuation or assertion of the claims of any other party to the transaction or occurrence unless the latter has consented in writing that said Judgment shall operate as a bar.

Thus, because Plaintiff was required to assert *all claims* for negligently performed services in the underlying, or original, cause of action (Cause No. 1991-25939), *res judicata* is applicable.

In this case, the issue of legal malpractice, and other actions pled by Plaintiff Bowles, all arose from the same transaction which generated the attorney's fees sought by the law firm's intervention in the original suit. While Plaintiff contested Defendant's legal costs and fees, he failed to counterclaim for damages arising from any claimed legal malpractice. Because Plaintiff chose not to counterclaim for these actions, *all claims* are now barred by *res judicata*. *Goggin v. Grimes*, 969 S.W.2d at 138.

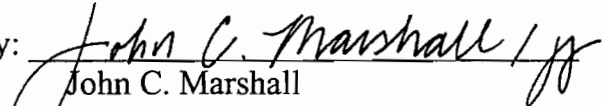
IV.

Given the well established principle of *res judicata*, this suit is well outside the bounds of the law and is now foreclosed. DEFENDANT BISHOP, PETERSON & SHARP, P.C. thus respectfully requests that this Court grant it full and final Judgment in its favor on all counts, as a matter of law.

WHEREFORE, PREMISES CONSIDERED, this Defendant moves for summary judgment on the grounds cited above and asks that Plaintiff take nothing in this suit. In the alternative, Defendant asks any individual causes of action or claims on which the evidence is conclusive be granted in its favor. Defendant also prays for all costs and for all other relief to which it may show itself justly entitled.

Respectfully submitted,

MARSHALL & McCracken, P.C.

By: 
John C. Marshall
SBN 13043000
Jacqueline G. Jaffee
SBN 24036833

1990 Post Oak Boulevard, Suite 2400
Houston, TX 77056
(713) 622-8944
FAX (713) 622-6786
ATTORNEYS FOR DEFENDANT
BISHOP, PETERSON & SHARP, P.C.

NO. 1995-43235

HARRY L. BOWLES

vs.

GEORGE M. BISHOP

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

151st JUDICIAL DISTRICT

AFFIDAVIT

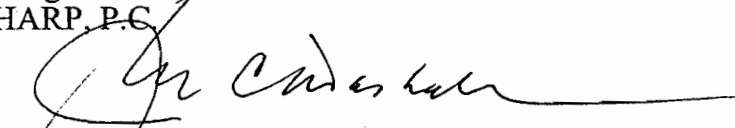
STATE OF TEXAS

COUNTY OF HARRIS

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BEFORE ME, the undersigned authority of law, personally appeared John C. Marshall, who after being duly sworn upon oath, deposed and said:


My name is John C. Marshall, I am over eighteen (18) years of age and I am of sound mind and have never been convicted of any crime. I have personal knowledge of the facts stated within this Affidavit because I am the attorney of record herein for Defendant, BISHOP, PETERSON & SHARP, P.C. I am an attorney licensed to practice law in the state of Texas. In the course of representing this Defendant I have participated personally in the discovery in this case and am personally familiar with relevant portions of the documents attached to Defendant's Motion for Summary Judgment and designated as Exhibits "A through E." Exhibits "A, B, C, D, and E" are true and correct, accurate and authentic copies. This Affidavit is for the purpose of authenticating those attachments to the Motion for Summary Judgment herein on behalf of Defendant, BISHOP, PETERSON & SHARP, P.C.



John C. Marshall

SUBSCRIBED AND SWORN TO before me, the undersigned authority, on this

18th day of November, 2005.

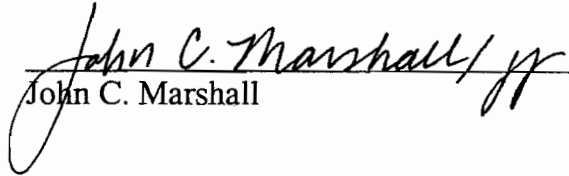


Notary Public In and For
The State of Texas

My Commission Expires: 9/8/2009

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, SBN 06822500, 7330 Torquay Lane, Houston, Texas 77074, (713) 777-1986, by certified mail, return receipt requested, or by hand delivery, and upon all other counsel of record herein, by regular mail, on this 18th day of November, 2005.


John C. Marshall

| | |
|----------|----|
| ASSESSED | 40 |
| ENTERED | 70 |
| VERIFIED | |

STR #2a

NO. 91-025939A

HARRY L. BOWLES, and
 QUALITY SEAL COMPANY, a Texas
 Corporation,

Plaintiffs,

V.

CHARLES N. SCHWARZ, JR.,
 ROSALIE SCHWARZ, AND
 JOANN LANE

Defendants.

§ IN THE DISTRICT COURT OF
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 § HARRIS COUNTY, TEXAS
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 § 190TH JUDICIAL DISTRICT

FILED
 KATHERINE TYRA
 DISTRICT CLERK
 HARRIS COUNTY, TEXAS

91 APR 10 AM 11:28
 BY [Signature]
 DEPUTY
 [Signature]

THIRD-PARTY INTERVENTION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Bishop Peterson & Sharp, P.C. and George M. Bishop, hereinafter referred to as third-party Intervenors, with this their Third-Party Intervention complaining of Plaintiff Harry L. Bowles and would show unto the Court the following in support of this their Petition in Intervention:

I.

Third-Party Intervenors would show that they entered into a contract with Plaintiff whereby they would represent plaintiff in the above-styled and numbered cause for forty percent (40%) of any funds collected by Plaintiff in this suit. A true and correct copy of the contract of employment is attached hereto as Exhibit "A". Subsequent to entering into the contract, Third-Party Intervenors performed services for Plaintiff and incurred expenses for which they have not been paid. Third-Party Intervenors have made demand on Plaintiff as shown by the attached Exhibit "B" and Plaintiff has not responded to this demand. The attached demand complies with

Section 38.001 of the Texas Civil Practice and Remedies Code. Third-Party Intervenors now seek enforcement of the contract attached as Exhibit "A" and attorney's fees for the services of their attorney in prosecuting this claim on a written contract pursuant to Section 38.001 of the Texas Civil Practice and Remedies Code. Third-Party Intervenors seek attorney's fees against Plaintiff Harry L. Bowles for preparation for trial, for trial, and for each step of the appellate process, in addition to forty percent (40%) of any funds received by Plaintiff and reimbursement of expenses incurred on behalf of Plaintiff.

II.

Third-Party Intervenors would show in the alternative that under the Doctrine of Quantum Meruit, Third-Party Intervenors are entitled to recovery of no less than \$300,000.00 for the value of their services rendered to Plaintiff Harry L. Bowles, plus interest at the highest rate allowed by law from the earliest date allowed by law on all amounts awarded by the Judgment and attorney's fees for preparation of Intervention for trial, trial, and for each step of the appellate process. All fees of the Receiver should come out of the portion of the recovery allotted to Plaintiff Bowles, as his actions have caused the fees and expenses of the Receiver to be increased to an amount greater than if Plaintiff had cooperated with the efforts of the Receiver to sell the stock or assets of N.P.S.

III.

Third-Party Intervenors would request that all funds to be paid to Harry L. Bowles pursuant to the Settlement Agreement entered into in this case be paid into the Registry of the Court pending determination of the issues in this intervention and that such monies be invested at the highest interest rate possible until Third-Party Intervenors' claim for breach of contract against Plaintiff Harry L. Bowles has been resolved.

WHEREFORE, PREMISES CONSIDERED, Third-Party Intervenors Bishop Peterson & Sharp, P.C. and George M. Bishop pray that after final hearing the Court enter Judgment for the Third-Party Intervenors enforcing the contract in question attached as Exhibit "A" and requiring that forty percent (40%) of all funds to be paid to Harry L. Bowles be paid to George M. Bishop pursuant to the Settlement Agreement so that those funds may be divided between George M. Bishop and Bishop Peterson & Sharp, P.C. and that Third-Party Intervenors recover interest from the earliest date allowed by law at the highest rate allowed by law and their attorney's fees pursuant to Section 38.001 of the Texas Civil Practice and Remedies Code for preparation for trial, trial, and for each step of the appellate process. Further, Third-Party Intervenors request recovery of all costs of court and that any fees for the Receiver be charged to the sixty percent (60%) of the recovery allowed to Harry L. Bowles since his actions alone have caused the increase of fees of the Receiver and the necessity for the hearing to enjoin

Harry L. Bowles from interfering with, threatening, or killing the Receiver or any of his agents or employees.

Respectfully submitted,

JOSEPH M. NIXON

Joseph M. Nixon ★
Joseph M. Nixon
State Bar No. 15244800
3000 Smith
Houston, Texas 77006
Telephone: (713) 521-9797
Telecopier: (713) 521-3125

Attorney for Third-Party Intervenors

CERTIFICATE OF SERVICE

I hereby certify that on this the 18th day of April, 1994, a true and correct copy of the foregoing was forwarded by U.S. Mail to Mr. Harry L. Bowles, 306 Big Hollow Lane, Houston, TX 77042; Mr. Joe Reynolds, Andrew & Kurth, 4200 Texas Commerce Tower, Houston, TX 77002; Mr. Grant Cook, Keck Mahin & Cate, 1021 Main Street, Suite 2800, Houston, Texas 77002-6606.

George M. Bishop
George M. Bishop

★ Signed by permission

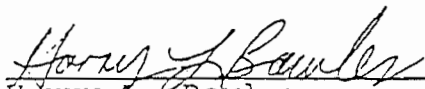
CONTINGENT FEE CONTRACT

On this 6th day of November, 1992, Harry L. Bowles, plaintiff in Cause No. 91-025939, presently pending the 165th District Court, entered into a contingent fee contract with George M. Bishop of Bishop Peterson & Sharp, P.C., wherein George M. Bishop and Bishop Peterson & Sharp, P.C., would represent Harry L. Bowles in Cause No. 91-025939 from this date forward until termination of this case through settlement, trial, appeal, or otherwise. The parties agree that no settlement will be made without the express consent of both Harry L. Bowles and George M. Bishop, and that George M. Bishop of Bishop Peterson & Sharp, P.C. will put forth his best effort on behalf of Harry L. Bowles in Cause No. 91-025939. In consideration of the services of George M. Bishop and Bishop Peterson & Sharp, P.C., Harry L. Bowles hereby assigns a forty percent (40%) interest in all recovery he may receive in Cause No. 91-025939, including attorneys' fees. He covenants and agrees to protect the interest of Bishop Peterson & Sharp, P.C., in any recovery in Cause No. 91-025939. Harry L. Bowles will be responsible for all out-of-pocket costs incurred from this date forward and if same are paid by Bishop Peterson & Sharp, P.C., Bishop Peterson & Sharp, P.C. will be entitled to reimbursement for same before any distribution of any proceeds of any settlement or judgment. If Harry L. Bowles pays any expenses, he will be reimbursed for those expenses out of the proceeds of any settlement or judgment before the proceeds of the settlement or judgment are divided on a basis of sixty percent (60%) and forty

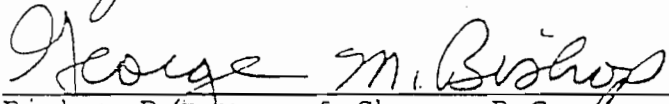
EXHIBIT "A"

percent (40%) to Bishop Peterson & Sharp, P.C. This will include all expenses that Harry L. Bowles has paid for depositions, filing fees, court costs or other necessary expenses incurred prior to this date, exclusive of any legal fees. In the event Mr. Bowles recovers the legal fees previously paid to Frank Svetlik, Jack Emmott, and David Williams and Associates for preparation of this case through a jury verdict or judgment, then those fees recovered as reimbursement for Mr. Bowles will be refunded to him prior to the division of the remainder of the proceeds of the case on a basis of sixty percent (60%) to Bowles, forty percent (40%) to Bishop Peterson & Sharp, P.C. In the event of an appeal to any of the courts of appeal of Texas or to the Texas Supreme Court, the fees will remain the same and the proceeds shall be divided between the parties on the same basis as if there had been no appeal.

SIGNED on this 6th day of November, 1992.



Harry L. Bowles



Bishop Peterson & Sharp, P.C.
By George M. Bishop, President

GEORGE M. BISHOP & ASSOCIATES

ATTORNEYS AT LAW

3000 SMITH

HOUSTON, TEXAS 77006

(713) 521-9797

FAX: (713) 521-3125

April 12, 1994

GEORGE M. BISHOP
"BOARD CERTIFIED - CIVIL TRIAL LAW
BOARD CERTIFIED - CIVIL APPELLATE LAW
TEXAS BOARD OF LEGAL SPECIALIZATION"

Mr. Harry L. Bowles
306 Big Hollow Lane
Houston, TX 77042

RE: No. 91-025939; Harry L. Bowles and Quality Seal Company
v. Charles N. Schwarz, Jr., Rosalie Schwarz and JoAnn
Lane; In the 190th District Court of Harris County, Texas

Dear Harry:

I received a fax from you this morning even though there was a court order prohibiting you from faxing me at this office. Please do not fax me again except through your new counsel. I suggest you get new counsel as soon as possible to represent you in this matter as there are many areas in this case in which you will need competent counsel to advise you.

The purpose of this letter is to advise you that you have outstanding expenses that you owe me that we have incurred on your behalf in the amount of \$12,568.05. I enclose a copy of our expenses to date.

In addition to these expenses, we have incurred a considerable amount of attorney's fees since you retained the firm of Bishop Peterson & Sharp, P.C. in October 1992. Under the terms of the contract that you signed with me you are to pay forty percent (40%) of any recovery you have in this suit as attorney's fees.

I hereby make demand upon you for payment of all expenses and for you to honor the contract whereby you assigned forty percent of your recovery.

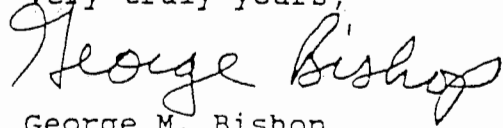
If I have not heard from you within ten days from the date of this letter, we will proceed with our intervention which we expect to file by the end of this week. We will seek to recover not only the attorney's fees you contracted for and the expenses incurred, but our attorney's fees for prosecuting this claim pursuant to Section 38.001 et. seq. of the Texas Civil Practice and Remedies Code.

EXHIBIT "B"

April 12, 1994

If you wish to acknowledge your contractual debt for attorney's fees and expenses, please have your attorney contact me within ten days from the date of this letter. If we have not heard from your attorney by that date, we will seek to recover not only the fees and expenses you owe, but the necessary and reasonable time for collecting these fees and expenses in the intervention.

Very truly yours,

A handwritten signature in cursive script that reads "George Bishop". The signature is written in dark ink and is positioned above the typed name.

George M. Bishop

GMB:tr
enclosure

G. RGE M. BISHOP & ASSOCIATES
3000 Smith
Houston, Texas 77006
713/521-9797
Fax/521-3125

April 12, 1994

Mr. Harry L. Bowles
306 Big Hollow Lane
Houston, Texas 77042

Invoice #859308

In reference to: Cause No. 91-025939 Harry L. Bowles and Quality
Seal Company v. Charles N. Schwartz, Jr.; In the
165th District Court of Harris County, Texas

| | Amount ----- |
|--|-----------------|
| Out of pocket expenses incurred | |
| 10/16/92 Postage for Harry Bowles | 3.90 |
| Copies for Harry Bowles | 9.50 |
| Faxes for Harry Bowles | 8.00 |
| 11/20/92 Copies for November | 25.50 |
| 11/24/92 Lunch meeting. | 15.92 |
| 11/30/92 Postage for November | 4.28 |
| Fax charges for November | 15.00 |
| 12/31/92 Postage for December | 4.75 |
| Copies for December | 50.75 |
| Fax | 29.00 |
| 01/08/93 Subpoena fee for Snyder, Olson, Freeman | 3.00 |
| 01/14/93 Subpoenas for Pat Olson, Dennis Forman, Barbara Snyder, Grady McCormack, Mamie May, Pamela Radford, and Al Stein. | 317.00 |
| Deposition of Pat Olson | 515.30 |
| Deposition of Dennis Dean Foreman | 341.00 |
| 01/20/93 DocuCopy | 251.66 |

Mr. Harry L. Bowles

Page 2

| | Amount ----- |
|---|-----------------|
| Deposition of Mamie May | 333.80 |
| Deposition of Pamela Radford | 345.70 |
| 01/31/93 Copies for January | 314.75 |
| Postage for Januray | 13.13 |
| Fax | 103.00 |
| Messenger | 13.00 |
| 02/03/93 Messenger | 15.00 |
| 02/06/93 Service of subpoenas on Al Stein, Barbara Snyder and Grady McCormack. | 160.00 |
| 02/11/93 Messenger | 19.90 |
| 02/28/93 Fax | 109.00 |
| Copies for February | 148.75 |
| Postage for February | 14.77 |
| Messenger | 5.00 |
| 03/03/93 Jury Fee | 30.00 |
| 03/15/93 Subpoena fee of Pat Olson | 77.50 |
| 03/19/93 Deposition of Allan T. Stein, Jr. | 496.50 |
| 03/23/93 Miscellaneous/NPL | 10.72 |
| 03/24/93 Deposition of Barbara Snyder | 1,017.18 |
| 03/25/93 Sixth amended petition service fee | 106.00 |
| 03/26/93 Mileage/Bowles office for document production | 7.50 |
| 03/29/93 Transcript of hearing | 990.00 |
| 03/31/93 Copies for March | 386.85 |
| Postage for March | 5.95 |
| Messenger for March | 125.00 |

Mr. Harry L. Bowles

Page 3

| | <u>Amount</u> |
|---|---------------|
| Fax for March | 80.00 |
| 04/05/93 Copy of Schwartz records | 47.00 |
| 04/15/93 Deposition of JoAnn Lane taken 03/24/93 | 437.80 |
| 04/19/93 Deposition/Rosalie Schwartz taken 03/24/93 | 489.50 |
| 04/21/93 Deposition of Grady McCormack, taken 03/26/93. | 449.10 |
| 04/30/93 Fax for April | 65.00 |
| Postage for April | 14.38 |
| Copies for April | 159.25 |
| Messenger April | 50.00 |
| 05/13/93 Westlaw Research | 43.60 |
| 05/14/93 Deposition of Charles N. Schwarz taken on 03/23/93. | 1,128.00 |
| 05/28/93 Messenger | 19.50 |
| Messenger | 1.90 |
| 05/31/93 Postage for May | 6.08 |
| Copies for May | 261.50 |
| Fax for May | 14.00 |
| 06/04/93 Mileage | 5.00 |
| 06/06/93 Deposition of John Brantley | 538.50 |
| 06/07/93 Westlaw | 72.86 |
| 06/08/93 Subpoenas | 32.00 |
| 06/09/93 Service on Fred Harssema | 60.00 |
| Filing fee - subpoenas | 12.00 |
| Witness fee's for Subpoena Randy Pennigton, Fred Harssema, Al Stien. | 3.00 |

Mr. Harry L. Bowles

Page 4

| | Amount |
|--|--------|
| | ----- |
| 06/11/93 Westlaw | 7.54 |
| 06/18/93 Witness fee Peter Boesel, Joe Pippert, JoAnn Cloud, David Peterman | 4.00 |
| Subpoenas for Peter Basil, JoAnn Cloud, David Peterman and Joel T. Peppert. | 16.00 |
| Westlaw | 29.52 |
| 06/21/93 Witness fee for Jack Hardy (\$1), Subpoena fee (\$4) | 5.00 |
| 06/22/93 Trip to N.P.S. office/25 miles at .25 per mile | 6.25 |
| 06/24/93 Subpoenas for Pat Olson, Mamie May and Pam Radford | 15.00 |
| Westlaw | 12.36 |
| 06/30/93 Copies for June | 406.50 |
| Postage for June | 15.05 |
| Fax for June | 172.00 |
| Messenger for June | 170.00 |
| DocuCopy | 70.44 |
| 07/15/93 Fax July | 30.00 |
| Copies for July 1-15 | 12.75 |
| Postage for July 1-15 | 2.78 |
| Messenger July 1-15 | 15.00 |
| 07/23/93 Parking | 0.75 |
| 07/31/93 Postage for July 16-31 | 2.78 |
| Copies for July 16-31 | 6.75 |
| Fax July 16-31 | 7.00 |
| 08/16/93 Westlaw research | 86.35 |

Mr. Harry L. Bowles

Page 5

| | Amount |
|--|--------|
| | ----- |
| 08/31/93 Fax August | 20.00 |
| Copies for August | 9.00 |
| Postage for August | 3.42 |
| 09/30/93 Messenger charges for September | 30.00 |
| Fax for September | 4.00 |
| Copies for September | 11.75 |
| Postage for September | 3.71 |
| 10/07/93 Certified copies | 1.00 |
| 10/19/93 File fee Notice of Deposition; deliver depositions to Mr. Cook. | 10.00 |
| 10/21/93 Service fees on Mamie May, Pamela Radford, Pat Olson, Barbara Snyder, Grady McCormack, JoAnn Lane, Fred Harssema and Charles Schwarz (\$8.00) and filing fees on May, Radford, McCormack, Olson, and Snyder(\$20.00). | 28.00 |
| Messenger / Service of subpoenas on Barbara Snyder, Pat Olson and Pamela Radford. | 20.00 |
| Messenger / trip to courthouse to file subpoenas on Barbara Snyder, Pat Olson, Pamela Radford, Mamie May and Grady McCormack. | 10.00 |
| 10/22/93 Subpoenas serviced by Dick Golden | 77.00 |
| 10/26/93 Parking | 2.00 |
| John Brantley | 60.00 |
| Messenger/Settlement agreement to Mr. Cook | 10.00 |
| Court Reporter charge for John R. Brantley on 10/22/93. | 60.00 |
| 10/28/93 Messenger/Receivers Bond to Joe Reynolds. | 10.00 |
| 10/31/93 Fax for October | 38.00 |
| Copies for October | 241.50 |

Mr. Harry L. Bowles

Page 6

| | Amount |
|-----------------------------|-------------------------------|
| | ----- |
| Postage for October | 1.45 |
| 11/30/93 Fax for November | 92.00 |
| Copies for November | 15.25 |
| Postage for November | 6.83 |
| 12/31/93 Fax for December | 35.00 |
| Postage for December | 8.28 |
| Copies for December | 41.50 |
| 01/31/94 Copies for January | 17.75 |
| Postage for January | 4.23 |
| Fax charges for January | 5.00 |
| 02/28/94 Fax for February | 14.00 |
| Postage for February | 2.32 |
| Copies for February | 5.00 |
| 03/31/94 Fax for March | 59.00 |
| Postage for March | 6.78 |
| Copies for March | 16.25 |
| 04/11/94 | 1.50 |
| 04/12/94 Copies for April | 13.75 |
| Postage for April | 2.43 |
| Fax for April | 43.00 |
| Total expenses | ----- \$12,568.05 |
| Balance due | ----- \$12,568.05 ===== |

P-3
4B
91-25939A
117"

NO. 91-025939

HARRY L. BOWLES, and
QUALITY SEAL COMPANY, a Texas
Corporation,

Plaintiffs,

V.

CHARLES N. SCHWARZ, JR.,
ROSALIE SCHWARZ, AND
JOANN LANE

Defendants.

§ IN THE DISTRICT COURT OF
§
§
§
§
§ HARRIS COUNTY, TEXAS
§
§
§
§
§ 190TH JUDICIAL DISTRICT

ORDER GRANTING SEVERANCE REQUESTED BY
BISHOP PETERSON & SHARP, P.C. AND GEORGE M. BISHOP

On this ___ day of April, 1995, came on to be considered the Motion for Severance of Intervenors Bishop Peterson & Sharp, P.C. and George M. Bishop and for entry of Final Judgment as to their Intervention. Having considered the law, the pleadings, and the argument of all interested parties, the Court is of the opinion that the Motion should be granted. It is therefore

ORDERED that the cause of action asserted by Bishop Peterson & Sharp, P.C. and George M. Bishop against Harry L. Bowles be and the same is hereby severed from the original suit and the Clerk is ORDERED to:

a. docket the severed cause under Cause Number 91-025939-A, with Bishop Peterson & Sharp, P.C. and George M. Bishop as Plaintiffs and Harry L. Bowles as the Defendant;

b. prepare certified copies of the following pleadings, papers, and orders and file them in the separate cause of action:

1. Third party intervention of Bishop Peterson & Sharp, P.C. and George M. Bishop, filed April 18, 1994

000847
RECORDER'S MEMORANDUM
This instrument is of poor quality
and not satisfactory for photographic
recording; and/or alterations were
present at the time of filing

EXHIBIT E

V8804 P0954

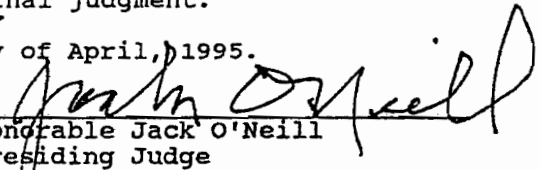
2. Intervenor's Motion for Summary Judgment, filed May 27, 1994
3. Order Granting the Summary Judgment of Bishop Peterson & Sharp, P.C. of July 18, 1994
4. Motion for Severance filed by Bishop Peterson & Sharp, P.C. and George M. Bishop, filed April 6, 1995
5. A copy of this Order signed by the Court.

It is further ORDERED that the cost of making the certified copies ordered above are to be taxed against Harry L. Bowles.

It is further ORDERED that separate Judgments be entered in the severed causes, each Judgment to be final and to dispose completely of all of the issues between all parties in their respective suits.

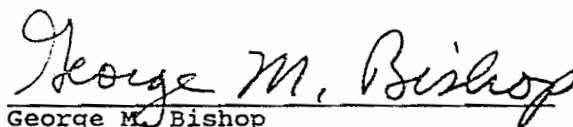
It is further ORDERED that the Summary Judgment granted by this Court in favor of Bishop Peterson & Sharp, P.C. be entered in Cause No. 91-025939-A as a final judgment.

SIGNED on this 10th day of April, 1995.


Honorable Jack O'Neill
Presiding Judge

Approved as to form and substance:

GEORGE M. BISHOP & ASSOCIATES



George M. Bishop
State Bar No. 02353000
3000 Smith
Houston, Texas 77006
Telephone: (713) 521-9797
Telecopier: (713) 521-3125

CERTIFICATE OF SERVICE

I hereby certify that on this the 6th day of April, 1995, a true and correct copy of the foregoing proposed Order Granting Severance Requested by Bishop Peterson & Sharp, P.C. and George M. Bishop was forwarded by U.S. Mail to Mr. Harry L. Powles, 306 Big Hollow Lane, Houston, TX 77042; Mr. Joe Reynolds, Andrew & Kurth, 4200 Texas Commerce Tower, Houston, TX 77002; Mr. Grant Cook, Keck Mahin & Cate, 1021 Main Street, Suite 2800, Houston, Texas 77002-6606.

George M. Bishop
George M. Bishop

V8804 P0956

APR 11 1995
U.S. MAIL
HOUSTON, TEXAS

000849

GEORGE M. BISHOP & ASSOCIATES

ATTORNEYS AT LAW

3000 SMITH

HOUSTON, TEXAS 77006

(713) 521-9797

FAX: (713) 521-3125

November 1, 1995

GEORGE M. BISHOP
"BOARD CERTIFIED - CIVIL TRIAL LAW
BOARD CERTIFIED - CIVIL APPELLATE LAW
TEXAS BOARD OF LEGAL SPECIALIZATION"

Mr. Charles Bacarisse
District Clerk
301 Fannin
Houston, TX 77002

RE: No. 91-025939; Harry L. Bowles and Quality Seal Company
v. Charles N. Schwarz, Jr., et al; In the 334th District
Court of Harris County, Texas

Dear Mr. Bacarisse:

Enclosed for filing in the above-referenced case is
George M. Bishop's Third Party Intervention.

Please return a copy of this filing to me for my records.
By copy of this letter, opposing counsel is being notified of this
filing.

Thank you for your attention and consideration in this
matter.

Very truly yours,
George M. Bishop
George M. Bishop

GMB:tr
enclosure

cc: Mr. Grant Cook
Keck Mahin & Cate
1021 Main Street, Suite 2800
Houston, Texas 77002-6606

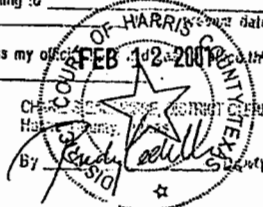
Mr. Harry L. Bowles
306 Big Hollow Lane
Houston, TX 77042

STATE OF TEXAS
COUNTY OF HARRIS

I, Charles Bacarisse, District Clerk of Harris County,
Texas, do hereby certify that the foregoing data is a
true and correct copy of the original record, now
in my lawful custody and possession as appears
of record in my office under:

- a) filed on 11/2/95
- b) recorded under Vol. _____ Page _____
in the Minutes of said Court
- c) abstracted from the original record in my lawful
possession, electronically, stored in digital form
and pertaining to the _____
in reference to cause number _____
- d) abstracted from the original record in my lawful
possession, electronically, stored in digital form
pertaining to _____
from _____

Witness my office this 1st day of FEB 1995.



CEDILLO

EXHIBIT F

000865

95 NOV 12 10:11:32

TR-51



NO. 91-025939

HARRY L. BOWLES, and
QUALITY SEAL COMPANY, a Texas
Corporation,

Plaintiffs,

V.

CHARLES N. SCHWARZ, JR.,
ROSALIE SCHWARZ, AND
JOANN LANE

Defendants.

§ IN THE DISTRICT COURT OF
§
§
§
§
§ HARRIS COUNTY, TEXAS
§
§
§
§
§ 334TH JUDICIAL DISTRICT

95 NOV -2 4 11 52
CLERK OF DISTRICT COURT
HARRIS COUNTY TEXAS

THIRD PARTY INTERVENTION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW George M. Bishop, with this his Third Party Intervention in the above-styled and numbered cause, complaining of Charles N. Schwarz, Jr., and would show unto the Court and Jury the following:

I.

George M. Bishop, hereinafter referred to as "Intervenor," would show that a Settlement Agreement was made in this cause on October 25, 1993 and was signed by all parties. The terms of the Settlement Agreement require, among other things, that at the closing of the sale by the Receiver, the Defendant in Intervention, Charles N. Schwarz, Jr., shall pay to Harry L. Bowles and Intervenor out of the net proceeds of the sale a sum of money equal to the difference between fifty percent (50%) of all legal fees and expenses incurred by Keck Mahin & Cate in its representation of parties in the above-entitled cause through and including 3:30 p.m. on October 25, 1993, and \$22,000.00. On

000862

November 8, 1993, Mr. Cook of Keck Mahin & Cate advised that those legal fees and expenses were \$224,132.01.

Paragraph 11 of the same Settlement Agreement requires that such payments be made jointly to Plaintiff, Harry L. Bowles, and Intervenor. The total due to be paid by check to Plaintiff and Intervenor is now \$90,066.01, plus accrued interest. Intervenor would show that he has made demand on counsel for defendant Charles N. Schwarz, Jr. for payment of the funds due pursuant to the Settlement Agreement in the amount of \$90,066.01, but the said Charles N. Schwarz, Jr., Defendant herein, has failed and refused to pay those funds in accordance with the Settlement Agreement. Intervenor has a forty-five percent (45%) interest in those funds due to the fact that Plaintiff perfected an unsuccessful appeal of Cause No. 91-025939.

II.

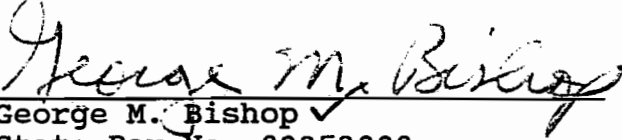
Intervenor would show that the failure of Mr. Schwarz to pay the funds due has constituted breach of the Settlement Agreement entitling Intervenor to recover his attorney's fees for preparation for trial, trial, and for each step of the appellate process.

WHEREFORE, PREMISES CONSIDERED, Intervenor requests that this Court set this matter for trial and that upon final hearing, enter judgment for Intervenor for the amounts due pursuant to the Settlement Agreement and for attorney's fees. Further, Intervenor prays for prejudgment interest from the earliest date possible at

the highest rate allowed by law. Intervenor requests recovery of his costs incurred herein.

Respectfully submitted,

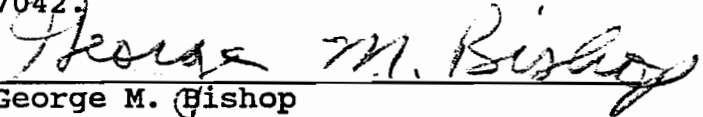
GEORGE M. BISHOP & ASSOCIATES



George M. Bishop ✓
State Bar No. 02353000
3000 Smith
Houston, Texas 77006
Telephone: (713) 521-9797
Telecopier: (713) 521-3125

CERTIFICATE OF SERVICE

I hereby certify that on this the 1st day of November, 1995, a true and correct copy of the foregoing was forwarded by U.S. Mail to Mr. Grant Cook, Keck Mahin & Cate, 1021 Main Street, Suite 2800, Houston, Texas 77002-6606 and Mr. Harry L. Bowles, 306 Big Hollow Lane, Houston, TX 77042.


George M. Bishop

P-1
TDCX
↓

NO. 9125939A

Bishop, Peterson & Sharp P.C.

VS.

Bowles, Harry L.

IN THE DISTRICT COURT OF
HARRIS COUNTY, TEXAS
180
55th JUDICIAL DISTRICT

ORDER

IT IS ORDERED, ADJUDGED AND DECREED THAT THE ABOVE STYLED AND NUMBERED CAUSE BE TRANSFERRED TO THE 55th JUDICIAL DISTRICT COURT.

SIGNED THIS THE 25th DAY OF May, 1996.

Donald W. ...
~~PRESIDING JUDGE~~
Administrative Judge
Civil Division

PRESIDING JUDGE

RECORD
This instrument
and not subject to
recording, and/or alterations were
present at the time of
EXHIBIT G

NO. 91-025939-A

BISHOP, PETERSON & SHARP, P.C.
ET AL.

VS.

HARRY L. BOWLES

§
§
§
§
§
§

IN THE DISTRICT COURT OF

HARRIS COUNTY, T E X A S

55TH JUDICIAL DISTRICT

PLEA IN INTERVENTION AND OBJECTION TO
MOTION TO DISTRIBUTE FUNDS

COMES NOW, Charles N. Schwarz, Jr., Intervenor, pursuant to Rule 60 of the Texas Rules of Civil Procedure and intervenes in this cause for the purpose of objecting to the Motion to Distribute Funds heretofore filed by Bishop, Peterson & Sharp, P.C., and as grounds therefore would show unto the Court the following:

1. Intervenor has an interest in these proceedings because of his interest in the funds being held in the Registry of the Court to which the Motion is addressed.

2. Prior to the severance of the claims of Bishop, Peterson & Sharp, the 190th District Court entered an Order on April 10, 1995, in Cause No. 91-025939, whereby the Court, *inter alia*, ordered that the funds held by the Receiver payable to Bowles and his attorney, Bishop, "be deposited into the Registry of the Court to be held until such time as the Court's Orders herein shall become final by operation of law or appellate decision." Thereafter, Cause No. 91-025939 was transferred to the 334th District Court. Subsequently, a Final Judgment was entered by the 334th District Court in Cause No. 91-025939 on February 12, 1996, which carried forward and confirmed the April 10, 1995 Order aforesaid and furthermore confirmed an Order of the 334th District Court of June 2, 1995, that the

EXHIBIT H

funds deposited into the Registry of the Court by Schwarz be held until the Judgment of the Court becomes final by operation of law or appellate decision. Such Orders of June 2, 1995 and February 12, 1996 also provided that Schwarz would have the right, upon motion and hearing, to recover from the funds on deposit in the Registry of the Court any additional attorneys' fees and expenses incurred by him in the enforcement of the Settlement Agreement of October, 1993. Schwarz' entitlement to such recovery was the obvious reason for the Court's Orders providing that the funds be held in the Registry of the Court until the Judgment should become final.

3. Bishop, Peterson & Sharp has purported to perfect an appeal from the Final Judgment of April 12, 1996 in Cause No. 91-025939 aforesaid, and accordingly, there has been no final judgment of the Court which has become final by operation of law or appellate decision and for that reason, Bishop, Peterson & Sharp are not entitled to withdraw any funds from the Registry of the Court. Schwarz is the Appellee in the appeal perfected by Bishop, Peterson & Sharp and therefore will be called upon to expend reasonable attorneys' fees in responding to that appeal which will, in itself, be further effort on his part to enforce the terms of the Settlement Agreement of October, 1993. He will, after such fees are incurred, be therefore entitled to seek a recovery of such fees out of the funds on deposit in the Registry of the Court.

4. Pleading further Intervenor would show that the deposit from which Bishop, Peterson & Sharp seeks to withdraw funds was a deposit made into the Registry of the 334th Judicial District Court, not this Court. Accordingly, this Court has no authority to

direct the withdrawal of funds that were deposited pursuant to an Order of the 334th District Court.

5. Intervenor would further show that the amount of funds sought to be withdrawn by Bishop, Peterson & Sharp, *i.e.*, \$281,561.55 is erroneous and that it is overstated by more than \$100,000.

WHEREFORE, PREMISES CONSIDERED, Intervenor respectfully prays that the Motion to Withdraw Funds of Bishop, Peterson & Sharp be denied.

Respectfully submitted,

KECK, MAHIN & CATE

By: 

Grant Cook

State Bar No. 04732000

1001 Fannin Street, Suite 1200

Houston, Texas 77002-6708

(713) 650-1500

(713) 650-1700 (FAX)

ATTORNEYS FOR INTERVENOR,
CHARLES N. SCHWARZ, JR.

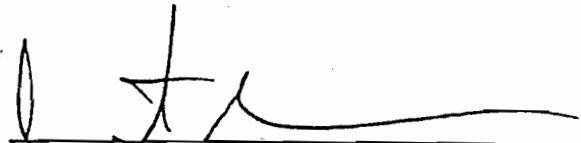
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded by certified mail, return receipt requested and by regular mail on this 25th day of June, 1996, to the following parties and counsel of record:

Mr. Harry Bowles
306 Big Hollow Lane
Houston, Texas 77042

Mr. George M. Bishop
3000 Smith Street
Houston, Texas 77006

Mr. Joe Reynolds
Andrews & Kurth, L.L.P.
4200 Texas Commerce Tower
Houston, TX 77002



Grant Cook

P1
TDCX

Cause No. 91-25939

Bowles, Harry L.

v.

Schwartz, Charles N. Jr.

}} IN THE DISTRICT COURTS OF

}} HARRIS COUNTY, TEXAS

}} ⁵⁵
}} 33rd JUDICIAL DISTRICT

TRANSFER ORDER

The above styled and numbered cause remains an active case under the jurisdiction of the Harris County District Courts Registry, and should be transferred to the court assigned cause number 91-25939-A. It is therefore

ORDERED that the District Clerk of Harris County transfer cause no. 91-25939 to the 55th District Court.

Signed Aug. 9, 1996.

Charles N. Schwartz, Jr.
Administrative Judge, Harris County

RECORDER'S MEMORANDUM:
This instrument is of poor quality and not satisfactory for photographic recordation; and/or alterations were present at the time of filming.

EXHIBIT I

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8/30/96
MLC

NO. 91-025939-A

| | | |
|-------------------------------|---|--------------------------|
| BISHOP PETERSON & SHARP, P.C. | § | IN THE DISTRICT COURT OF |
| and GEORGE M. BISHOP | § | |
| | § | |
| vs. | § | HARRIS COUNTY, TEXAS |
| | § | |
| HARRY L. BOWLES | § | 55TH JUDICIAL DISTRICT |
| | | |
| | | and |

NO. 91-025939

| | | |
|-------------------------------|---|--------------------------|
| HARRY L. BOWLES, and | § | IN THE DISTRICT COURT OF |
| QUALITY SEAL COMPANY, a Texas | § | |
| Corporation, | § | |
| | § | |
| Plaintiffs, | § | |
| | § | |
| V. | § | HARRIS COUNTY, TEXAS |
| | § | |
| CHARLES N. SCHWARZ, JR., | § | |
| ROSALIE SCHWARZ, AND | § | |
| JOANN LANE | § | |
| | § | |
| Defendants. | § | 55TH JUDICIAL DISTRICT |

ORDER FOR DISBURSEMENT OF FUNDS

Be it remembered that on the 19th day of July, 1996, and again on the 23rd day of July, 1996, came on to be heard the Motion of Plaintiffs Bishop Peterson & Sharp, P.C. and George M. Bishop for the distribution to them of the funds heretofore deposited into the registry of the Court in Cause No. 91-025939. Plaintiffs in Cause No. 91-025939-A and Intervenor, Charles N. Schwarz, Jr., appeared by counsel and Defendant Harry L. Bowles did not appear, even though he had been properly notified of the hearing of such motion. The Plaintiffs and Intervenor Charles N. Schwarz, Jr. announced to the Court that they had reached a partial agreement relative to the motion, which agreement pertains to the funds deposited into the

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RECORDER'S MEMORANDUM
EXHIBIT J

registry of the Court by Charles N. Schwarz, Jr. on February 26, 1996, in the amount of \$42,219.99. The Court finds that the agreement of the parties should be carried forward as an order of the Court; accordingly it is

ORDERED that the Clerk issue to George M. Bishop the sum of \$39,618.18 from the registry of the Court out of the deposit made into the registry of the Court on February 26, 1996, by Charles N. Schwarz, Jr.

In addition, the Court having heard evidence and argument of counsel concerning the funds tendered into the registry of the Court by the court-appointed receiver, Joe H. Reynolds, was of the opinion that George M. Bishop ^{and} ~~of~~ Bishop Peterson & Sharp, P.C. ^{WERE} ~~HAS~~ entitled to a recovery of \$186,781.19, representing principal and

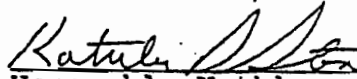
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interest due through July 26, 1996, on the judgment signed by the Honorable Jack O'Neill on July 18, 1994.

To Bishop Petteson & Sita
P.C.
KM

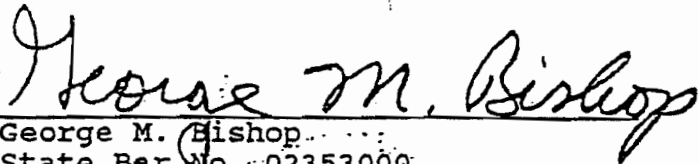
The Clerk is ORDERED to disburse \$186,781.19 ^{s/o} George M. Bishop at 3000 Smith Street, Houston, Texas 77006. The Clerk is ORDERED to disburse the remainder of the funds in the registry of the Court in Cause No. 91-025939 to Harry L. Bowles, 306 Big Hollow Lane, Houston, Texas 77042.

SIGNED and RENDERED on this 30 day of ^{August} ~~July~~, 1996.


Honorable Kathleen Stone
Presiding Judge

Approved as to form and substance:

GEORGE M. BISHOP & ASSOCIATES



George M. Bishop
State Bar No. 02353000
3000 Smith
Houston, Texas 77006
Telephone: (713) 521-9797
Telecopier: (713) 521-3125

10230F0659

N

P-2
(3)

Cause No. 199125939A

BISHOP PETERSON & SHARP P C

VS

BOWLES, HARRY L

• IN THE DISTRICT COURT OF
• HARRIS COUNTY, TEXAS
• 55TH JUDICIAL DISTRICT

ORDER OF DISMISSAL

For failure to comply with THE NOTICE DATED 03-25-1999/TRCP165A,
this cause is ordered DISMISSED FOR WANT OF PROSECUTION. Costs of court are
assessed against the plaintiff(s).

Signed

Sherry Badack

SHERRY BADACK
JUDGE, 55TH DISTRICT COURT
Generated on: APRIL 20, 1999

April 21, 1999

F I L E D
CHARLES BACUMER
District Clerk

APR 21 1999

Harris County, Texas

By _____
Deputy

EXHIBIT K

GEORGE M BISHOP III
3000 SMITH ST
HOUSTON TX 77006

RECORDER'S MEMORANDUM
This instrument is of poor quality
and not satisfactory for photographic
recording, and/or alterations were
present at the time of imaging

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