

**TAB H**

No. **03-0532**

OFFICIAL ORDER  
of the  
COMMISSIONER OF INSURANCE  
of the  
STATE OF TEXAS  
AUSTIN, TEXAS

Date: JUN 26 2003

Subject Considered:

THE HOME INSURANCE COMPANY  
NEW HAMPSHIRE

DESIGNATION AS AN IMPAIRED INSURER UNDER  
TEXAS INSURANCE CODE 21.28-C

General remarks and official action taken:

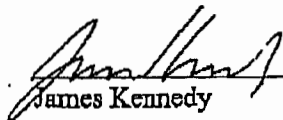
On this day came on for consideration by the Commissioner of Insurance the matter of The Home Insurance Company, organized under the laws of the State of New Hampshire, doing the business of insurance in the State of Texas. On June 13, 2003, the Superior Court of Merrimack County, New Hampshire entered an Order of Liquidation in Docket No. 03-E-0106 finding The Home Insurance Company to be insolvent.

Based upon the finding of insolvency by the Superior Court, and having considered the purposes of TEX. INS. CODE ANN. art. 21.28-C, the Commissioner of Insurance finds that The Home Insurance Company should be, and is hereby, designated as an impaired insurer as that term is defined in TEX. INS. CODE ANN. art. 21.28-C §5(9).

JOSÉ MONTEMAYOR  
COMMISSIONER OF INSURANCE

By: 

Reviewed by:

  
James Kennedy



(1994). Casting a complaint in the form of a civil rights action does not permit circumvention of this rule. *Id.*

A review of the Complaint reveals that Bowles is complaining about the way his state district court actions were handled and the adverse results he suffered in those cases. His requests for injunctive relief and damages, stripped to their essentials, are nothing more than an attack on the judgment by the state court. His “constitutional” claims, if any, are inextricably intertwined with the state court proceedings and the adverse judgments entered therein. *See Liedtke*, 18 F.3d at 318.

B. Complete diversity does not exist.

Bowles alleges that this Court has diversity jurisdiction under 28 U.S.C. § 1332. Complete diversity simply does not exist in this case. In his Complaint, Bowles alleges that he is a resident and citizen of the State of Texas. Pursuant to 28 U.S.C. § 1332(c)(1), since this is a direct action against a liability carrier, to which action the Insured Law Firm is not joined, HICIL is a citizen of the State in which the insured is a citizen. The Insured Law Firm was a Texas corporation with its principal place of business in Texas. TPCIGA is an unincorporated, nonprofit legal entity. TEX. INS. CODE ANN. § 462.051(a) (Vernon Pamph. 2008). As such, it is a citizen of every state its constituent members are citizens of. *Temple Drilling Co. v. Louisiana Ins. Guar. Ass'n*, 946 F.2d 390, 394 (5<sup>th</sup> Cir. 1991). Since § 462.051 requires every insurance carrier doing business in Texas, including Texas insurance companies, to be members, TPCIGA is also a citizen of Texas.<sup>2</sup> *See id.* Jurisdiction does not exist under § 1332.

---

<sup>2</sup> Bowles alleges TPCIGA is a state agency. If that were correct, diversity jurisdiction would still not exist because state agencies are not citizens for purposes of the statute and their presence precludes complete diversity. *Hotep v. United States*, 2007 WL 1321845, at \*2 (N.D. Tex. 2007).

C. There is no federal question at issue in this case.<sup>3</sup>

Federal question jurisdiction comes into play from a well-pleaded complaint. *Sarmiento*, 939 F.2d at 1245. In order to invoke federal question jurisdiction, the plaintiff must set forth a violation of a federal law, statute, or constitutional provision on which the court can exercise jurisdiction. *Perez*, 2007 WL 3125287, at \*2. Mere recitations of constitutional violations will not suffice where the contention is frivolous or patently without any merit. *Fox v. City of El Paso*, 2007 WL 2901125, at \*2 (W.D. Tex. 2007).

Bowles alleges claims for fraud, conspiracy, officious intermeddling, tortious interference, perjury, obstruction of justice, and violations of TEX. PENAL CODE ANN. § 37.09 (Vernon Supp. 2008). To the extent that any of these “claims” constitute valid state law claim, these claims do not provide grounds for federal question jurisdiction. *See Perez v. Araiza*, 2007 WL 3125287, at \*2 (W.D. Tex. 2007), *aff'd*, 275 Fed. Appx. 385 (5<sup>th</sup> Cir. 2008).

Although Bowles is still apparently attempting to make a right of access argument under the 1<sup>st</sup> Amendment and a due process argument under the 14<sup>th</sup> Amendment, his claims are nothing more than a bare recitation of some alleged constitutional violation. His entire claim is based on the misguided assumption that he has a right to sue an individual that carries liability insurance without any defense being provided by the insurer. To the extent that Bowles seeks to make this a constitutional violation, his contention is patently without merit.

---

<sup>3</sup> The Fifth Circuit has suggested that where issues of fact are central to both subject matter jurisdiction and a claim on the merits, the district court should proceed to rule on the merits. *Krim v. PCOrder.Com, Inc.*, 402 F.3d 489, 494 n.15 (5<sup>th</sup> Cir. 2005). However, as the Fifth Circuit noted in *Sarmiento v. Texas Bd. of Veterinary Med. Exam'rs*, 939 F.2d 1242 (5<sup>th</sup> Cir. 1991), dismissal for want of jurisdiction remains appropriate where the federal claims are frivolous or mere matters of form. *Id.* at 1245. As the Fifth Circuit subsequently noted in *Richard v. Hoechst Celanese Chem. Group, Inc.*, 355 F.3d 345 (5<sup>th</sup> Cir. 2003), *cert. denied*, 543 U.S. 917 (2004), this exception is particularly appropriate where the plaintiff's assertion of federal jurisdiction serves only as a means for challenging a state court judgment. *Id.* at 354. This is exactly what Bowles is seeking to do in round two before this Court.

Bowles must establish that he has a protected property interest created by state law and that he has a legitimate claim of entitlement to that interest. *See Urban Developers LLC v. City of Jackson*, 468 F.3d 281, 304 (5<sup>th</sup> Cir. 2006); *Bryan v. City of Madison*, 213 F.3d 267, 274-75 (5<sup>th</sup> Cir. 2000), *cert. denied*, 531 U.S. 1145 (2001). Bowles cannot point to any property interest under Texas law. Although a cause of action is a property right protected by the 14<sup>th</sup> Amendment and access to courts is a protected interest under the 1<sup>st</sup> and 14<sup>th</sup> Amendments, *see Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428-30 (1982); *Bayou Fleet, Inc. v. Alexander*, 234 F.3d 852, 857 (5<sup>th</sup> Cir. 2000), *cert. denied*, 532 U.S. 905 (2001), a plaintiff has no property interest in any particular form of remedy but simply has a right to seek redress. *Gibbes v. Zimmerman*, 290 U.S. 326, 332 (1933).

The right of access simply means a right to institute suit. *LaBarbera v. Angel*, 95 F. Supp. 2d 656, 665 (E.D. Tex. 2000). A plaintiff has no right to a particular remedy or a right to proceed without his claims being contested. *Id.* (right of access does not mean right to win); *see also Holmes v. Hardy*, 852 F.2d 151, 153 (5<sup>th</sup> Cir.), *cert. denied*, 488 U.S. 931 (1988) (party did not have a constitutional right to status as indigent without a contested judicial determination).

Bowles cannot show that he was unable to pursue his claim against the Insured Law Firm. *See Joyce v. Mavromatis*, 783 F.2d 56, 56 (6<sup>th</sup> Cir. 1986) (plaintiff had right to file suit and offer proof so he was never denied access); *Andrade v. Chojnacki*, 65 F. Supp. 2d 431, 454 (W.D. Tex. 1999) (since plaintiffs were not hindered from gaining physical access to the courts, no 1<sup>st</sup> Amendment right of access claim existed). In fact, Bowles filed numerous claims. The fact that the defendants in those cases were defended in no way precluded Bowles from pursuing his claims. *See Rogan v. City of Boston*, 267 F.3d 24, 28 (1<sup>st</sup> Cir. 2001).

No federal question exists in this case.<sup>4</sup>

D. There is no other statutory basis for jurisdiction.

Bowles also asserts that jurisdiction exists in this case under 28 U.S.C. § 1343 based on some alleged infringement of his civil rights. No such rights are identified, nor has Bowles specified which subpart of Section 1343 he relies on.

Subsections (a)(1) and (a)(2) of Section 1343 are jurisdictional counterparts of 42 U.S.C. § 1985. Section 1985(1) concerns only federal officers and proceedings. *Salmon v. Miller*, 951 F. Supp. 103, 106 (E.D. Tex. 1996). Bowles is not a federal officer and is only complaining about a state court action. *See Lowe v. Letsinger*, 772 F.2d 308, 311 (7<sup>th</sup> Cir. 1985) (allegations of conspiracy to deny private litigant constitutional rights in state court action insufficient). Subsections (2)<sup>5</sup> and (3) of Section 1985 both require allegation and proof that the plaintiff is a member of a protected class and that the defendant acted with some racial or otherwise class-based, invidiously discriminatory animus. *See Griffin v. Breckenridge*, 403 U.S. 88, 102 (1971); *Bittakis v. City of El Paso*, 480 F. Supp. 2d 895, 920 (W.D. Tex. 2007). Bowles is not a member of any protected class and there are, and can be, no allegations of racial or other invidiously, discriminatory animus on the part of Home or HICIL.<sup>6</sup>

---

<sup>4</sup> Reliance on the 5<sup>th</sup> or 6<sup>th</sup> Amendments is likewise unavailing. The only 5<sup>th</sup> Amendment claim that could possibly exist would be a due process claim. Such claims only apply to actions by the federal government. *Hall v. City of Seven Points*, 31 Fed. Appx. 835, at \*13 n.4 (5<sup>th</sup> Cir. 2002). HICIL is in no way associated with the federal government. No 6<sup>th</sup> Amendment claim exists because by its very language, it only applies to criminal prosecutions. U.S. CONST. amend. VI.

<sup>5</sup> The first part of Section 1985(2) likewise requires a federal court proceeding. *Rivera v. City of Everman*, 2008 WL 4923107, at \*5 (N.D. Tex. 2008).

<sup>6</sup> Should this Court decide to analyze this matter under Rule 12(b)(6) instead of 12(b)(1), any claims of conspiracy on the part of Home or HICIL are conclusory at best. In fact, Bowles never even alleges that Home or HICIL conspired with anyone in the state court action. Such allegations are wholly inadequate. *See McKay v. Dallas ISD*, 2007 WL 2668007, at \*9 (N.D. Tex. 2007); *Perry v. Gold & Laine, P.C.*, 371 F. Supp. 2d 622, 626 (D. N.J. 2005) (conclusory and unsupported allegations that defendants conspired to fix cases fell short of actions giving rise to 1985 claim).

Section 1343(a)(3) is the jurisdictional counterpart of 42 U.S.C. § 1983. *Weisser v. Medical Care Sys.*, 432 F. Supp. 1292, 1295 (E.D. Pa. 1977). A requirement for jurisdiction under this section is that the defendant acted under color of state law. *Phillips v. Fisher*, 445 F. Supp. 552, 554 (D. Kan. 1977). No cause of action exists under Section 1983 when a private citizen allegedly deprives another of his constitutional rights. *Morgan v. Barry*, 785 F. Supp. 187, 191 n.8 (D. D.C. 1992). Section 1983 affords a plaintiff no cause of action for alleged abuse or misuse of process since it relates solely to state action and not that of private individuals or corporations. *Weisser*, 432 F. Supp. at 1295. Parties who participate in state court litigation do not act under color of state law. *Phillips*, 445 F. Supp. at 554. Neither HICIL nor Home is a state actor, nor is TPCIGA. Home afforded a defense to its insured. Even if that constitutes participation in the state court litigation, Home did not act under color of state law.

Nor can Bowles rely on the exception that permits liability under 1983 when a non-state actor engages in a conspiracy with state actors. *See Ballard v. Wall*, 413 F.3d 510, 518 (5<sup>th</sup> Cir. 2005). The Complaint contains only a conclusory allegation that jurisdiction exists because the defendants engaged in a conspiracy with a state district judge or judges or with an agent or agency of the state. (See Complaint ¶ 8). Mere conclusory allegations of conspiracy will not support jurisdiction under Section 1983. *Priester v. Lowndes County*, 354 F.3d 414, 423 n.9 (5<sup>th</sup> Cir.), *cert. denied*, 543 U.S. 829 (2004).<sup>7</sup>

Under Section 1343(a)(4), the plaintiff must show the existence of a statute upon which he relies that is designed to protect civil rights. *Wright v. State*, 495 F.2d 1086, 1090 (5<sup>th</sup> Cir. 1974). This jurisdictional grant also requires that the cause of action be one established by an

---

<sup>7</sup> Additionally, resorting to the courts and being on the winning side of a lawsuit does not make a party a co-conspirator for purposes of this exception. *See Richard v. Hoechst Celanese Chem. Group*, 355 F.3d 345, 353 (5<sup>th</sup> Cir. 2003), *cert. denied*, 543 U.S. 917 (2004).



Act of Congress. *Patterson v. City of Chester*, 389 F. Supp. 1093, 1095 n.1 (E.D. Pa. 1975). It does not apply to claims under the 1<sup>st</sup> or 14<sup>th</sup> Amendment. *Id.* (nor the 5<sup>th</sup> or 6<sup>th</sup>).

For all these reasons, no jurisdiction exists under these statutory provisions.

E. Full faith and credit, comity, and abstention all mandate dismissal.

The Order of Liquidation unambiguously enjoins commencing any actions against Home except through the liquidation process. That Order of Liquidation was made pursuant to the liberally construed statutory scheme established for enhanced efficiency, economy of liquidation, and the equitable apportionment of any unavoidable loss. *Gonya v. Commissioner*, 899 A.2D 278, 280 (N.H. 2006). Pursuant to the statutory scheme, the liquidator is vested with title to and charge with administering Home's assets and persons asserting claims against HICIL must file proofs of claim in the liquidation. *In re Liquidation of Home Ins. Co.*, 913 A.2d 712, 715 (N.H. 2006).

The concept of full faith and credit is a central one to our system of jurisprudence. *Underwriters Nat'l Assurance Co. v. North Carolina Life & Accident & Health Ins. Guar. Ass'n*, 455 U.S. 691, 703 (1982). The United States Constitution provides that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." U.S. CONST. art. IV, § 1. By enacting the Full Faith and Credit Act, *see* 28 U.S.C. § 1738, Congress statutorily codified this constitutional guarantee and extended the reach of this doctrine to all courts within the United States, including federal courts. This constitutional mandate is fulfilled when the judgment of a state court has the same credit, validity, and effect, in every other court of the United States, which it had in the state where it was pronounced. *Underwriters Nat'l Assurance Co.*, 455 U.S. at 704.

Courts regularly afford full faith and credit to orders from courts of other states with respect to insurance company liquidation proceedings. In *Underwriters Nat'l Assurance Co.*, *supra*, the United States Supreme Court held that full faith and credit must be extended to an order by the Indiana Rehabilitation Court enjoining the commencement or prosecution of any suit against the carrier. In so holding, the Court rejected the contention that giving full faith and credit to the order would violate the State's right to assert control over the assets of a foreign insurance company to be used for the benefit of its policyholders. 455 U.S. at 715.

In *Bard v. Charles R. Myers Ins. Agency, Inc.*, 839 S.W.2d 791 (Tex. 1992), an order from a Vermont receivership court contained an injunction prohibiting the prosecution of any action against the carrier. The Texas Supreme Court granted full faith and credit and dismissed a counterclaim by the insurance agency alleging conspiracy against the carrier. *Id.* at 797. The court noted that both the liquidation order and Texas public policy required that the claim be asserted in the receivership proceeding in Vermont. *Id.*<sup>8</sup>

There is no question that the New Hampshire Court had jurisdiction to enter the Order of Liquidation and that said order is valid under the New Hampshire Insurers Rehabilitation and Liquidation Act. The injunction against suits against HICIL is entitled to full faith and credit.<sup>9</sup>

The doctrine of comity refers to the recognition that one court affords to the decision of another, not as a matter of obligation but out of deference and respect. *Lee v. Miller County, Ark.*, 800 F.2d 1372, 1375 (5<sup>th</sup> Cir. 1986). Comity involves considerations of both convenience and expediency, as well as deference to the courts of a sister state. *Interfirst Bank-Houston, N.A.*

---

<sup>8</sup>Other courts, including the Fifth Circuit, have consistently reached the same conclusion. *See, e.g., Clark v. Fitzgibbons*, 105 F.3d 1049, 1053 (5<sup>th</sup> Cir. 1997); *Anshutz v. J. Ray McDermott Co.*, 642 F.2d 94, 95 (5<sup>th</sup> Cir. Unit A 1981); *Janak v. Allstate Ins. Co.*, 319 F. Supp. 215, 218 (W.D. Wisc. 1970); *Louisiana ex rel. Guste v. Alic Corp.*, 595 So. 2d 797, 801 (La. Ct. App. 1992); *Integrity Ins. Co. v. Martin*, 769 P.2d 69, 70 (Nev. 1989).

<sup>9</sup> The Texas Legislature has in fact mandated that full faith and credit be afforded. *See* TEX. INS. CODE ANN. § 443.402(a) (Vernon Pamph. 2008).

*v. Quintana Petroleum Corp.*, 699 S.W.2d 864, 877 (Tex. App.—Houston [1<sup>st</sup> Dist.] 1985, writ ref'd n.r.e.). It is generally appropriate to apply this doctrine where another court has exercised jurisdiction over a matter and where the states agree about the public policy at issue. *In re State Farm Mut. Auto. Ins. Co.*, 192 S.W.3d 897, 901 (Tex. App.—Tyler 2006, orig. proceeding).

Both New Hampshire and Texas have adopted statutory schemes that serve the same interest in judicial economy unique to liquidations by joining all of the insolvent carrier's claimants in a single receivership, ensuring equal treatment of all insureds, claimants, and creditors. N.H. REV. STAT. ANN. § 402-C:1 (2008): *Gonya*, 899 A.2d at 280; *Bard*, 839 S.W.2d at 797. Because the Order of Liquidation issued by the New Hampshire court is in harmony with both states' regulatory scheme, the Order of Liquidation should be enforced as a matter of comity and this case dismissed.

Finally, the doctrine of abstention under *Burford* provides a basis for dismissal. Abstention is appropriate in cases involving difficult questions of state law bearing on policy problems of substantial public import or where federal adjudication of the case would disrupt state efforts to establish a coherent policy with respect to matters of substantial public importance. *Munich Am. Reinsurance Co. v. Crawford*, 141 F.3d 585, 589 (5<sup>th</sup> Cir.), *cert. denied*, 525 U.S. 1016 (1998). The States have been consigned broad and primary responsibility for regulating the insurance industry. McCarran-Ferguson Act, 15 U.S.C. §§ 1011-1015. Courts have consistently approved abstention in actions against a carrier in liquidation. *See, e.g., Barnhardt Marine Ins., Inc. v. New England Int'l Sur. of Am., Inc.*, 961 F.2d 529, 531 (5<sup>th</sup> Cir. 1992).<sup>10</sup> Abstention is appropriate in this case and is a proper basis for dismissal.

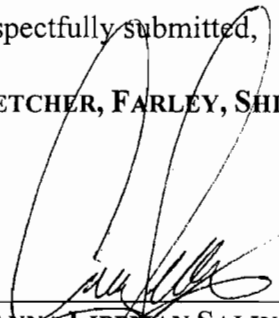
---

<sup>10</sup>The case of *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706 (1996) does not change this result because the Court noted that abstention is still proper when equitable relief, like an injunction, is sought. *Id.* at 730.

WHEREFORE, PREMISES CONSIDERED, HICIL prays that Bowles's Complaint be dismissed in its entirety for lack of subject matter jurisdiction and for such other and further relief to which it may be entitled.

Respectfully submitted,

**FLETCHER, FARLEY, SHIPMAN & SALINAS, L.L.P.**



---

**JOANNA LIPPMAN SALINAS**  
State Bar No. 00791122  
823 Congress Avenue, Suite 1300  
Austin, Texas 78701  
(512) 476-5300 (telephone)  
(512) 476-5771 (facsimile)

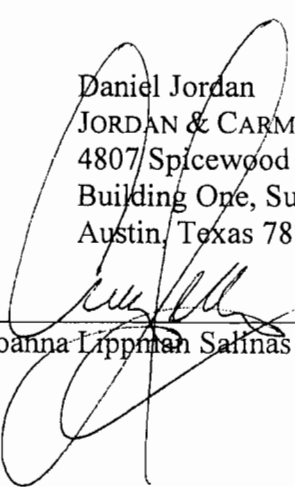
**CRAIG L. REESE**  
State Bar No. 16705480  
8750 N. Central Expressway, 16<sup>th</sup> Floor  
Dallas, Texas 75231  
(214) 987-9600 (telephone)  
(214) 987-9866 (facsimile)

**ATTORNEYS FOR DEFENDANT HICIL**

**CERTIFICATE OF SERVICE**

THIS WILL CERTIFY that a true and correct copy of this Motion to Dismiss has been served on all attorneys of record in this cause by ECF filing and on the pro se Plaintiff by certified mail, return receipt requested, in accordance with the Federal Rules of Civil Procedure on this 12<sup>th</sup> day of January, 2009.

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



Daniel Jordan  
JORDAN & CARMONA, PC  
4807 Spicewood Springs Road  
Building One, Suite 1220  
Austin, Texas 78759-8435

---

Joanna Lippman Salinas *FOR*



## TABLE OF CONTENTS

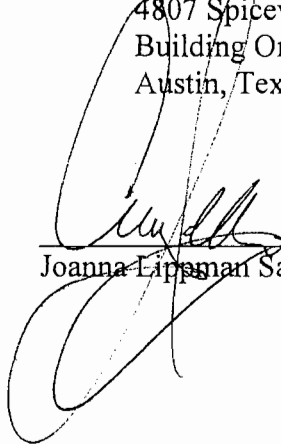
Tab A	Summary of Facts
Tab B	Affidavit of Ronald F. Barta
Exhibit 1	2003 Houston Real Estate Proof of Claim
Exhibit 2	Letter from Bowles to HICIL dated October 5, 2006
Exhibit 3	Letter from HICIL to Farmer dated October 11, 2006
Exhibit 4	Letter from HICIL to Farmer dated October 16, 2006
Exhibit 5	2008 Bishop Peterson Proof of Claim
Exhibit 6	Explanation of Late Filing
Exhibit 7	Notice of Determination regarding 2003 Proof of Claim
Exhibit 8	Notice of Determination regarding 2008 Proof of Claim
Exhibit 9	Objection to the Notice of Determination
Tab C	Certified Copy of Verified Petition For Rehabilitation
Tab D	Certified Copy of Verified Petition For Order of Liquidation
Tab E	Certified Copy of Order
Tab F	Certified Copy of Order of Liquidation
Tab G	New Hampshire Insurers Rehabilitation and Liquidation Act - N.H. REV. STAT. ANN. ch. 402-C (2008)
Tab H	Official Order of the Commissioner of Insurance Designating Home as an Impaired Insurer

**CERTIFICATE OF SERVICE**

THIS WILL CERTIFY that a true and correct copy of this Appendix in Support of the Motion to Dismiss has been served on all attorneys of record in this cause by ECF filing and on the pro se Plaintiff by certified mail, return receipt requested, in accordance with the Federal Rules of Civil Procedure on this 12<sup>th</sup> day of January, 2009.

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

Daniel Jordan  
JORDAN & CARMONA, PC  
4807 Spicewood Springs Road  
Building One, Suite 1220  
Austin, Texas 78759-8435

  
\_\_\_\_\_  
Joanna Lippman Salinas

FOR

**TAB A**



## SUMMARY OF THE FACTS <sup>1</sup>

On June 11, 2003, The Home Insurance Company (“Home”) was declared insolvent and an Order of Liquidation was entered by the Superior Court for the State of New Hampshire, Merrimack County, said order having been vacated and superseded by Order of Liquidation dated June 13, 2003.

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

Home issued a Professional Liability Policy to Bishop Peterson & Sharp, P.C. (the “Insured Law Firm”). The Professional Liability Policy is a claims made and reported policy. Under the policy, a “claim” was defined as a “demand received by the insured for money or services, including the service of a suit...” Prior to the expiration of the Professional Liability Policy reporting period, Bowles forwarded letters to the Insured Law Firm expressing dissatisfaction with its work and demanding fee reductions. The Insured Law Firm then notified Home regarding same within the policy period. For purposes of the Professional Liability Policy and pursuant to its Discovery Clause, a claim was timely reported alleging acts or omissions that potentially invoked coverage under the Professional Liability Policy. Since the Professional Liability Policy is a third-party liability policy providing the Insured Law Firm with defense and indemnity benefits where coverage is otherwise afforded, this was all that was necessary to potentially invoke coverage under the policy at issue.<sup>2</sup>

---

<sup>1</sup>All references to acts or events prior to the Order of Liquidation refer to The Home Insurance Company and all references to acts or events post the Order of Liquidation refer to HICIL.

<sup>2</sup>Although a lawsuit was not filed by Bowles against the Insured Law Firm until August of 1995, potential coverage had been invoked by notice of the claim and Home undertook to provide a defense subject to any reservation of rights raised by the pleadings. Even if a defense had not been owed, which Home believed it was, Home was within its rights to afford same even if voluntarily.

Home was designated as an impaired insurer by the Texas Commissioner of Insurance on June 26, 2003.

Pursuant to the provisions of Subchapter G of the Texas Property and Casualty Insurance Guaranty Act (the "Act"), Home forwarded its entire claim file to the Texas Property and Casualty Guaranty Association ("TPCIGA") because the lawsuit potentially constituted a covered claim under the Act. Pursuant to the Act, TPCIGA undertook to discharge its statutory duty to defend the Insured Law Firm.

Having forwarded the claim file to TPCIGA as it was required to do under the Act, Home has had no further direct involvement with the lawsuit by Bowles against the Insured Law Firm. By virtue of paragraph (n) of the Order of Liquidation, "all persons are hereby permanently enjoined and restrained from...any act to collect, assess, or recover a claim against The Home, other than the filing of a proof of claim with the Liquidator...."

On or about August 13, 2003, Bowles filed a Proof of Claim form as a third-party claimant against a purported insured of Home ("2003 Houston Real Estate Proof of Claim"). The 2003 Houston Real Estate Proof of Claim alleged that Home's purported insured was an entity named Houston Real Estate a/k/a ETS Interests. Bowles alleged that he was a tenant of the policy holder and was shot on the policy holder's property.

On October 5, 2006, Bowles sent a letter to Thomas Kober with HICIL requesting an update on his 2003 Houston Real Estate Proof of Claim filed in 2003.

On October 11, 2006, Ronald Barta, Senior Manager for HICIL, sent a letter to Mr. Farmer, counsel for Plaintiff. Mr. Farmer was provided with a copy of the Order of Liquidation and advised that Bowles was enjoined from commencing or continuing any litigation against

---

Home and if Bowles wished to make a claim against Home, he would need to file a Proof of Claim.

On October 16, 2006, Ronald Barta sent another letter to Mr. Farmer responding to Bowles's October 5, 2006 letter to Mr. Kober. Mr. Farmer was advised that since Home had ceased writing liability policies in 1995 and there was no information that suggested that the entity identified in the 2003 Houston Real Estate Proof of Claim was an insured under a Home policy, HICIL was recommending to the Liquidator that the 2003 Houston Real Estate Proof of Claim be disallowed.

Prior to filing suit against HICIL in August of 2007, Bowles had never filed a Proof of Claim with respect to the Professional Liability Policy and the Insured Law Firm, although that is the only remedy available under the Order of Liquidation.

On or about February 4, 2008, Bowles finally filed a Proof of Claim with respect to the Professional Liability Policy and the Insured Law Firm ("2008 Bishop Peterson Proof of Claim"). Filed along with 2008 Bishop Peterson Proof of Claim was Claimant's Explanation of Late Filing of Claim with Liquidator.

On October 22, 2008, HICIL's Liquidator sent a Notice of Determination with respect to the 2003 Houston Real Estate Proof of Claim filed in 2003 regarding Home's purported insured Houston Real Estate a/k/a ETS Interests. The Liquidator disallowed this Proof of Claim on the basis that there was no record that Home ever issued a policy to said entity.

On October 22, 2008, HICIL's Liquidator sent a Notice of Determination with respect to the 2008 Bishop Peterson Proof of Claim filed in 2008 regarding the Professional Liability Policy and the Insured Law Firm. The Liquidator disallowed this Proof of Claim on the basis

that Bowles' claims had been previously adjudicated in the insureds' favor and Bowles had not been awarded any damages against the insureds.

Each Notice of Determination set forth the steps Bowles would need to take if he wanted to dispute the determination. These steps are part of the only remedy available under the Order of Liquidation.

On or about October 27, 2008, Bowles filed the present suit against HICIL.

On or about December 20, 2008, Bowles filed an Objection to the Notice of Determination made with respect to the 2008 Bishop Peterson Proof of Claim regarding the Professional Liability Policy and the Insured Law Firm. This Objection will be heard by a court-appointed referee pursuant to the Order Establishing Procedures Regarding Claims, with review available of any decision made by the referee in the Merrimack County Superior Court and the New Hampshire Supreme Court. That Order and other pertinent information regarding the Liquidation are available on the website for the Liquidation Clerk at [www.hicilclerk.org](http://www.hicilclerk.org).

**TAB B**



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

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

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

5. I am one of the custodians of the claim file records of HICIL. Attached hereto are 67 pages of records from HICIL. These said 67 pages of records are kept by HICIL in the regular course of business, and it was the regular course of business of HICIL for an employee or representative of HICIL, with knowledge of the act, event, condition, opinion, or diagnosis, recorded to make the record or to transmit information thereof to be included in such record; and the record was made at or near the time or reasonably soon thereafter. The records attached hereto are the original or exact duplicates of the original.

6. Home issued a Professional Liability Policy to the Insured Law Firm. The Professional Liability Policy is a claims made and reported policy. Under the Professional

Liability Policy, a “claim” was defined as a “demand received by the insured for money or services, including the service of a suit...” (Professional Liability Policy, Sec. B).

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

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

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

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

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

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

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



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

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

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

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

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

19. On October 11, 2006, I sent a letter to Mr. Farmer, counsel for Plaintiff. Mr. Farmer was provided with a copy of the Order of Liquidation and advised that Bowles was enjoined from commencing or continuing any litigation against Home and if Bowles wished to make a claim against Home, he would need to file a Proof of Claim. A true and correct copy of the October 11, 2006 letter is attached hereto as Exhibit 3 and incorporated herein by reference.

20. On October 16, 2006, I sent another letter to Mr. Farmer responding to Bowles's October 5, 2006 letter to Mr. Kober. A true and correct copy of the October 16, 2006 letter is attached hereto as Exhibit 4 and incorporated herein by reference. Mr. Farmer was advised that since Home had ceased writing liability policies in 1995 and there was no information that suggested that the entity identified in the 2003 Houston Real Estate Proof of Claim was an insured under a Home policy, HICIL was recommending to the Liquidator that the 2003 Houston Real Estate Proof of Claim be disallowed.

21. Prior to filing suit against HICIL in August of 2007, Bowles had never filed a Proof of Claim with respect to the Professional Liability Policy and the Insured Law Firm, although that is the only remedy available under the Order of Liquidation.

22. On or about February 4, 2008, Bowles finally filed a Proof of Claim with respect to the Professional Liability Policy and the Insured Law Firm ("2008 Bishop Peterson Proof of Claim"). A true and correct copy of the 2008 Bishop Peterson Proof of Claim is attached hereto as Exhibit 5. Filed along with 2008 Bishop Peterson Proof of Claim was Claimant's Explanation of Late Filing of Claim with Liquidator. A true and correct copy of the Explanation of Late Filing is attached hereto as Exhibit 6.

23. On October 22, 2008, HICIL's Liquidator sent a Notice of Determination with respect to the 2003 Houston Real Estate Proof of Claim filed in 2003 regarding Home's purported insured Houston Real Estate a/k/a ETS Interests. A true and correct copy of the Notice of Determination is attached hereto as Exhibit 7. The Liquidator disallowed this Proof of Claim on the basis that there was no record that Home ever issued a policy to said entity.

24. On October 22, 2008, HICIL's Liquidator sent a Notice of Determination with respect to the 2008 Bishop Peterson Proof of Claim filed in 2008 regarding the Professional

Liability Policy and the Insured Law Firm. A true and correct copy of the Notice of Determination is attached hereto as Exhibit 8. The Liquidator disallowed this Proof of Claim on the basis that Bowles' claims had been previously adjudicated in the insureds' favor and Bowles had not been awarded any damages against the insureds.

25. Each Notice of Determination set forth the steps Bowles would need to take if he wanted to dispute the determination. These steps are part of the only remedy available under the Order of Liquidation.

26. On or about October 27, 2008, Bowles filed the present suit against HICIL.

27. On or about December 20, 2008, Bowles filed an Objection to the Notice of Determination made with respect to the 2008 Bishop Peterson Proof of Claim regarding the Professional Liability Policy and the Insured Law Firm. A true and correct copy of the Objection is attached hereto as Exhibit 9. This Objection will be heard by a court-appointed referee pursuant to the Order Establishing Procedures Regarding Claims, with review available of any decision made by the referee in the Merrimack County Superior Court and the New Hampshire Supreme Court. That Order and other pertinent information regarding the Liquidation are available on the website for the Liquidation Clerk at [www.hicilclerk.org](http://www.hicilclerk.org).

FURTHER, AFFIANT SAYETH NOT.

Ronald F. Barta  
RONALD F. BARTA

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned authority, on this  
9<sup>th</sup> day of January, 2009.

Mary E Actor  
Notary Public, State of New York

My Commission Expires: 11/3/2011

MARY E. ACTOR.  
Notary Public - State of New York  
No. 02AC6101148  
Qualified in New York County  
My Commission Expires November 3, 2011

# **EXHIBIT 1**

PROOF OF CLAIM

The Home Insurance Company,

Merrimack County Superior Court, State of New Hampshire 03-E-0106

Read Carefully Before Completing This Form

Please print or type

RECEIVED

DATE PROOF OF CLAIM RECEIVED AUG 13 2003

HICIL

POC #: C1m380570

Bowles, Harry
C/O James D. Farmer
7330 Torquay Lane
Houston TX 77074-3326



The Deadline for Filing this Form is June 13, 2004.

You should file this Proof of Claim form if you have an actual or potential claim against The Home Insurance Company of any of its former subsidiaries\* ("The Home") even if the amount of the claim is presently uncertain. To have your claim considered by the Liquidator, this Proof of Claim must be postmarked no later than June 13, 2004. Failure to timely return this completed form will likely result in the DENIAL OF YOUR CLAIM. You are advised to retain a copy of this completed form for your records.

- 1. Claimant's Name: Harry Louis Bowles
2. Claimant's Address: 306 Big Hollow Lane, Houston, Texas 77042
3. Claimant's Telephone Number: (713) 784-8966
Fax Number: (713) 365-9441
Email address:
4. Claimant's Social Security Number, Tax ID Number or Employer ID Number: 462-48-7822
5. Claim is submitted by (check one):
a) Policyholder or former policyholder
b) X Third Party Claimant making a claim against a person insured by The Home
c) Employee or former employee
d) Broker or Agent
e) General Creditor, Reinsurer, or Reinsured
f) State or Local Government Entity
g) Other, describe:

If your name, address, e-mail address, or telephone number set forth above are incorrect, or if they change, you must notify the Liquidator so she can advise you of new information.

Describe in detail the nature of your claim. You may attach a separate page if desired. Attach relevant documentation in support of your claim, such as copies of outstanding invoices, contracts, or other supporting documentation.

Claimant is a Tenant of the policy holder (landlord), and was shot on July 3, 2002 on the landlord's property (driveway). Claimant filed a claim in July, 2002, an offer to settle was made, that was wholly unsatisfactory, as the Claimant's claim is for damages to the limits of the Policyholders policy.

6. Indicate the total dollar amount of your claim. If the amount of your claim is unknown, write the word "unknown", BUT be sure to attach sufficient documentation to allow for determination of the claim amount. The documentations were furnished to the adjuster for Home Insurance. \$ 300,000.00 (if amount is unknown, write the word "unknown").

7. If you have any security backing up your claim, describe the nature and amount of such security. Attach relevant documentation.

8. If The Home has made any payments towards the amount of the claim, describe the amount of such payments and the dates paid:

9. Is there any setoff, counterclaim, or other defense which should be deducted by The Home from your claim? none

10. Do you claim a priority for your claim? If so, why: The claim has been pending for over one (1) year, with no resolution.

11. Print the name, address and telephone number of the person who has completed this form. Name: Harry L. Bowles Address: 306 Big Hollow Lane, Houston, Tx, 77042 Phone Number (713) 784-8966 or 461-9293 Email address:

\* The Home Indemnity Company, The Home Insurance Company of Indiana, City Insurance Company, Home Lloyds Insurance Company of Texas, The Home Insurance Company of Illinois, and The Home Insurance Company of Wisconsin.

12. If represented by legal counsel, please supply the following information:
- a. Name of attorney: \_\_\_\_\_
  - b. Name of law firm: \_\_\_\_\_
  - c. Address of law firm: \_\_\_\_\_
  - d. Attorney's telephone: \_\_\_\_\_
  - e. Attorney's fax number: \_\_\_\_\_
  - f. Attorney's email address: \_\_\_\_\_
13. If using a judgment against The Home as the basis for this claim:
- a. Amount of judgment \_\_\_\_\_
  - b. Date of judgment \_\_\_\_\_
  - c. Name of case \_\_\_\_\_
  - d. Name and location of court \_\_\_\_\_
  - e. Court docket or index number (if any) \_\_\_\_\_

14. If you are completing this Proof of Claim as a Third Party Claimant against an insured of The Home, you must conditionally release your claim against the insured by signing the following, as required by N.H. Rev. Stat. Ann. § 402-C:401:

I, Harry Louis Bowles (insert claimant's name), in consideration of the right to bring a claim against The Home, on behalf of myself, my officers, directors, employees, successors, heirs, assigns, administrators, executors, and personal representatives hereby release and discharge Houston Real Estate (insert defendant(s) insured by The Home), and his/her/its officers, directors, employees, successors, heirs, assigns, administrators, executors, and personal representatives, from liability on the cause(s) of action that forms the basis for my claim against The Home in the amount of the limit of the applicable policy provided by The Home; provided, however, that this release shall be void if the insurance coverage provided by The Home is avoided by the Liquidator.

Harry L Bowles Claimant's signature 8/08/03 Date

15. All claimants must complete the following:

I, Harry Louis Bowles (insert individual claimant's name or name of person completing this form for a legal entity) subscribe and affirm as true, under the penalty of perjury as follows: that I have read the foregoing proof of claim and know the contents thereof, that this claim in the amount of \* Three hundred thousand dollars (\$ 300,000.00) against The Home is justly owed, except as stated in item 9 above, and that the matters set forth in this Proof of Claim are true to the best of my knowledge and belief. I also certify that no part of this claim has been sold or assigned to a third party.

Harry L Bowles Claimant's signature 8/08/03 Date

Any person who knowingly files a statement of claim containing any false or misleading information is subject to criminal and civil penalties.

16. Send this completed Proof of Claim Form, postmarked by June 13, 2004, to:

The Home Insurance Company in Liquidation  
P.O. Box 1720  
Manchester, New Hampshire 03105-1720

**You should complete and send this form if you believe you have an actual or potential claim against The Home even if the amount of the claim is presently uncertain.**

\* This is the amount I believe I am entitled to, HPS

## **EXHIBIT 2**



Harry L. Bowles  
306 Big Hollow Lane  
Houston, Texas 77042  
713-983-6779, Fax 713-983-6722

October 5, 2006

Mr Thomas Kober  
Home Insurance Company in Liquidation  
59 Maiden Lane  
New York, New York 10038

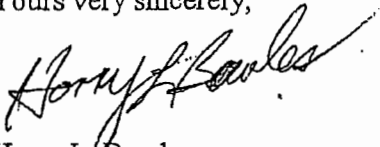
Subject: Request for Information on Claim against Home Insurance in Liquidation

Dear Mr. Kober:

It was recently stated in a document submitted by attorney Amber A. Walker of the Texas Property and Casualty Insurance Guarantee Association that I, at some time in the past, filed a casualty claim against Home Insurance Company in Liquidation Estate relating to a "shooting" incident at my premises of 1330 Sherwood Forest in Houston.

I was later visited by a claims adjuster, but I have received no information from Home concerning this claim. Please provide me with the claim number and the number of the policy to which this claim applied. Also, I request the status of this claim since I have heard nothing regarding its disposition.

Yours very sincerely,



Harry L. Bowles

Cc: James Farmer, Attorney