

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

**BEFORE THE COURT-APPOINTED REFEREE  
IN RE THE LIQUIDATION OF THE 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 REGARDING THE REFEREE'S JURISDICTION  
TO HEAR CLAIMANT'S OBJECTION TO LIQUIDATOR'S  
DETERMINATION OF PROOF OF CLAIM**

Claimant Harry L. Bowles ("Bowles") files the following in response to the Referee's demand for a brief addressing a purported challenge to the Referee's jurisdiction to rule on the issue or issues in dispute that Bowles has brought before this Court.

I.

OBJECTION

1. Bowles considers the Referee's request made orally in a telephonic conference without a preliminary motion by the Liquidator to be blatantly audacious, brash and insulting. This Superior Court is a court of general jurisdiction and its duties regarding its resolution of claims filed in The Home Insurance Company Liquidation case are precisely set forth in the Court's Order No. 03-E-0106 dated January 19, 2005. Bowles objects with displeasure and irritation to the Referee's demand, and believes he has no duty to respond because the opposing counsel has laid out no predicate for his request to the Court. Bowles believes the Referee has no discretion to refuse jurisdiction. He or she must follow New Hampshire law.

2. The Liquidator's counsel, Mr. Smith, is apparently attempting to graft federal law on to New Hampshire law by assuming this Court is a federal court of limited jurisdiction with authority to employ the various defenses authorized under Rule 12 of the Federal Rules of Civil Procedure (Failure to State a Claim, etc., etc.). He may even decide that the infamous Rooker-Feldman doctrine is somehow applicable here. Counsel's move to suborn the Referee and the Court in this way must be seen as deceit and fraud on the court.

3. Bowles most strenuously objects to the Referee's demand that Bowles "prove" that the Referee has jurisdiction of Bowles' objection to the Liquidator's determination of the subject Proof of Claim. This is an outrageous violation of Bowles' sovereign right to petition a government for a redress of grievances. What's to prove? !!! The HICIL web site clearly states as follows: "Proceedings regarding disputed claims will be administered by the Office of the Liquidation Clerk and will be adjudicated by the Referee, under the supervision of the Merrimack County Superior Court". There is no reference to any conditions whereby the appointed Referee is privileged to summarily refuse jurisdiction of a disputed claim without a formal proceeding before the Court.

## II

### Counsel For Liquidator Previously Agreed That The Dispute Would Be Heard

#### By The Referee In Accordance With The Claims Procedure Order

4. Bowles received a letter dated February 12, 2009 from the Liquidator's counsel Eric A. Smith (**attached as EXHIBIT A**) in which counsel stated that the dispute would be heard by the Referee per the January 19, 2005 Claims Procedure Order. There was no indication that the Liquidator would challenge the jurisdiction of the Referee. Bowles states that this letter

constitutes proof that all parties are in agreement that the Referee has jurisdiction and must rule on the matters in dispute

### III

#### History

5. Bowles objection to the Liquidator's determination of the subject claim is based specifically on the Liquidator's explanation for rejection of the claim, which is as follows:

Your Proof of Claim seeks an allowance for damages you allege you sustained as a result of alleged professional misconduct by Bishop, Peterson & Sharp, P.C. and George M. Bishop pursuant to a professional liability policy The Home Insurance Company aka The Home Insurance Company in Liquidation issued to the firm and its individual partners. You made these allegations in law suits you brought against the firm and Mr. Bishop. The suits have been subject to dismissal and summary judgment in the insured's favor. Because your claims have been previously adjudicated and you have not been awarded any damages against the insureds, this Proof of Claim has been disallowed.

6. The Liquidator's explanation is fatally erroneous in stating that Bowles' law suit has been subjected to dismissal by summary judgment. The fact is that the case in the Texas court has not been finally adjudicated in favor of the insureds. Specifically, one of the insureds, attorney David E. Sharp, has evaded service for some fourteen years and the case remains open so long as he refuses to be served and submits to being a party to the suit. Very recently Mr. Sharp again evaded service by refusing to sign a U.S. mail certified delivery receipt and thereafter filing a motion to quash service. (**See attached EXHIBIT B**).

7. There is a serious question as to whether or not HICIL is supplying Mr. Sharp with defense counsel pursuant to an application by the Liquidator to the Court for permission to intervene and grant of permission. Has Mr. Sharp submitted, or will he submit, a Proof of Claim to the Liquidator or with TPCIGA for coverage under Home Policy No. LPL-F871578?

8. Furthermore, all judgments in the underlying suit issued by the Texas court against Bowles as a result of the intervention in the litigation by TPCIGA are subject to nullification by Bill of Review based on fraud. The former judge of the court was thrown out of office by the electorate in November 2008, and the new judge has vowed to perform the duties of office fairly and impartially in accordance with Texas law, which the ousted judge failed and refused to do in dereliction of her oath of office.

9. As shown by EXHIBIT B, the Liquidator's reason for his determination of the subject POC is false and groundless. The Liquidator was obviously suborned to issue an invalid ruling, and it is the Referee's duty to grant Bowles' demand that the ruling be amended and reissued to reflect the true facts of the matter. It is fraud when a Superior Court in New Hampshire rejects a POC based on *res judicata* by judgment of a Texas court when, as here, it is known that the case in Texas has not been subjected to an appealable final judgment by one court in one document pursuant to Rule 301, Texas Rules of Civil Procedure.

10. The Referee has before her all documents related to Bowles objection to the Liquidator's determination and requests for relief. Bowles has produced a full body of evidence to prove that the defense of Home Policy No. LPL-F871578 initiated in August 2005 by TPCIGA was illegal. Neither the Liquidator nor this Superior Court were authorized under the Order of Liquidation to interfere in the litigation in Texas because the Liquidator was required to cancel all Home policies effective 30 days after the June 13, 2003 date of liquidation.

11. The Liquidator cannot show that there was any active litigation ongoing between Bowles and The Home Insurance Company regarding Home Policy No. LPL-F871578 on June 13, 2003. Therefore, neither the Liquidator nor any HICIL or TPCIGA official could act to intervene in Bowles malpractice case in Texas. Even if there had been such litigation in progress on that

date, the Liquidator and all HICIL and TPCIGA officials were barred from initiating such litigation in August 2005 by New Hampshire Insurance Code Section 402-C: 28.

#### IV

#### Conclusions

12. This Court and its appointed Referee are legally required to address and resolve Bowles' objection to the Liquidator's explanation for rejection of the subject Proof of Claim. Both parties agree that procedure for doing so is set out in this Court's Order No. 03-E-0106 dated January 19, 2005.

13. This exercise by the Liquidator's counsel to challenge the jurisdiction of the Referee is a desperate attempt to suborn this Court to mete out justice in disregard of the confining shackles of due process of law. Counsel is faced with the impossible task of providing documentary evidence to prove up allegations contained in sworn affidavits by HICIL and TPCIGA officials that a defense of Home Policy No. LPL-F871578 initiated by TPCIGA in August 2005 in Texas was legal under New Hampshire law governing insurance company liquidation procedure. The Liquidator's sole defense is to circumvent statutory law and due process by securing arbitrary dismissal of Bowles' disputed claim and demand for an evidentiary hearing.

14. The Liquidator (the New Hampshire Department of Insurance) has apparently adopted the position that the executives of HICIL at 59 Maiden Lane in New York City had carte blanche authority to operate openly and fraudulently in disregard of this Court's June 13, 2003 Order of Liquidation and Section RSA 402-C:28 of the New Hampshire Insurance Code. This was admittedly done when HICIL's Ronald Barta forwarded Bowles' August 2003 POC to TPCIGA after June 13, 2003 for execution as a covered claim under Home Policy No. LPL-F871578.

TPCIGA proceeded to take action to defend the policy in the Texas court while at all times aware that all Home policies were cancelled by the Order of Liquidation effective 30 days after the June 13, 2003 date of the Order.

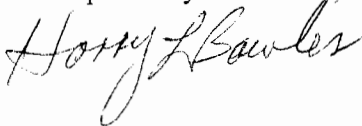
15. The wording of the explanation for the Liquidator's determination of Bowles' POC (quoted above) was phrased specifically to aid, abet, support and cover up the conspiracy and fraud in Texas in order to protect TPCIGA (and possibly HICIL under Texas long-arm statute) from suits for malicious prosecution or abuse of process and document tampering in violation of both federal and state laws.

16. The Liquidator's explanation for rejection of the subject POC filed by Bowles in February 2008 falsely states that Bowles' underlying malpractice litigation has been finally adjudicated against Bowles. This false statement places Bowles in a bad light and must be stricken and amended to reflect the actual facts of the matter.

17. The facts of the matter are that Bowles' had no standing to submit a third-party claim against Home Policy No. LPL-F871578 (since no insured person ever submitted a claim to the Liquidator to the effect that Bowles had no **insurable interest** in the policy), and that the claim was made outside of Homes' coverage period (since all coverage under Policy No. LPL-F871578, if it ever existed, was cancelled by the Order of Liquidation dated June 13, 2003).

18. It is the Referee's duty to order the Liquidator's explanation of rejection be amended to state that Bowles' POC was rejected due to Bowles' lack of standing to submit a third-party claim, and due to its having been filed outside of Homes' coverage period.

Respectfully submitted,

A handwritten signature in cursive script that reads "Harry L. Bowles".

**RACKEMANN**  
**SAWYER & BREWSTER**  
PROFESSIONAL CORPORATION  
COUNSELLORS AT LAW

Established 1886

Eric A. Smith  
617-951-1127  
esmith@rackemann.com

February 12, 2009

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

Re: 2008-HICIL-41

Dear Mr. Bowles:

I write in response to your letter of February 6, 2009 to David Leslie. As you know, we represent Roger A. Sevigny, Commissioner of Insurance for the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home").

We have copies of your objection, supplemental pleading and second supplemental pleading.

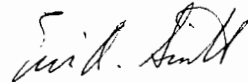
Disputed claim proceedings in the Home liquidation are governed by the Restated and Revised Order Establishing Procedures Regarding Claims Filed With The Home Insurance Company In Liquidation entered January 19, 2005 (the "Claims Procedures Order"). The Claims Procedures Order is available on the website for the Home liquidation, [www.hicilclerk.org](http://www.hicilclerk.org), under "Court Orders Relating To The Claims Process".

It is the Liquidator's view that this proceeding is a dispute between you, as claimant against Home, and the Liquidator regarding the Liquidator's determination to deny the claim presented by proof of claim No. CLMN712396-01 in the Home liquidation. The dispute will be heard by the Referee, who will determine the appropriate procedure in accordance with the Claims Procedures Order.

In accordance with Section 14(b) of the Claims Procedures Order, copies of the "Case File" are being provided to the Liquidation Clerk and to you under a separate letter issued today. Section 14(b) of the Claims Procedures Order then requires that the claimant provide

“Mandatory Disclosures” within thirty days. Once you have provided those disclosures, we should request that the Referee hold a telephonic structuring conference to determine how to proceed.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Eric A. Smith".

Eric A. Smith



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

151<sup>ST</sup> JUDICIAL DISTRICT

**DEFENDANT DAVID SHARP'S MOTION TO QUASH SERVICE**

COMES NOW, Defendant David Sharp and files this, his Motion to Quash Service and in support thereof, respectfully shows unto this Court as follows:

**I.**

**BACKGROUND**

The file stamped on the Petition reveals that this case was filed on August 31, 1995. Defendant David Sharp (hereinafter referred to as "Defendant" or "Mr. Sharp") received notification of this lawsuit on April 9, 2009.<sup>1</sup> Plaintiff attempted to serve Defendant through certified mail; however, the attempted service of process on Defendant failed to comply with the Texas Rules of Civil Procedure and is therefore invalid. A Motion to Quash is the proper way to challenge defective service of process. *Kawasaki Steel Corp. v. Middleton*, 699 S.W.2d 199 (Tex. 1985).

<sup>1</sup> See Affidavit of David E. Sharp, attached hereto as Exhibit 1.

**EXHIBIT B**

the citation by "mailing to the defendant by registered or certified mail, return receipt requested, a true copy of the citation with a copy of the petition attached thereto." Tex. R. Civ. P. 106. Rule 103 provides that "Service by registered or certified mail and citation by publication must, if requested, be made by the clerk of the court in which the case is pending. But no person who is a party to, or interested in the outcome of a suit may serve any process in that suit..." Tex. R. Civ. P. 103. Here, service of citation appears to have been made via certified mail by the plaintiff himself, which would violate Rules 103 and 106, and render the service invalid and of no effect.

### III.

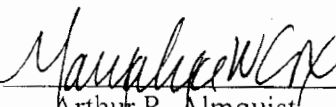
#### CONCLUSION AND PRAYER

Because Plaintiff has failed to strictly comply with the Texas Rules of Civil Procedure, his attempts to serve Defendant are invalid and of no effect.

Wherefore, premises considered, Defendant respectfully requests this Court to quash the attempted service on Defendant, and for such other and further relief to which he has shown himself justly entitled to receive.

Respectfully submitted,

MEHAFFY WEBER, P.C.

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