

RESOLUTION OF  
THE BOARD OF DIRECTORS  
OF  
LEWIS & CLARK LTC RISK RETENTION GROUP, INC.  
OCTOBER 20, 2006

A meeting of the Board of Directors of Lewis & Clark LTC Risk Retention Group, Inc., a Nevada corporation (the "Corporation"), was held on October 20, 2006. A quorum of the Board of Directors was in attendance

After discussion, and upon motion duly made and seconded, the following resolution was adopted by the Board of Directors:

RESOLVED, that the Board of Directors (with Eric Stickels abstaining) hereby approves the Corporation's request to extend the \$750,000 Surplus Subordinated Debenture maturity date from November 27, 2006 to May 27, 2008, upon the same terms, conditions, and floating interest rate, the Board having been informed by Mr. Stickels that Oncida Savings Bank has approved such extension upon payment of accrued interest through November 27, 2006.

  
Madeene Wood-Clater, Secretary

NW-AGN372020001Bd-Reso-10-06 doc

# EXHIBIT 12

MINUTES OF A MEETING OF THE  
BOARD OF DIRECTORS OF  
LEWIS & CLARK LTC RISK RETENTION-GROUP, INC.  
ON MARCH 22-23, 2007

---

A meeting of the Board of Directors of Lewis & Clark LTC Risk Retention Group, Inc. (the "Corporation") was held at Las Vegas, Nevada beginning at 5:00 p.m., PST, on March 22, 2007 and continuing at 8:30 a.m., PST, on March 23, 2007.

The Chairman noted that all directors were present, in addition to Sanford Elsass, Doc Malone, Nadeene Wood-Clater, Kathi Cavallo, Donna Dalton and Dwain Chamberlain of Uni-Ter Underwriting Management Corporation, Constance Akridge of Jones Vargas, and Curtis H. Sitterson of Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A. Larry Shatoff of U.S. Re Companies attended a portion of the meeting, and Sara Berberain of Uni-Ter attended a portion of the meeting by telephone.

The following matters were presented to the Board and were discussed and/or approved as noted.

1. The Board approved the minutes of the Board meetings of October 20, 2006 and January 31, 2007.
2. Ms. Dalton presented a report on the unaudited financial results and a risk based capital report for the year ending December 31, 2006, both of which were approved by the Board.
3. Ms. Dalton presented an investment report for the year ending December 31, 2006 which was approved by the Board.
4. Mr. Shatoff presented a review of the Corporation's reinsurance renewal for 2007 with Imagine RE, which was ratified and approved by the Board.
5. Mr. Malone presented an underwriting report for 2006 and the beginning of 2007. The Board discussed at length the prospects for growth in 2007.
6. Ms. Wood-Clater presented a marketing report. The Board approved the direct marketing expense budget of \$100,000 for 2007.
7. Ms. Cavallo presented a risk management report.
8. Mr. Elsass advised the Board of Jim Martin's retirement and presented a claims report. The Board approved an increase to Uni-Ter's claims professional reimbursement rate to \$125/hour effective April 1, 2007.

9. Ms. Dalton reviewed the terms of the final Nevada examination report for 2003-2005.
10. Mr. Elsass reviewed the progress of NAIC RRG regulatory and state accreditation changes.
11. Mr. Elsass advised the Board of Gard Management's Benefit Savings Program.
12. The Board tentatively set its next Board meeting for August 9-10, 2007.

There being no further business to come before the meeting, upon motion duly made and seconded, the meeting was adjourned.



Nadene Wood-Clater, Secretary

11w-agA372021000minutes 3-22&23-07.doc



**MINUTES OF THE ANNUAL MEETING  
OF THE SHAREHOLDERS OF  
LEWIS & CLARK LTC RISK RETENTION GROUP, INC.  
ON MARCH 23, 2007**

---

The Annual Meeting of the Shareholders of Lewis & Clark LTC Risk Retention Group, Inc. (the "Corporation") was held in Las Vegas, Nevada at 8:00 a.m., PST.

The Chairman noted that a majority of the shareholders were present, in person or by proxy, in addition to the members of the Board of Directors, Sanford Elsass, Doc Malone, Nadeene Wood-Clater, Kathi Cavallo, Donna Dalton and Dwain Chamberlain of Uni-Ter Underwriting Management Corporation, Constance Akridge of Jones Vargas, and Curtis H. Sitterson of Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.

The following matter was presented and approved by the shareholders:

- \* The shareholders approved the re-election of Jeff C. Marshall and Steven Charles Fogg to the Board of Directors.

There being no further business to come before the meeting, upon motion duly made and seconded, the meeting was adjourned.

  
Nadeene Wood-Clater, Secretary

# EXHIBIT 13

MINUTES OF A MEETING OF THE  
BOARD OF DIRECTORS OF  
LEWIS & CLARK LTC RISK RETENTION GROUP, INC.  
ON OCTOBER 12, 2007

---

A telephonic meeting of the Board of Directors of Lewis & Clark LTC Risk Retention Group, Inc. (the "Corporation") was held at 4:00 p.m., EST, on October 12, 2007.

The Chairman noted that all directors were present, with the exception of Steven Fogg, in addition to Sanford Elsass, Nadeene Wood-Clater, Dwain Chamberlain, and Donna Dalton of Uni-Ter Underwriting Management Corporation, and Curtis H. Sitterson of Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.

The following matters were presented to the Board and were discussed and/or approved as noted.

1. Mr. Elsass reported to the Board on the recommendation from the Company's actuary that IBNR be reduced by \$934,000.00 which was being accomplished for the quarter ending 9/30/07.
2. The Board discussed the prospect of beginning to make principal repayments on the surplus notes with Oneida Bank. The Board agreed that a decision in that regard would be appropriate after the receipt of 9/30/07 financial results.
3. Mr. Chamberlain and Ms. Wood-Clater reported on year to date underwriting and marketing results including new entrants into the market.
4. Mr. Elsass reported to the Board on potential new business with North American Healthcare.
5. The Board approved, subject to required regulatory filings, the offering by the Corporation of an "occurrence" policy, in addition to the current "claims made" policy on a selective basis as determined by Uni-Ter's underwriters. When both types of coverage are offered, the choice of the type of coverage would be at the election of the insured.

There being no further business to come before the meeting, upon motion duly made and seconded, the meeting was adjourned.

  
Nadeene Wood-Clater, Secretary

# EXHIBIT 14

MINUTES OF A MEETING OF THE  
BOARD OF DIRECTORS OF  
LEWIS & CLARK LTC RISK RETENTION GROUP, INC.  
ON JANUARY 10, 2008

A telephonic meeting of the Board of Directors of Lewis & Clark LTC Risk Retention Group, Inc. (the "Corporation") was held at 4:30 p.m., EST, on January 10, 2008.

The Chairman noted that all directors were present, with the exception of Mark Garber, in addition to Sanford Elsass, Nadene Wood-Clater, Dwain Chamberlain, and Donna Dalton of Uni-Ter Underwriting Management Corporation, and Larry Shatoff of U.S. Re, and Curtis H. Sitterson of Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.

The following matters were presented to the Board and were discussed and/or approved as noted.

1. Mr. Shatoff presented a report on U.S. Re's efforts to secure reinsurance for the 2008 underwriting year. The Board approved the placement of the Corporation's reinsurance for 2008 with Beazley Group, with a continuation of the 2007 reinsurance with Lloyds Re, upon the terms presented by Mr. Shatoff.
2. Mr. Chamberlain reported on 2007 underwriting results.
3. Mr. Chamberlain reported to the Board on potential new business with North American Healthcare.
4. Ms. Wood-Clater reported on 2007 marketing results.
5. Mr. Elsass presented the Board with Uni-Ter's plans to develop an in-house retail agency operation with respect to the Corporation's business. He explained that this plan represented an attempt to improve upon the relatively disappointing efforts by most (but not all) of the current agency network. The preliminary 2008 annual budget for Uni-Ter for this effort is approximately \$300,000. Mr. Elsass requested that the Corporation advance one-half of this amount, repayable from commissions earned by the Uni-Ter retail agency on the Corporation's business (which would initially be set at 12%, rather than 15% of gross written premium). Mr. Elsass indicated that a detailed budget would be forthcoming prior to final Board review.

There being no further business to come before the meeting, upon motion duly made and seconded, the meeting was adjourned.

  
Frederick Wood Clater, Secretary

2000/03/10 10:00 minutes 1-10-00.doc

# EXHIBIT 15

MINUTES OF A MEETING OF THE  
BOARD OF DIRECTORS OF  
LEWIS & CLARK LTC RISK RETENTION GROUP, INC.  
ON APRIL 24, 2008

A meeting of the Board of Directors of Lewis & Clark LTC Risk Retention Group, Inc. (the "Corporation") was held beginning at 6:00 p.m. on April 24, 2008 and continuing at 8:00 a.m. on April 25, 2008 in Las Vegas, Nevada.

The Board noted that all directors were present (with Mr. Stickle and Mr. Fagg attending by telephone), in addition to Samuel Elsass, Nadene Wood-Clater, and Devin Chamberlain of Uni-Ter Underwriting Management Corporation and Curtis H. Sitterson of Stennis Weaver Miller Webster Almdorff & Sincerson, P.A. Donna Dalton and Jen Lambert of Uni-Ter attended portions of the meeting by telephone.

The following matters were presented to the Board and were discussed and/or approved as noted.

1. The Board reviewed and approved the minutes of the Board meetings of August 21, 2007, October 12, 2007, November 8, 2007 and January 10, 2008 and the Audit Committee meeting of August 21, 2007.
2. Mr. Elsass presented an overview of the Corporation's operations in 2007.
3. Ms. Dalton presented a review of the unaudited 2007 financial results, including an actuarial opinion and a management discussion and analysis, all of which were approved by the Board. The Board also approved an amendment to the Management Agreement regarding the method of calculation of the profit sharing bonus. The Board ratified the engagement of Johnson & Lambert as the Corporation's outside auditors.
4. The Board (with Mr. Stickle abstaining) approved a motion to pursue partial retirement of the \$750,000 surplus note with Oneida Savings Bank, subject to receipt of unaudited financials for the period ending 3/31/08.
5. Ms. Dalton presented an investment report for 2007 which the Board approved.
6. Ms. Lambert presented a report on current claims experience.
7. Mr. Elsass presented a risk management report including a summary of recent and contemplated staff changes.
8. Mr. Chamberlain presented a report on 2007 and first quarter 2008 underwriting results.



9. Mr. Elsass presented a summary of the results of the Larson Allen study and the dissemination thereof.
10. Ms. Wood-Clater presented a marketing report. The Board approved a marketing budget of \$150,000 for 2008.
11. Mr. Elsass reported on the renewal of the Corporation's reinsurance as approved at the January 2008 Board meeting.
12. The Board approved the renewal of the Corporation's ratings application with Demotech.
13. The Board approved the purchase by the Corporation of \$1.0 million in insolvency gap insurance coverage for a premium not in excess of \$25,000.
14. Mr. Elsass reported on consideration of extending coverage to the home healthcare component of the long-term care facility business.
15. Mr. Elsass reported on pending federal legislation regarding RRG property insurance coverage.
16. The Board discussed the qualities for which the Corporation wishes to be known and the inclusion thereof in a concise statement.
17. The Board tentatively set the next regular Board meeting and the annual Shareholders meeting for November, 2008 in Atlanta, Georgia.

There being no further business to come before the meeting, upon motion duly made and seconded, the meeting was adjourned.

  
Maryanne Wood-Clater, Secretary

NW-AGT0750270000Minutes 4-24-08.doc

# EXHIBIT 16

**MINUTES OF A MEETING OF THE  
BOARD OF DIRECTORS OF  
LEWIS & CLARK LTC RISK RETENTION GROUP, INC.  
ON DECEMBER 2, 2009**

---

A meeting of the Board of Directors of Lewis & Clark LTC Risk Retention Group, Inc. (the "Corporation") was held at 8:30 a.m. local time on December 2, 2009 in Chicago, Illinois.

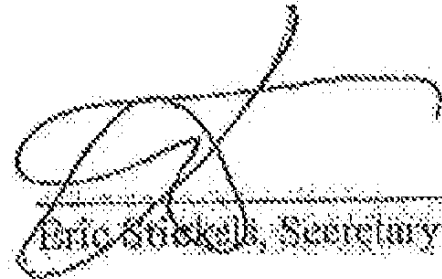
The Board noted that all directors were present (with Mr. Hurlbut attending by telephone), in addition to Sanford Elsass, Nadeene Wood-Clater, and Dwain Chamberlain of Uni-Ter Underwriting Management Corporation, and Barbara Lumpkin, the Chairperson of the Board of Directors of Sophia Palmer Nurses Risk Retention Group, Inc. Curtis H. Sitterson of Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A., Peter Rawlings and Dana Stewardson of Logan Capital Management, Inc., and Donna Dalton, Susan Bugg, Linda Knowles and Jeri Lambert of Uni-Ter attended all or portions of the meeting by telephone.

The following matters were presented to the Board and were discussed and/or approved as noted.

1. The Board (with the affected person abstaining in each applicable case) appointed the following persons as officers of the Corporation:
  - (a) Jeff C. Marshall -- Chairman of the Board; President
  - (b) Eric Stickels -- Vice President; Secretary/Treasurer
2. The Board reviewed and approved the minutes of the Board meeting of September 10, 2009.
3. The Board reviewed and approved the 2009 signature and disclosure page to the Corporation's Code of Business Conduct and Ethics, which was circulated for signatures.
4. The Board approved the formation of an Advisory Council to the Board regarding the nurses/allied practitioner book of business to be chaired by Ms. Lumpkin.
5. The representatives of Logan Capital presented a 2009 year to date investment report which was approved by the Board.
6. Ms. Dalton presented a review of the unaudited third quarter 2009 financial results which was approved by the Board. Ms. Dalton also reported on the current triennial examination by the Nevada Department of Insurance.
7. Ms. Lambert presented a claims report.

8. Ms. Bugg presented a risk management report.
9. Mr. Chamberlain presented a report on third quarter 2009 underwriting results.
10. Ms. Wood-Clater presented a marketing report. The Board approved a marketing budget for 2010 in the amount of \$250,000.
11. Mr. Elsass reported on the renewal of the Corporation's insolvency gap coverage at a level of \$2.0 million.
12. Mr. Elsass reported on the impending completion of the merger of Sophia Palmer Nurses Risk Retention Group, Inc. into the Corporation.
13. Ms. Dalton reported on the purchase of a new computer operating system for Uni-Per.
14. The Board approved the form of the <sup>Seventh</sup> ~~Fourth~~ Amendment to the Management Agreement with Uni-Per regarding the nurse/allied practitioner book of business.
15. The Board tentatively set the next Board meeting for May 21, 2010 in Bermuda.

There being no further business to come before the meeting, upon motion duly made and seconded, the meeting was adjourned.

  
Eric Strickels, Secretary

# EXHIBIT 17

MINUTES OF A MEETING OF THE  
BOARD OF DIRECTORS OF  
LEWIS & CLARK LTC RISK RETENTION GROUP, INC.  
ON DECEMBER 10, 2008

---

A meeting of the Board of Directors of Lewis & Clark LTC Risk Retention Group, Inc. (the "Corporation") was held at 9:00 a.m. local time on December 10, 2008 in Chicago, Illinois.

The Board noted that all directors were present (with Mr. Fogg attending by telephone), in addition to Sanford Elsass, Nadeene Wood-Clater, and Dwain Chamberlain of Uni-Ter Underwriting Management Corporation. Curtis H. Sitterson of Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A. and Donna Dalton, Susan Bugg, Jan Ferguson and Jeri Lambert of Uni-Ter attended all or portions of the meeting by telephone.

The following matters were presented to the Board and were discussed and/or approved as noted.

1. The Board reviewed and approved the minutes of the Board meetings of April 24, 2008, May 22, 2008 and October 24, 2008 and the action by unanimous consent of the Audit Committee dated May 22, 2008.
2. The Board reviewed and approved the revised disclosure and signature page to the Corporation's Code of Business Conduct and Ethics.
3. Mr. Elsass presented an overview of the Corporation's year to date 2008 operations.
4. Ms. Dalton presented a review of the unaudited third quarter 2008 financial results and the Logan Capital investment report, all of which were approved by the Board. The Board (with Mr. Stickels abstaining) approved a motion to request an eighteen month extension of the Corporation's \$1,000,000 surplus note from Oneida Savings Bank and ratified certain clarification amendments to the outstanding notes based upon a request from the Nevada Department of Insurance.
5. Ms. Lambert presented a claims report.
6. Ms. Bugg presented a risk management report including a summary of recent and contemplated staff changes.
7. Mr. Chamberlain presented a report on third quarter 2008 underwriting results.
8. Mr. Elsass reported on the extension of coverage to the home healthcare component of the long-term care business and the offering, in limited circumstances, of occurrence coverage.

9. Ms. Wood-Clater presented a marketing report. The Board approved a marketing budget for 2009.
10. Mr. Elsass reported on discussions of a fronting arrangement with Meadowbrook Insurance Company and on ratings discussions with A.M. Best.
11. Mr. Elsass made a brief presentation to the Board regarding continuing care and longevity risk.
12. Mr. Elsass reported on the market for contractual liability/medical stop loss insurance.
13. The Board discussed the possibility of identifying potential buyers (from the current list of shareholders) of the Corporation's stock from current shareholders who wish to sell their stock.
14. The Board tentatively set the next Board meeting for May 13-15, 2009 in Las Vegas, Nevada.

There being no further business to come before the meeting, upon motion duly made and seconded, the meeting was adjourned.



Nadene Wood-Clater, Secretary

RW-AC70720210001\minutes 12-10-08(v3).doc

# EXHIBIT 18



MINUTES OF A MEETING OF THE  
BOARD OF DIRECTORS OF  
LEWIS & CLARK LTC RISK RETENTION GROUP, INC.  
ON MAY 21, 2010

A meeting of the Board of Directors of Lewis & Clark LTC Risk Retention Group, Inc. (the "Corporation") was held at 8:00 a.m. local time on May 21, 2010 in Tuckers Town, Bermuda.

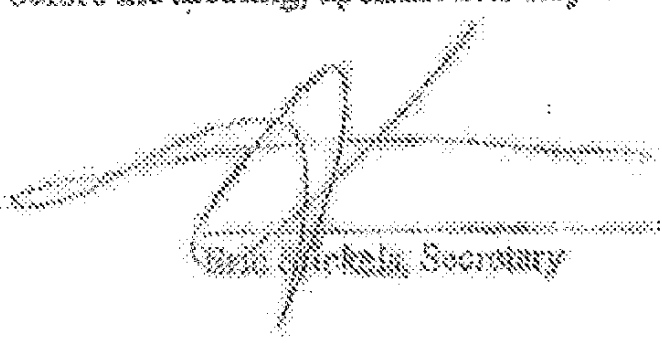
The Board noted that all directors were present (with Mr. Chur and Mr. Fogg attending by telephone), in addition to Sanford Blane, Nadene Wood-Clater, Dawn Chamberlain, Donna Dalton, Susan Dugg and Christine McCarthy of Uni-Ter Underwriting Management Corporation, and Curtis H. Sitterson of Stearns Weaver Miller Weissel Raskopf & Siroppen, P.A. Jim Murphy of Johnson Lambert & Co. LLP attended a portion of the meeting by telephone.

The following matters were presented to the Board and were discussed and/or approved as noted.

1. The Board reviewed and approved the minutes of the Board meeting of December 2, 2009 and the shareholders meeting of December 2, 2009.
2. The members of the Board reviewed and accepted the Conflicts of Interest statements for 2010.
3. After receiving a report from Mr. Murphy and after meeting in executive session, the Board approved the 2009 annual audited statements and report prepared by the Corporation's outside auditors, Johnson Lambert & Co. LLP.
4. Ms. Dalton presented a review of the unaudited financial results and an investment report through the first quarter of 2010, both of which were approved by the Board. The Board approved the Company's presentations as reflected in the investment report. The Board approved the 2009 Milliman actuarial report and calculation of Profit Sharing bonuses.
5. The Board reviewed the results of the Nevada triennial examination and approved the responses thereto.
6. The Board discussed the proposed terms of the renewal of the Management Agreements with Uni-Ter.
7. Ms. McCarthy presented a report on current claims experience.
8. Ms. Dugg presented a risk management report.

9. Mr. Chamberlain presented a report on 2009 and first quarter 2010 underwriting results.
10. The Board approved (with Mr. Suckols abstaining) the renewal by the Corporation of its D&O insurance upon the terms reviewed by Mr. Blases.
11. Ms. Wood-Clater presented a marketing report.
12. The Board discussed the development of the Sophia Palmer nurses/allied practitioner book of business.
13. The Board approved the continued participation in NREAA activities.
14. Mr. Blases presented a report on a possible request for an A. M. Best rating.
15. The Board determined that the Corporation would not pursue any business through Lebow Enrollment Services.
16. The Board ratified the renewal of the Corporation's Demotech rating request.
17. The Board tentatively set the next regular Board meeting and the annual shareholders meeting for November 11, 2010 in Las Vegas, Nevada.

There being no further business to come before the meeting, upon motion duly made and seconded, the meeting was adjourned.



Eric Suckols, Secretary

MINUTES OF A MEETING OF THE AUDIT COMMITTEE  
OF THE BOARD OF DIRECTORS OF  
LEWIS & CLARK LTC RISK RETENTION GROUP, INC.  
ON MAY 21, 2010

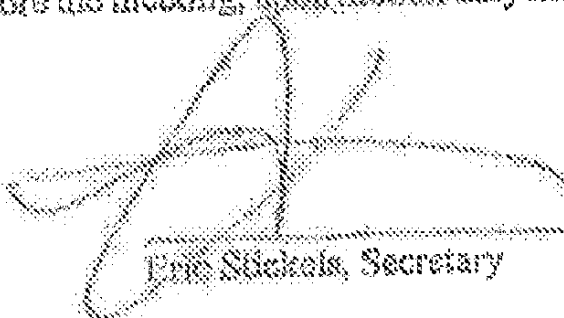
A meeting of the Audit Committee (the "Committee") of the Board of Directors of Lewis & Clark LTC Risk Retention Group, Inc. (the "Corporation") was held at 8:00 a.m. EST on May 21, 2010 in Tuckers Town, Bermuda.

The Committee noted that all members were present (with Mr. Clark attending by telephone) in addition to Sanford Elmore, Dennis Chamberlain, Susan Bogg, Christine McCarthy, Nadene Wood-Clair and Donna Dathan of Uni-Tec Underwriting Management Corporation, Curtis H. Satterton of Stevens Weaver Miller Wolosier Allard & Satterton, P.A., and Jim Murphy of Johnson Lambert & Co. LLP (by telephone).

The following matters were presented to the Committee and were discussed and/or approved as noted.

1. After receiving a report from Mr. Murphy and after meeting in executive session, the Committee approved the 2009 annual audited statements and report prepared by the Company's outside auditors, Johnson Lambert & Co. LLP.

There being no further business to come before the meeting, upon motion duly made and seconded, the meeting was adjourned.



Eric Stickels, Secretary

# EXHIBIT 19

MINUTES OF A MEETING OF THE  
BOARD OF DIRECTORS OF  
LEWIS & CLARK LTC RISK RETENTION GROUP, INC.  
ON NOVEMBER 10-11, 2010

---

A meeting of the Board of Directors of Lewis & Clark LTC Risk Retention Group, Inc. (the "Corporation") was held at 5:30 p.m. local time on November 10, 2010 and continuing on November 11, 2010 at 8:00 a.m. local time in Las Vegas, Nevada.

The Board noted that all directors were present (with Mr. Stickels attending by telephone), in addition to Sanford Elsass, Nadeene Wood-Clater, Dwain Chamberlain, Susan Bugg and Christine McCarthy of Uni-Ter Underwriting Management Corporation, Constance Akridge of Jones Vargas, and Curtis H. Sitterson of Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A. Donna Dalton of Uni-Ter, Jim Murphy of Johnson Lambert & Co. LLP and Peter Rawlings and Jonathan Heckscher of Logan Capital attended all or a portion of the meeting by telephone.

The following matters were presented to the Board and were discussed and/or approved as noted.

1. The Board reviewed and approved the minutes of the Board meeting of May 21, 2010 and the Audit Committee meeting of May 21, 2010.
2. Ms. Wood-Clater presented a marketing report. The Board approved a marketing budget for 2011 of approximately \$250,000 for the Corporation's long term healthcare business and approximately \$50,000 for its nurses business. The Board (with Mr. Stickels abstaining) also approved a revision to the Corporation's and Uni-Ter's agent commission schedule for 2011 (subject to annual approval) to increase certain agents' renewal commissions to 15% upon achieving specified production levels, coupled with a reduction in Uni-Ter's and Bailey Haskell's commission of 1% each for 2011. To the extent that the amount of such increased renewal commissions paid for 2011 is less than such 1% reductions, Uni-Ter and Bailey Haskell shall be paid the difference on a pro-rata basis.
3. The Board tentatively set the next regular Board meeting and the annual shareholders meeting for May 3-4, 2011 in Sonoma, California and a following Board meeting for September 18, 2011 in Las Vegas, Nevada.
4. Ms. Dalton presented a review of the unaudited financial results through the third quarter of 2010, which was approved by the Board.
5. Jonathan Heckscher of Logan Capital presented a third quarter 2010 investment report which was approved by the Board. The Board approved the Company's investments as

reflected in the investment report. The Board authorized Mr. Stickels to discuss potential investment sales with Logan.

6. The Board discussed the proposed terms of the renewal of the Management Agreement with Uni-Ter and approved (with Mr. Stickels abstaining) same subject to the following revisions:

- a) Clarification of significant claims notice to the Board, with settlement authority remaining with Uni-Ter;
- b) Current profit sharing calculation to apply through 2006;
- c) Beginning with 2007, profit sharing bonus calculated generally at 20% of pre-tax profit;
- d) Carryover of losses from 2010 forward;
- e) Deletion of 75% maximum loss ratio.

7. Ms. McCarthy presented a report on current claims experience, including reserve additions in the third quarter of 2010.

8. Ms. Bugg presented a risk management report.

9. Mr. Chamberlain presented a report on third quarter 2010 underwriting results.

There being no further business to come before the meeting, upon motion duly made and seconded, the meeting was adjourned.



Eric Stickels, Secretary

# EXHIBIT 20

MINUTES OF A MEETING OF THE  
BOARD OF DIRECTORS OF  
LEWIS & CLARK LTC RISK RETENTION GROUP, INC.  
ON MAY 4-5, 2011

---

A meeting of the Board of Directors of Lewis & Clark LTC Risk Retention Group, Inc. (the "Corporation") was held at 4:00 pm local time on May 4, 2011 and continuing on May 5, 2011 at 8:00 a.m. local time in Sonoma, California.

The Board noted that all directors were present, in addition to Sanford Elsass, Nadeene Wood-Clater, Dwain Chamberlain, Donna Dalton, Tonya Dugan, Jonna Miller, and Susan Bugg of Uni-Ter Underwriting Management Corporation, Jim Murphy of Johnson Lambert & Co. LLP and Curtis H. Sittersen of Stearns Weaver Miller Weissler Alhadeff & Sittersen, P.A. Andrew Keller of ENP and Jonathan Heckscher of Logan Capital each attended a portion of the meeting.

The following matters were presented to the Board and were discussed and/or approved as noted.

1. The Board reviewed and approved the minutes of the Board meeting of November 10-11, 2010.
2. The members of the Board reviewed and executed the Conflicts of Interest statements for 2011.
3. After receiving a report from Mr. Murphy and after meeting in executive session, the Board approved the 2010 annual audited statements and report prepared by the Corporation's outside auditors, Johnson Lambert & Co. LLP.
4. Mr. Heckscher of Logan Capital presented an investment report through the first quarter of 2011, which was approved by the Board. The Board approved the Company's investments as reflected in the investment report. The Board requested that Logan present a proposal for equity investments by the Corporation.
5. Ms. Miller presented a report on current claims experience.
6. Ms. Bugg presented a risk management report.
7. Ms. Dugan and Mr. Chamberlain presented a report on 2010 and first quarter 2011 underwriting results.
8. The Board approved (with Mr. Stickels abstaining) the renewal by the Corporation of its D&O insurance upon the terms reviewed by Mr. Elsass.

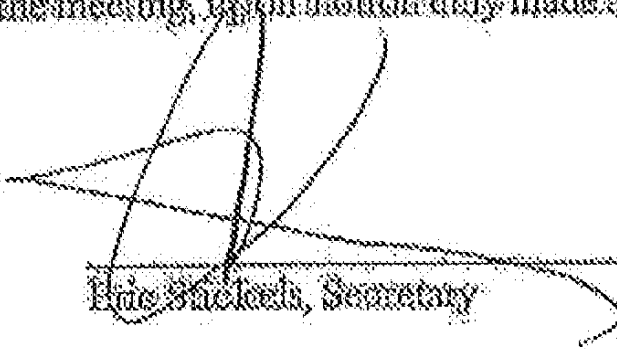


9. Ms. Wood-Clater presented a marketing report.
10. The Board (with Mr. Marshall and Mr. Stiekels abstaining) reappointed officers of the Corporation as follows:

Jeff Marshall, Chairman and President  
Erik Stiekels, Treasurer and Secretary

11. Andrew Keller of ENP presented a report on Internet related issues, particularly relative to the Sophia Palmer nurses business.
12. Mr. Elsass presented various reports regarding possible new business opportunities. The Board authorized further inquiry into (i) the offering by the Corporation of employment practices liability insurance and (ii) a possible acquisition of the CCRRC business.

There being no further business to come before the meeting, upon motion duly made and seconded, the meeting was adjourned.

  
Erik Stiekels, Secretary

MINUTES OF THE ANNUAL MEETING  
OF THE SHAREHOLDERS OF  
LEWIS & CLARK LTC RISK RETENTION GROUP, INC.  
ON MAY 5, 2011

---

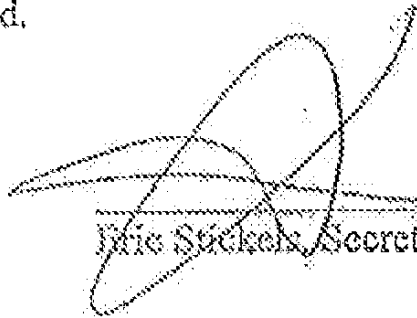
The Annual Meeting of the Shareholders of Lewis & Clark LTC Risk Retention Group, Inc. (the "Corporation") was held in Sonoma, California at 8:00 a.m., local time, on May 5, 2011.

The Chairman noted that a majority of the shareholders were present, in person or by proxy, in addition to the members of the Board of Directors, and Sanford Elsass, Tonya Dugan, Donna Dalton, Susan Bugg, Jonna Miller, Nadeene Wood-Clator, and Dwain Chamberlain of Uni-Ter Underwriting Management Corporation and Curtis H. Sitterson of Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A. Armando Vilches of Uni-Ter attended by telephone.

The following matter was presented and approved by the shareholders:

- \* The shareholders approved the re-election of Jeff Marshall, Steven Fogg and Barbara Lumpkin to the Board of Directors for terms ending at the annual shareholders meeting in 2013 and the re-election of Robert Chur and Robert Hurlbut to the Board of Directors for terms ending at the annual shareholders meeting in 2014.

There being no further business to come before the meeting, upon motion duly made and seconded, the meeting was adjourned.

  
Eric Sittler, Secretary

MINUTES OF A MEETING OF THE AUDIT COMMITTEE  
OF THE BOARD OF DIRECTORS OF  
LEWIS & CLARK LTC RISK RETENTION GROUP, INC.  
ON MAY 5, 2011

---

A meeting of the Audit Committee (the "Committee") of the Board of Directors of Lewis & Clark LTC Risk Retention Group, Inc. (the "Corporation") was held at 8:30 a.m. local time on May 5, 2011 in Sonoma, California.

The Committee noted that all members were present in addition to Sanford Elsass, Tonya Dugan, Dwain Chamberlain, Susan Bugg, Jonna Miller, Nadeene Wood-Clater and Donna Dalton of Uni-Ter Underwriting Management Corporation, Jim Murphy of Johnson Lambert & Co. LLP and Curtis H. Sitterson of Starns Weaver Miller Weissler Alhadeff & Sitterson, P.A. Armando Vilches of Uni-Ter attended by telephone.

The following matters were presented to the Committee and were discussed and/or approved as noted.

1. After receiving a report from Mr. Murphy and after meeting in executive session, the Committee approved the 2010 annual audited statements and report prepared by the Company's outside auditors, Johnson Lambert & Co. LLP.

There being no further business to come before the meeting, upon motion duly made and seconded, the meeting was adjourned.



Eric Stickle, Secretary

# EXHIBIT 21

**MINUTES OF A MEETING OF THE  
BOARD OF DIRECTORS OF  
LEWIS & CLARK LTC RISK RETENTION GROUP, INC.  
ON SEPTEMBER 21, 2011**

---

A meeting of the Board of Directors of Lewis & Clark LTC Risk Retention Group, Inc. (the "Corporation") was held at 12:00 pm local time on September 21, 2011 in Las Vegas, Nevada.

The Board noted that all directors were present (with Mr. Fogg attending by telephone), in addition to Sanford Elsass, Nadeene Wood-Clater, Donna Dalton, and Jonna Miller of Uni-Ter Underwriting Management Corporation, Richard Lord of Milliman, Richard Davies of USRE, Cathy Lever of Marquis Companies, Constance Akridge of Jones Vargas, and Curtis H. Sitterson of Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A. Tonya Dugan, Dwain Chamberlain and Susan Bugg of Uni-Ter and Jim Murphy of Johnson Lambert & Co. attended all or a portion of the meeting by telephone.

The following matters were presented to the Board and were discussed and/or approved as noted.

1. The Board reviewed and approved the minutes of the Board meeting of May 4-5, 2011, the Audit Committee meeting of May 5, 2011, and the Shareholders meeting of May 5, 2011.
2. Ms. Dalton presented a report on the second quarter 2011 unaudited financial statements which were approved by the Board. The Board also reviewed pro-forma third and fourth quarter 2011 and full year 2012 unaudited financial statements.
3. The Board reviewed the second quarter 2011 investment report of Logan Capital. The Board approved the report and the investments reflected therein.
4. Mr. Lord of Milliman presented an actuarial report based upon the Corporation's recent claims experience.
5. Ms. Miller presented a report on recent claims experience.
6. The Board discussed in detail the current loss experience of the Corporation and the need to raise capital on a current basis.
7. Ms. Dugan presented an underwriting report. The Board reviewed and approved a statement of the Corporation's underwriting philosophy.
8. Ms. Bugg presented a risk management report.
9. Ms. Wood-Clater presented a marketing report.

10. The next Board meeting was tentatively scheduled for December 7, 2011 in Chicago, Illinois.

There being no further business to come before the meeting, upon motion duly made and seconded, the meeting was adjourned.



---

Eric E. Stickels, Secretary

# EXHIBIT 22

ACTION BY UNANIMOUS WRITTEN CONSENT  
OF THE BOARD OF DIRECTORS OF  
LEWIS & CLARK LTC RISK RETENTION GROUP, INC.  
IN LIEU OF A SPECIAL MEETING

The undersigned, being all of the members of the Board of Directors (the "Board") of LEWIS & CLARK LTC RISK RETENTION GROUP, INC., a Nevada corporation (the "Corporation"), do hereby adopt the following resolutions by written consent (with each Board member abstaining with respect to matters involving his affiliated entity) in lieu of a special meeting.

A. RESOLVED, that the Board approves of a plan to increase the capital of the Corporation as follows:

1. Aggregate cash contributions of \$2,150,000 are to be made on or before 11/15/11 in exchange for surplus notes by the following persons:
  - a) Oneida Bank - \$750,000
  - b) Eagle Healthcare - \$220,000
  - c) Pinnacle Healthcare - \$220,000
  - d) Marquis Companies - \$220,000
  - e) Elderwood Senior Care - \$220,000
  - f) Rshm Services - \$220,000
  - g) Uni-Ter - \$300,000
2. Surplus notes will be generally in the same form as the current Oneida surplus note. Term will be 3 years, with interest payable annually at prime + 2%. All surplus notes will be paid in cash as to repayment. Each surplus note will be convertible into common stock at any time on or before the end of the 3 year term, based upon the unaudited reported GAAP book value of the common stock as of 9/30/11 of \$17.52 per share. Such conversion price shall be so set, and shall not be subject to adjustment based upon future audit or review of the 9/30/11 financials. In the case of Oneida and Uni-Ter, such conversion can only be made if L&C ceases to be a Risk Retention Group. Prior to repayment of the new surplus notes, any profit sharing bonus payable to Uni-Ter may be accrued in the ordinary course, but not paid.



3. Depending upon the requirements of the business in the 4th quarter 2011, as determined by the Board, the above parties (other than Onside) would commit to make additional commitments, in exchange for surplus notes, in the aggregate amount of \$550,000 in the 4th quarter 2011 or 1st quarter 2012 in the following proportions:

- a. Eagle, Pinnacle, Marquis, Elderwood and Rohm 7/55 each
- b. ESRB Co. - Tr 20/55

B. RESOLVED, that the Board reaffirms the Corporation's underwriting philosophy as discussed at the last Board meeting.

C. RESOLVED, that the Board requests more frequent financial reporting to the Board as discussed at the last meeting, preferably monthly.

IN WITNESS WHEREOF the undersigned being all of the members of the Board of Directors have executed this Unanimous Written Consent as of the 5 day of October, 2011.

BOARD OF DIRECTORS:

  
Jeff C. Marshall

Steven Charles Fogg

Mark S. Gahler

Robert Murlbut

Carol G. Hester, Ph.D.

Eric Stickle

Robert M. Chur

Barbara Lumpkin, RN

3. Depending upon the requirements of the business in the 4th quarter 2011, as determined by the Board, the above parties (other than Oneida) would commit to make additional commitments, in exchange for surplus notes, in the aggregate amount of \$550,000 in the 4th quarter 2011 or 1st quarter 2012 in the following proportions:

- a. Bagle, Pinnacle, Marquis, Elderwood and Rohm 7/55 each
- b. ~~USPS~~ ~~Co.~~ ~~Tr~~ 20/55

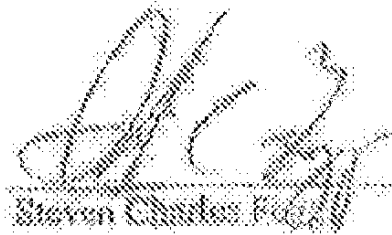
B. RESOLVED, that the Board reaffirms the Corporation's underwriting philosophy as discussed at the last Board meeting.

C. RESOLVED, that the Board requests more frequent financial reporting to the Board as discussed at the last meeting, preferably monthly.

IN WITNESS WHEREOF the undersigned being all of the members of the Board of Directors have executed this Unanimous Written Consent as of the 4<sup>th</sup> day of October, 2011.

BOARD OF DIRECTORS:

Jeff C. Marshall

  
Steven Charles Felt

Mark S. Garber

Robert Harbui

Carol C. Harter, Ph.D.

Eric Stickels

Robert M. Chur

Barbara Lampala, RN

3. Depending upon the requirements of the business in the 4th quarter 2011, as determined by the Board, the above parties (other than Oneida) could consent to make additional commitments in exchange for surplus going to the aggregate amount of \$30,000 in the 4th quarter 2011 or 1st quarter 2012 in the following proportions:

- a. Eagle, Pinnacle, Marquis, Elderwood and Rohm 7/55 each
- b. ~~XXXXX~~ Univ. - 20/55

B. RESOLVED, that the Board reaffirms the Corporation's underwriting philosophy as discussed at the last Board meeting.

C. RESOLVED, that the Board requests more frequent financial reporting to the Board as discussed at the last meeting, preferably monthly.

IN WITNESS WHEREOF the undersigned being all of the members of the Board of Directors have executed this Unanimous Written Consent as of the 5<sup>th</sup> day of October, 2011.

**BOARD OF DIRECTORS:**

Jeff C. Marshall

Steven Charles Fogg

Mark S. Garber

Robert W. Horbuz

Carol C. Harter, Ph.D.

Eric Sticksels

Robert M. Chur

Bernara Lomplin, RN

3. Depending upon the requirements of the business in the 4th quarter 2011, as determined by the Board, the above parties (other than Occidea) would commit to make additional commitments, in exchange for surplus notes, in the aggregate amount of \$5,500,000 in the 4th quarter 2011 or 1st quarter 2012 in the following proportions:

- a. Eagle, Pinnacle, Marquis, Elderwood and Robin 7/55 each
- b. BSRN 20/55

B. RESOLVED, that the Board reaffirms the Corporation's underwriting philosophy as discussed at the last Board meeting.

C. RESOLVED, that the Board requests more frequent financial reporting to the Board as discussed at the last meeting, preferably monthly.

IN WITNESS WHEREOF the undersigned being all of the members of the Board of Directors have executed this Unanimous Written Consent as of the 2<sup>nd</sup> day of October, 2011.

**BOARD OF DIRECTORS:**

Jeff C. Marshall

Steven Charles Fogg

Mark S. Gochen

Robert W. Hoffman

Carol C. Hester, Ph.D.

Eric Nickels

Robert M. Cinar

Barbara Lumpkin, RN

3. Depending upon the requirements of the business in the 4th quarter 2011, as determined by the Board, the above parties (other than Qualdy) would commit to make additional commitments, in exchange for surplus notes, in the aggregate amount of \$350,000 in the 4th quarter 2011 or 1st quarter 2012 in the following proportions:

- a. Eagle, Pinnacle, Marquis, Elderwood and Rohan 7/55 each
- b. Uni-Tor 20/55

B. RESOLVED, that the Board reaffirms the Corporation's underwriting philosophy as discussed at the last Board meeting.

C. RESOLVED, that the Board requests more frequent financial reporting to the Board as discussed at the last meeting, preferably monthly.

IN WITNESS WHEREOF the undersigned being all of the members of the Board of Directors have executed this Unanimous Written Consent as of the 5<sup>th</sup> day of October, 2011.

**BOARD OF DIRECTORS:**

Jeff C. Marshall

Steven Charles Fogg

Mark S. Garber

Robert W. Hughes

Carol C. Harter, Ph.D.

Eric Stachura

Robert M. Char

Barbara Lumpkin, RN

3. Depending upon the requirements of the business in the 4th quarter 2011, as determined by the Board, the above parties (other than Onida) would commit to make additional commitments, in exchange for surplus notes, in the aggregate amount of \$550,000 in the 4th quarter 2011 or 1st quarter 2012 in the following proportions:

- a. Eagle, Pinnacle, Marquis, Elderwood and Rohm 7/55 each
- b. Uni-Tor 20/55

B. RESOLVED, that the Board reaffirms the Corporation's underlying philosophy as discussed at the last Board meeting.

C. RESOLVED, that the Board requests more frequent financial reporting to the Board as discussed at the last meeting, preferably monthly.

IN WITNESS WHEREOF the undersigned being all of the members of the Board of Directors have executed this Unanimous Written Consent as of the 5<sup>th</sup> day of October, 2011.

BOARD OF DIRECTORS:

Jeff C. Marshall

Steven Charles Fogg

Mark S. Garber

Robert W. Harbut

Carol C. Harter, Ph.D.

Eric Stickle

Robert M. Chur

Harbers Lempike, RN

3. Depending upon the requirements of the business in the 4th quarter 2011, as determined by the Board, the above parties (other than Oacida) would commit to make additional commitments, in exchange for surplus notes, in the aggregate amount of \$150,000 in the 4th quarter 2011 or 1st quarter 2012 in the following proportions:

- a. Eagle, Pinnacle, Marquis, Elderwood and Rohm 7/55 each
- b. Uni-Tex 20/55

B. RESOLVED, that the Board reaffirms the Corporation's underwriting philosophy as discussed at the last Board meeting.

C. RESOLVED, that the Board requests more frequent financial reporting to the Board as discussed at the last meeting, preferably monthly.

IN WITNESS WHEREOF the undersigned being all of the members of the Board of Directors have executed this Unanimous Written Consent as of the \_\_\_\_\_ day of October, 2011.

BOARD OF DIRECTORS:

Jeff C. Marshall

Steven Charles Fogg

Mark S. Garber

Robert W. Harlow

Carol G. Huxter, Ph.D.

Eric Stickels

Robert M. Chur

Barbara Liscipkin, PhD

3. Depending upon the requirements of the business in the 4th quarter 2011, as determined by the Board, the above parties (other than Onside) would commit to make additional commitments, in exchange for surplus notes, in the aggregate amount of \$350,000 in the 4th quarter 2011 or 1st quarter 2012 in the following proportions:

- a. Eagle, Pinnacle, Marquis, Elderwood and Rohm 7/55 each
- b. Uni-Ter 20/55

B. RESOLVED, that the Board reaffirms the Corporation's underwriting philosophy as discussed at the last Board meeting.

C. RESOLVED, that the Board requests more frequent financial reporting to the Board as discussed at the last meeting, preferably monthly.

IN WITNESS WHEREOF the undersigned being all of the members of the Board of Directors have executed this Unanimous Written Consent as of the 3<sup>rd</sup> day of October, 2011.

**BOARD OF DIRECTORS:**

_____ Jeff C. Marshall	_____ Steven Charles Fogg
_____ Mark S. Garber	_____ Robert W. Harbut
_____ Carol C. Harter, Ph.D.	_____ Eric Sackels
_____ Robert M. Char	_____ Barbara Lumpkin, RN



# EXHIBIT 23

MINUTES OF A MEETING OF THE  
BOARD OF DIRECTORS OF  
LEWIS & CLARK LTC RISK RETENTION GROUP, INC.  
ON DECEMBER 20, 2011

---

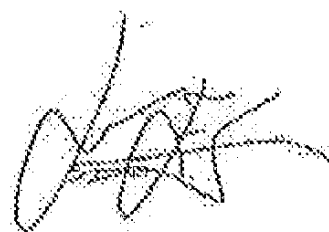
A telephonic meeting of the Board of Directors of Lewis & Clark LTC Risk Retention Group, Inc. (the "Corporation") was held at 12:00 p.m. EST on December 20, 2011.

The Board noted that all directors were present (with the exception of Ms. Harter and Mr. Hurlbut), in addition to Sanford Elsass, Donna Dalton and Tonya Dugan of Uni-Ter Underwriting Management Corporation, and Richard Davies of USRE Corporation, and Curtis H. Sitterson of Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.

The following matters were presented to the Board and were discussed and/or approved as noted.

1. Mr. Elsass presented a preliminary report of a material increase in required claims reserves from that reported at the last Board meeting in November 2011. He reported that, subject to further review in early January 2012, the claims reserves may have increased by \$5 million from November 2011 figures. The Board requested an immediate written report of such claims activity.
2. The Board tentatively set the next Board telephonic meeting for December 23, 2011.

There being no further business to come before the meeting, upon motion duly made and seconded, the meeting was adjourned.



---

Eric E. Stickels, Secretary

# EXHIBIT 24

MINUTES OF A MEETING OF THE  
BOARD OF DIRECTORS OF  
LEWIS & CLARK LTC RISK RETENTION GROUP, INC.  
ON DECEMBER 28, 2011

A telephonic meeting of the Board of Directors of Lewis & Clark LTC Risk Retention Group, Inc. (the "Corporation") was held at 4:00 p.m. EST on December 28, 2011.

The Board noted that all directors were present, in addition to Sanford Elias and Donna Dalton of Uni-Ter Underwriting Management Corporation, Tai Piccone and Richard Davies of USRE Corporation, Curtis H. Sitterton of Stearns Weaver Miller Weissler Alhadeff & Sitterton, P.A., and Constance Akridge of Jones Varga.

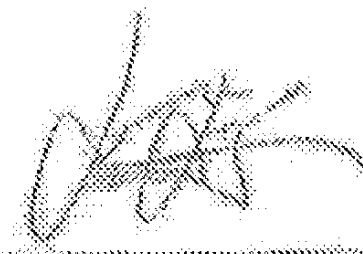
The following matters were presented to the Board and were discussed and/or approved as noted.

1. Mr. Elias reported regarding the need to determine a schedule for responding to HealthCap RRG.
2. Mr. Piccone reported regarding the possible use of facultative reinsurance particularly for current renewals.
3. The Board was advised regarding the schedules for Mr. Fishlinger's claims review commencing the first full week of January 2012.
4. The Board (with the exception of Mr. Marshall) then met in executive session with Mr. Sitterton and Ms. Akridge and resolved as follows:
  - A. HealthCap may be allowed to commence due diligence on the Corporation regarding a possible transaction, upon execution of a confidentiality agreement. The Board expects to meet promptly after its receipt of the Fishlinger claims review, and determine at that time whether to pursue a transaction with HealthCap.
  - B. Having been advised that Uni-Ter's pro forma December 31, 2011 financials for the Corporation indicate that the Corporation is neither impaired nor insolvent and pending receipt of the Fishlinger review, Uni-Ter should process the current renewals, with level monthly premium payment offered to the facilities.
  - C. In order to facilitate the Board's consideration of alternatives, the Board claims subcommittee should be included in a telephonic meeting to receive an oral report from Fishlinger at or towards the end of his work before the work is done to finalize his written report.

D. USRE is authorized to solicit, but not bind, facultative reinsurance for portions of the current book of business.

E. The Board tentatively set its next meeting for January 12, 2012 in Chicago, Illinois.

There being no further business to come before the meeting, upon motion duly made and seconded, the meeting was adjourned.



Eric B. Stickle, Secretary

# EXHIBIT 25

MINUTES OF A MEETING OF THE  
BOARD OF DIRECTORS OF  
LEWIS & CLARK LTC RISK RETENTION GROUP, INC.  
ON JANUARY 16, 2012

---

A telephonic meeting of the Board of Directors of Lewis & Clark LTC Risk Retention Group, Inc. (the "Corporation") was held at 4:00 p.m. EST on January 16, 2012.

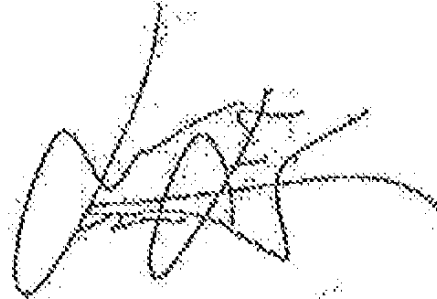
The Board noted that all directors were present, in addition to Sanford Elsass and Donna Dalton of Uni-Ter Underwriting Management Corporation, Curtis H. Sitterson of Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A., and Constance Akridge of Jones Vargas. Joseph Fedor, Larry Shatoff and Richard Davies of USRE Corporation attended a portion of the meeting.

The following matters were presented to the Board and were discussed and/or approved as noted.

1. Mr. Elsass presented a report on efforts to raise additional capital, the results of claims audit and discussions with the Corporation's actuaries and auditors. Ms. Dalton presented and discussed draft pro forma statements indicating capital and surplus as of December 31, 2011 of \$1,979,730.
2. Mr. Fogg reported on behalf of the Board's claim subcommittee and Mr. Stickels reported on behalf of the Board's strategic transaction subcommittee.
3. Mr. Fedor, Mr. Shatoff and Mr. Davies reported on various discussions with the Corporation's lead reinsurer. A reinsurance audit is scheduled in the next week.
4. The Board requested that Ms. Akridge make contact with the Nevada Department of Insurance to respond to the current inquiry.
5. The Board tentatively set the next Board telephonic meeting for January 26, 2012 at 5:00 p.m.

*What  
inquiry*

There being no further business to come before the meeting, upon motion duly made and seconded, the meeting was adjourned.



Eric E. Stickels, Secretary



# EXHIBIT 26

MINUTES OF A MEETING OF THE  
BOARD OF DIRECTORS OF  
LEWIS & CLARK LTC RISK RETENTION GROUP, INC.  
ON JANUARY 26, 2012

---

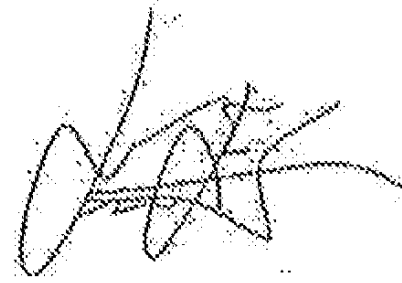
A telephonic meeting of the Board of Directors of Lewis & Clark LTC Risk Retention Group, Inc. (the "Corporation") was held at 5:00 p.m. EST on January 26, 2012.

The Board noted that all directors were present (with the exception of Ms. Harter, Mr. Hurlbut and Mr. Chur), in addition to Sanford Elsass and Donna Dalton of Uni-Ter Underwriting Management Corporation, Curtis H. Sitterson of Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A., and Constance Akridge of Jones Vargas. Joseph Fedor and Richard Davies of USRE Corporation attended a portion of the meeting.

The following matters were presented to the Board and were discussed and/or approved as noted.

1. Mr. Elsass presented a report on current claims activity in California and New York and discussions with the Corporation's actuaries and auditors.
2. Ms. Akridge reported on her communications with the Nevada Department of Insurance.
3. Mr. Fedor and Mr. Davies reported on various discussions with the Corporation's lead reinsurer. A response from the reinsurer is expected in the next week. The Board approved of a proposal to request reduction of the current year reinsurance premium consistent with the projected reduction in business. The Board deferred approval of a commutation proposed for years 2005, 2006, 2008 and 2009 pending receipt from Uni-ter of a report regarding outstanding claims for such periods.
4. The Board tentatively set the next Board telephonic meeting for February 2, 2012 at 4:30 p.m.
5. The Board met in executive session to discuss issues involving potential additional capital.

There being no further business to come before the meeting, upon motion duly made and seconded, the meeting was adjourned.



---

Eric E. Stickels, Secretary

# EXHIBIT 27

MINUTES OF A MEETING OF THE  
BOARD OF DIRECTORS OF  
LEWIS & CLARK LTC RISK RETENTION GROUP, INC.  
ON FEBRUARY 2, 2012

---

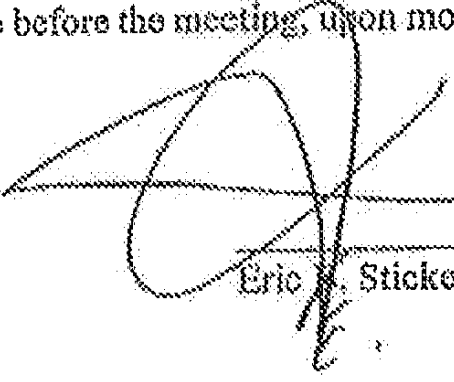
A telephonic meeting of the Board of Directors of Lewis & Clark LTC Risk Retention Group, Inc. (the "Corporation") was held at 4:30 p.m. EST on February 2, 2012.

The Board noted that all directors were present (with the exception of Mr. Garber, as well as Mr. Harbut and Mr. Chur for portions of the meeting), in addition to Sanford Elsass and Donna Dalton of Uni-Ter Underwriting Management Corporation, Curtis H. Sitterson of Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A., and Constance Akridge of Jones Vargas, Larry Shatoff and Richard Davies of USRE Corporation attended a portion of the meeting.

The following matters were presented to the Board and were discussed and/or approved as noted.

1. Mr. Elsass and Ms. Dalton presented a report on the preliminary pro-forma 12/31/11 financial statement and profit and loss statement for 2012. Assuming approval of the reduction in the minimum reinsurance premium and additional capital contributions of \$480,000, 12/31/11 capital and surplus was estimated in excess of \$3,200,000.
2. Mr. Elsass reported regarding recent favorable claims activity.
3. Mr. Shatoff presented a report regarding continuing discussions with the Corporation's lead reinsurer. The Board approved the proposal to reduce the minimum and deposit premiums on the current year casualty excess treaties and to commute the 2005-2006 treaty years. Any action with respect to possible commutation of the 2008-2009 years was deferred.
4. The Board approved minutes from the Board meetings of September 21, 2011, November 7, 2011, December 20, 2011, December 23, 2011, December 28, 2011, January 16, 2012 and January 26, 2012.
5. The Board, meeting in executive session, approved the terms of additional capital contributions in the amount of \$480,000 and the issuance of subordinated surplus debentures in exchange therefore upon the same terms as those issued in the fall of 2011.

There being no further business to come before the meeting, upon motion duly made and seconded, the meeting was adjourned.

  
Eric J. Stickels, Secretary

# EXHIBIT 28

MINUTES OF A MEETING OF THE  
BOARD OF DIRECTORS OF  
LEWIS & CLARK LTC RISK RETENTION GROUP, INC.  
ON APRIL 30, 2012

---

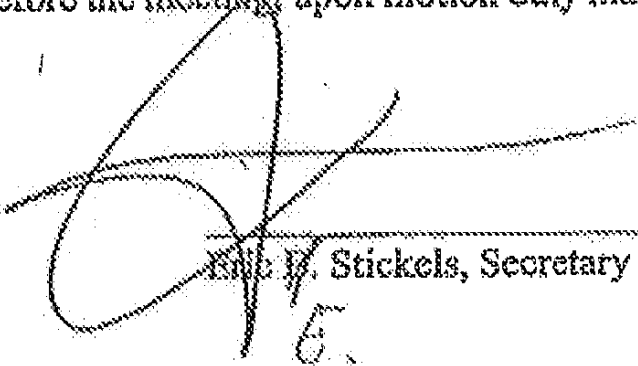
A telephonic meeting of the Board of Directors of Lewis & Clark LTC Risk Retention Group, Inc. (the "Corporation") was held at 12:00 p.m. EST on April 30, 2012. *and*

The Board noted that all directors were present (with the exception of Mr. Marshall, Mr. Pogg and Dr. Harter), in addition to Sanford Elsass and Donna Dalton of Uni-Ter Underwriting Management Corporation, Richard Davies of U.S. RE Corporation, Curtis H. Sitterson of Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A., and Constance Akridge of Jones Vargas.

The following matters were presented to the Board and were discussed and/or approved as noted.

1. Mr. Elsass and Ms. Dalton presented a report regarding submissions to the Nevada Department of Insurance, which submissions were approved by the Board.
2. The Board approved in concept the settlement of outstanding loss adjustment expenses with Country Villa.

There being no further business to come before the meeting, upon motion duly made and seconded, the meeting was adjourned.

  
Eric D. Stickels, Secretary

# EXHIBIT 29



**MINUTES OF A MEETING OF THE AUDIT COMMITTEE  
OF THE BOARD OF DIRECTORS OF  
LEWIS & CLARK LTC RISK RETENTION GROUP, INC.  
ON MAY 14, 2012**

---

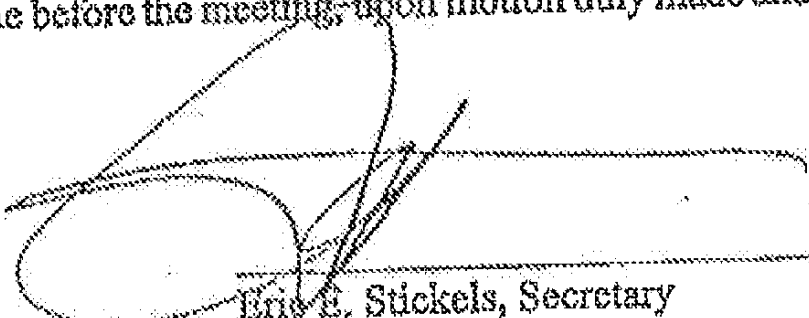
A meeting of the Audit Committee (the "Committee") of the Board of Directors of Lewis & Clark LTC Risk Retention Group, Inc. (the "Corporation") was held at 12:30 p.m. EST on May 14, 2012 in Las Vegas, Nevada.

The Committee noted that all members were present in addition to Sanford Elsass, Donna Dalton, Tonya Dugan, and Susan Bugg of Uni-Ter Underwriting Management Corporation, Curtis H. Sitterson of Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A., and Jim Murphy of Johnson Lambert & Co. LLP.

The following matters were presented to the Committee and were discussed and/or approved as noted.

1. After receiving a report from Mr. Murphy and after meeting in executive session, the Committee approved the 2011 annual audited statements and report prepared by the Company's outside auditors, Johnson Lambert & Co. LLP.

There being no further business to come before the meeting, upon motion duly made and seconded, the meeting was adjourned.

  
Eric E. Stickels, Secretary

**MINUTES OF A MEETING OF THE  
BOARD OF DIRECTORS OF  
LEWIS & CLARK LTC RISK RETENTION GROUP, INC.  
ON MAY 14, 2012**

---

A meeting of the Board of Directors of Lewis & Clark LTC Risk Retention Group, Inc. (the "Corporation") was held at 12:00 p.m. local time on May 14, 2012 in Las Vegas, Nevada.

The Board noted that all directors were present (with Mr. Fogg attending by telephone) in addition to Sanford Elsass, Tonya Dugan, Donna Dalton, and Susan Bugg of Uni-Ter Underwriting Management Corporation, Brian Steiefel of Praxis Consulting, and Curtis H. Sitterson of Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A. Jim Murphy of Johnson Lambert & Co. LLP, Peter Rawlings of Logan Capital, Rick Cassell of USRE and Bill Nagel of RCS each attended a portion of the meeting. Joe Fedor of USRE also attended a portion of the meeting by telephone.

The following matters were presented to the Board and were discussed and/or approved as noted.

1. The Board reviewed and approved the minutes of the Board meetings of February 2, 2012 and April 30, 2012 and the Board's Unanimous Consent dated March 15, 2012.
2. After receiving a report from Mr. Murphy and after meeting in executive session, the Board approved the 2011 annual audited statements and report prepared by the Corporation's outside auditors, Johnson Lambert & Co. LLP.
3. Ms. Dalton presented a review of the unaudited financial results through the first quarter of 2012, which was approved by the Board.
4. Mr. Rawlings presented an investment report through the first quarter of 2012 which was approved by the Board. The Board approved the Company's investments as reflected in the investment report.
5. Mr. Elsass reported regarding the status of the scheduled Nevada DOI examination.
6. The Board approved (with Mr. Stickels abstaining) the renewal by the Corporation of its D&O insurance upon the terms reviewed by Mr. Elsass.
7. Mr. Elsass introduced Mr. Steiefel who will be managing the claims department on a consulting basis. Mr. Steiefel presented a report on current claims experience. Mr. Elsass presented a report regarding the Country Villa claims.

1 c. By first class mail to all other persons who might reasonably be  
2 expected to have a claim against L&C; or

3 d. By publication in a newspaper of general circulation in this state  
4 and counties in which L&C currently has its corporate offices and in such other locations  
5 as the Receiver deems appropriate.

6 8. The notice served shall require persons seeking to receive distributions in  
7 liquidation as claimants, to file with the Receiver a claim together with proper proof of  
8 loss, in such manner and form as the Receiver may in his discretion require, provided  
9 pursuant to NRS 696B.330(1), that all claims and proofs shall set forth in reasonable  
10 detail the amount of the claim or the basis upon which such amount can be ascertained;  
11 the facts upon which the claim is based; the priority asserted if any; and be verified by  
12 the affidavit of the claimant, or someone authorized to act on his behalf and having  
13 knowledge of the facts and supported by such documents as may be material thereto.  
14 Not less than six months after the entry of the Order of Liquidation, a proof of claim  
15 shall be filed with the Receiver at an address to be set forth therein.

16 9. The notice served shall require that policyholders and claimants make and  
17 submit any actual, contingent or unliquidated claim which they have with or against L&C  
18 or its insureds, including both known claims and circumstances within the knowledge of  
19 the policyholder or claimant which can reasonably be expected to give rise to claims.

20 10. The Receiver shall, in his notice, require that policyholders who do not  
21 know or have reason to know of the existence of actual contingent or unliquidated  
22 claims, nonetheless submit a claim in order to preserve their right to assert claims in the  
23 future. In the case of such policyholders, the proof of loss requirement shall be deemed  
24 satisfied if the policyholder states by way of proof that he intends to reserve his rights to  
25 assert all contingent and unliquidated claims against L&C.

26 11. No contingent and unliquidated claim shall share in a distribution of the  
27 assets of L&C, except that such claim shall be considered, if properly presented, and  
28 may be allowed to share where:

1           a.     There is a surplus in the estate of L&C and the liquidation is  
2 thereafter conducted upon the basis that L&C is solvent.

3           12.    Any person who has a cause of action against an insured of L&C under a  
4 liability insurance policy issued by L&C shall have the right to file a claim in that  
5 liquidation proceeding, regardless of the fact that such claim may be contingent, and  
6 such claim may be allowed:

7           a.     If it may be reasonably inferred from the proof presented upon such  
8 claim that such person would be able to obtain a judgment upon such cause of action  
9 against such insured;

10          b.     If such claimant furnishes suitable proof, unless the Court for good  
11 cause shown otherwise directs, that no further valid claim against L&C out of these  
12 cause of action other than those already presented can be made; and

13          c.     If the total liability of L&C to all claimants arising out of the same as  
14 of its insured is no greater than its maximum liability would be were it not in receivership  
15 for purposes of liquidation.

16           13.    If notice is given in accordance with this Order, the distribution of the  
17 assets of L&C shall be conclusive with respect to all policyholders and claimants  
18 whether or not they receive actual notice.

19           14.    No claim need be considered or allowed if it does not contain all of the  
20 information required by the Receiver which may be applicable.

21           15.    The Receiver shall review all claims duly filed in the receivership and shall  
22 make such further investigation as he shall deem necessary. He may compromise a  
23 disputed claim with the claimant, whether contingent or unliquidated, if such  
24 compromise is justified and supported by the facts and circumstances. Unresolved  
25 disputes shall be determined as follows:

26           a.     When a claim is denied in whole or in part by the Receiver, notice  
27 notice of that determination (approved amount and creditor class) shall be given to the  
28 claimant or the claimant's attorney by first class mail at the address shown in the proof  
of claim within a reasonable length of time after the filing of such proof of claim. Within

60 days from the mailing of the notice, the claimant shall file his objections if any, with the Receiver. Failure to file within 60 days shall be viewed as a waiver of all objections.

b. Whenever objections are filed with the Receiver and the Receiver does not alter his recommendation or denial of the claim as a result of the objections, the Court shall fix a time for hearing such claims and shall direct the claimant or the Receiver as the Court shall specify, to give notice of the hearing by first class mail to the claimant or his attorney and to any other persons directly affected.

c. All contracts, treaties and agreements of reinsurance wherein L&C is the ceding company, shall remain in full force and effect pending a determination and recommendation by the Receiver as to when and upon what terms cancellation or termination is appropriate.

16. The amount recoverable by the Receiver from reinsurers shall not be reduced as a result of the receivership or liquidation proceedings, regardless of any provision in the reinsurance contract, treaty or other agreement. Unless the reinsurance contract or an applicable statute provides to the contrary, payment made directly to an insured or other creditor shall not diminish the reinsurer's obligation to L&C.

17. All officers, directors, trustees, employees, brokers, agents, managers, reinsurers of L&C, attorneys representing L&C and/or its policyholders or any other person, firm association, partnership, corporation or other entity with authority over or in charge of any aspect of L&C's affairs, property, or assets, including but not limited to insurers, contractors, service providers, managers, brokers, agents, trusts, banks, savings and loan associations, financial or lending institutions, credit unions, stock or mutual associations, reinsurers and any parent, holding company, subsidiary or affiliated corporation or any other representative acting in concert with L&C, shall cooperate with the Receiver in the performance of his duties. The directive "cooperate" shall include, but not be limited to, a duty to do both of the following as required by law:

a. Reply promptly in writing to any inquiry from the Receiver requesting such a reply; and

13. Make available to and deliver to the Receiver any books, accounts, documents, agreements, records, legal/litigation files, policy files, claim files, corporate records, correspondence, information or property of, or pertaining to L&C in their possession, custody or control.

14. No person, including but not limited to, any officer, director, employee, consultant, attorney, parent, subsidiary or affiliated corporation, contractor, service provider, manager, partner, agent, reinsurer, representative of L&C or any other person, shall obstruct or interfere with the Receiver in the conduct of his duties as Receiver, and these persons are hereby enjoined and restrained, except under the express authorization of the Receiver or by further order of this Court, from doing, operating and conducting any business of or on behalf of L&C under any charter, permit, license, power or privilege, belonging to or herebefore issued by or to L&C, and from in any manner conducting, or doing or engaging in the business of insurance on behalf of L&C.

15. All persons are hereby enjoined and restrained from dealing with or permitting to be done any action which might assist or dispose of the property or assets of L&C, from disposing of, using, transferring, selling, assigning, cancelling, hypothecating, concealing in any manner or in any way, any books, records, legal/litigation files, data files, equipment, money, accounts, accounts receivable, stocks, bonds, assets, notes, funds, credits or any other property or other assets of L&C, whether real, personal or mixed, or of any kind or nature, wherever situated, including any claims or causes of action that L&C might have against any person, firm, association or corporation, belonging to, owned by, in the possession of, or claimed by L&C, and disposing of any account, debt, deposit, share account, trust account, or any other asset owned, owed to, or held for the benefit of L&C, or any account held individually, jointly, or severally, for L&C, whether such account, debt, deposit, share account, trust account, or any other asset owned or held for L&C is in the name of or for the benefit of L&C or under any other name.

16. All officers, directors, employees, agents, servants, attorneys, reinsurers, managers, creditors, representatives of L&C, or any other person shall, by sworn written

1 statement upon the request of the Receiver, inform the Receiver of the nature  
2 description, and location of all assets or other property of L&C not located on the  
3 premises of L&C including but not limited to, all bank accounts, safe deposit boxes,  
4 sales, stock certificates, bonds, certificates of deposit, cash, credits, security  
5 legal/insurance files, data files or any other property, real, personal, or mixed, and these  
6 persons are specifically ordered and enjoined from disposing of, using or concealing in  
7 any manner or in any way of the assets, books, property, records, legal/insurance files or  
8 reports of L&C except under the express authorization of the Receiver or by further  
9 order of this Court.

10 21. All banks, savings and loan associations, trust companies, agents,  
11 attorneys and any other persons, firms, corporations, associations, sole owners,  
12 depositaries, credit unions, brokerage houses, or other legal entities, are hereby  
13 enjoined as follows:

14 a. From disposing of, using, releasing, transferring withdrawing,  
15 withholding, allowing to be withdrawn or concealing in any manner or in any way the  
16 property or assets of L&C of any kind or nature whatsoever, wherever situated, or from  
17 disposing of any account, debt, deposit, share account, trust account, credit or any  
18 other asset owned, owed to or held for the benefit of L&C or any account, debt, share  
19 account, trust account, credit or other assets owned or held individually, jointly, or  
20 severally, for L&C, whether such account, debt, deposit, share account, trust account,  
21 credit or any other asset is owned or held for L&C, in the name of or for the benefit of  
22 L&C or under any other name, except under the express written authorization of the  
23 Receiver or by the further order of this Court.

24 b. From doing anything, directly or indirectly, to prevent the Receiver  
25 from acquiring all property, assets, books, documents, claims or claim files,  
26 legal/insurance files, data files or records which are the property or assets of L&C and/or  
27 have been ordered to be tendered to the Receiver by the provisions of this Order or  
28 other order of this Court, under whatever name such books, documents, claims or claim  
files, legal/insurance files or records may be filed or found whenever such books,



1 documents, claims or claims files, legal/litigation files or records may be found or  
2 situated; and from doing anything, directly or indirectly, to prevent the Receiver from  
3 gaining access to, acquiring, examining or investigating all other books, documents,  
4 claims or claims files, legal/litigation files, data files or records pertaining to or  
5 concerning L&C or its affairs, under whatever name such books, documents,  
6 legal/litigation files, data files or records may be filed or found or wherever such books,  
7 documents, legal/litigation files, data files or records may be found or situated;

8         c. From interfering in any way with the lawful acts of the Receiver or  
9 from disposing of, converting, dissipating, or concealing in any manner or in any way  
10 any of the assets, books, property, legal/litigation files, data files, records, or reports of  
11 L&C.

12         22. The Receiver shall take all steps necessary to place all bank accounts,  
13 stock certificates, securities, certificates of deposit and other financial instruments of  
14 L&C into the name of the receivership or his own name as Receiver, and shall use any  
15 accounts of L&C, and shall keep a true and correct account of any and all receipts or  
16 expenditures which he shall make as Receiver in the course of the receivership or  
17 liquidation of said business.

18         23. All persons and parties are hereby enjoined from commencing or  
19 prosecuting any action, obtaining preferences, judgments, attachments, or other liens,  
20 or the making of any levy against L&C or its Receiver, or against its assets or any part  
21 thereof, except with leave of this Court.

22         24. L&C's officers, directors, agents, employees, managers, attorneys, and all  
23 other persons are enjoined from bringing or further prosecuting any action or claim for  
24 relief, counterclaim, setoff, cross-claim, third-party complaint, or otherwise, at law or in  
25 equity or other proceeding against L&C or the Receiver, or from in anyway interfering  
26 with the Receiver's conduct of the business of L&C, or from obtaining preferences,  
27 judgments, attachments, or other liens or the making of any levy against L&C or its  
28 property and assets while in the possession and control of the Receiver, or from in



1 anyway interfering with the Receiver in his gaining possession or control of or in his  
2 right, title and interest to the property, books, records and all other assets of L&C.

3 25. The Receiver is authorized, within two years of his appointment as  
4 receiver on December 28, 2012, or such time in addition to two years as applicable law  
5 may permit, to commence any action or proceeding on behalf of L&C upon any cause of  
6 action against which the period of limitation fixed by applicable law had not expired at  
7 the time of the filing on November 15, 2012, of Plaintiff's Petition for Appointment of  
8 Commissioner as Receiver Pursuant to NRS 696B.250.

9 26. All persons, including policyholders, obligees, principals, creditors,  
10 stockholders, officers or directors of L&C and all persons asserting claims against such  
11 policyholders, are enjoined from instituting or pursuing any action or proceeding in any  
12 court or before any administrative agency, including boards and commissions  
13 administering workmen's compensation or occupational diseases or similar laws of the  
14 State of Nevada or of other states of the United States, which seeks in any way, directly  
15 or indirectly, to contest or interfere with the Receiver's exclusive right, title and interest  
16 in funds recoverable under treaties and agreements of reinsurance heretofore entered  
17 into by L&C as the ceding insurer.

18 27. Unless reaffirmed in writing by the Receiver, all executory contracts are  
19 terminated as of the entry of this Order.

20 28. The Receiver is hereby authorized to do all things permitted by law to  
21 effectuate the liquidation of L&C.

22 29. All rights and liabilities of L&C and of its creditors and all other parties  
23 interested in the estate of L&C shall become fixed as of the entry of this Order.  
24 Granting Petition for Appointment of Receiver, except as provided in Paragraph 4.

25 30. This Court shall retain jurisdiction in this case for the purpose of granting  
26 such other further relief as the nature of this case or the interests of the creditors,  
27 stockholders or the members of the public may require.

28 / / /

32. The statutory immunity of NRS 696B.565 extends to deputy receivers and  
deputy Receivers as officers or agents of the Receiver.


IT IS SO ORDERED.

DATED this 12 day of February, 2013.

  
DISTRICT COURT JUDGE

Respectfully Submitted:

CATHERINE CORTEZ MASTO  
Attorney General

By:   
JOANNA N. GRIGORIY  
Senior Deputy Attorney General  
Nevada Bar No. 5849  
555 East Washington Ave., Suite 1900  
Las Vegas, NV 89101  
(702) 486-3101  
Email: jgrigoriy@nysp.org  
Attorneys for the Plaintiff

# EXHIBIT 2

## MANAGEMENT AGREEMENT

THIS AGREEMENT is made between Lewis & Clark LTC RISK RETENTION GROUP, INC. ("L&C"), a Nevada corporation, and UNI-TIER UNDERWRITING MANAGEMENT CORPORATION ("Manager"), which is a wholly owned subsidiary of U.S. RE Companies, Inc. a Delaware corporation, and which shall continue as such wholly owned subsidiary during the term or extended term of this agreement.

### ARTICLE I. Term of Agreement

This Agreement is effective as of 1/1/2011. It will continue for a period of 7 years from the effective date hereof unless terminated prior thereto under the provisions of Article X of this Agreement, and shall be automatically renewed for an additional (7) years, subject to mutual agreement between the parties as to the terms of such renewal. If the parties are unable to so agree, then L&C shall be free to enter into a selection process for a new managing general agent.

### ARTICLE II. Appointment of Manager. Lines of Authority.

L&C appoints Manager as its underwriting, administrative, accounting, risk management and claims manager as follows:

- A. Lines of Authority: Manager's appointment and authority extends to the classes of business, policies of insurance, including all endorsements, (the "Policies"); and lines and limits of insurance described in Exhibit A attached to this Agreement (the "Business").
- B. Territory: Manager's appointment and authority extends to risks located in the states set forth in Exhibit A.
- C. Exclusions: Manager's appointment and authority is subject to any exclusions set forth in Exhibit A.
- D. Fiduciary: Manager will serve L&C in a fiduciary capacity for all legal duties.

### ARTICLE III. Manager's Duties and Responsibilities

Manager will faithfully perform all of its duties to the best of its professional knowledge, skill and judgment. Manager's duties include the following:

- A. Solicitation: To solicit risks and classes of risks at limits and for lines of insurance authorized in Exhibit A, that in their pricing and insurability meet or exceed the agreed upon underwriting and pricing standards established by L&C in writing.
- B. Binding of Risks: To bind risks only in accordance with Exhibit A and any other agreed upon underwriting and pricing standards established by L&C in writing.

C. Policy Issuance: To timely and properly issue, deliver and execute or countersign policies, certificates, endorsements, and binders on forms approved by L&C and appropriate regulatory authorities, as required by law, for the business described in Exhibit A.

D. Risks Bound: To record on the books of L&C each risk or policy bound or written under this Agreement.

E. Compliance with State and Federal Regulations: To comply fully, timely and promptly with all manuals, rules, guidelines, instructions and directions issued in writing by L&C relating to the business covered by this Agreement as well as to comply with all state and federal rules, regulations, and statutes including those relating to privacy & confidentiality for all L&C business covered hereby.

F. Premium Rates: To quote accurate premiums and rates for policies bound or written under this agreement in compliance with the approved and applicable rating manuals or rating plans of L&C.

G. Statistical Reporting: To provide the necessary data processing and statistical records, including the development of any specialized programs which may be required by L&C.

H. Accounting: To timely account for the business and for the financial affairs of L&C as follows:

1. Manager shall prepare and forward to L&C on a monthly basis, within twenty (20) calendar days of the end of each calendar month, a complete set of financial statements prepared in accordance with Generally Accepted Accounting Principles (GAAP) basis to include:

- a. Operating Statement
- b. Balance Sheet
- c. Policies written for the month
- d. Claims incurred for the month
- e. Accounts receivable summary
- f. Summary report of all claims, reserves and losses

2. As of the end of each calendar quarter or calendar year as appropriate, Manager shall prepare and file, in accordance with Statutory Standards and GAAP, quarterly and annual financial statements with the Nevada Department of Insurance and any other State requiring same, including all regulatory forms necessary to keep L&C's Certificate of Authority in good standing.

I. Fiduciary Capacity - Premium Trust Funds and Assets of L&C: To hold all premiums and assets of L&C in a bank, which is a member of the Federal Reserve System and investment custodian accounts owned by L&C. The bank accounts shall be designated by Manager in such a manner as to clearly establish that Manager is a fiduciary for L&C with respect to all funds so held. L&C funds, under fiduciary control of Manager, may be used as necessary to pay return premiums, claims, and operating expenses of L&C. These funds shall not be used for the operating expenses of Manager.

- J. Copies of Policies: Manager shall maintain copies of all policies, endorsements, policy cancellations, and underwriting file documentation.
- K. Collection of Premiums: To invoice and collect premiums and initial capital assessments on all policies. Other than making a good faith effort to collect all premiums, Manager is not responsible for uncollectable premiums other than to cancel the related policies as applicable. All funds collected for the account of L&C shall be deposited directly into bank accounts owned by L&C. These account(s) shall be used for all payments as directed by L&C and by this Agreement.
- L. Reinsurance Transactions: To pay, collect, and otherwise account for any reinsurance transactions, as authorized by L&C.
- M. L&C Property: To safeguard, maintain and account for all policies, forms, manuals, accounting and claims records, equipment, supplies or anything else furnished Manager by L&C, all of which shall remain the property of L&C. Manager will return all property to L&C promptly upon demand.
- N. Manager Expenses: To pay, assume the obligation for and to be fully responsible for all costs and expenses associated with Manager's performance under this Agreement, including: travel expense, employee and clerical salaries, benefits and expense, risk management fees, postage, advertising, etc. L&C shall be responsible for its own expenses such as license fees, income taxes, premium taxes and assessments, auditor fees, legal fees, investment advisor fees, investment custodian fees, actuarial fees, directors' fees, and salary, benefits and overhead of any direct employees of L&C.
- O. Legal Compliance: The Manager shall be responsible for the appointment of qualified agents and brokers (producers) after verification of the license of such producers to lawfully transact the designated line(s) of insurance and shall assure that such producers comply with all laws, regulations, rules and requirements applicable to Manager's activities and, in addition, all written instructions provided from time to time by L&C concerning underwriting requirements and regulatory compliance in general; provided, however, that such written instructions shall not unreasonably alter or amend the terms of this Agreement.
- P. Governmental Contacts: To promptly respond to all contacts and correspondence received from insurance regulatory or other governmental authorities that pertain to business described in Exhibit A, to respond appropriately to all summonses, complaints, subpoenas or other court documents, and to advise L&C of any such items that are of a material nature.
- Q. Claims Handling: To respond to all claims, suits and losses reported to Manager and/or L&C, and to perform the investigation, settlement and payment of each and all claims, and to collect deductibles due and salvage or subrogation. Manager's specific claim handling duties are set forth in Exhibit B.
- R. Risk Management: To arrange for or perform risk management services for the benefit of the insureds of L&C. Such risk management shall have the primary goal of reducing the frequency of medical incidents that give rise to policy claims. Specific risk management duties are set forth in Exhibit C.

- S. Competent Staff: To maintain sufficient supplies and equipment, and a staff of competent and trained personnel, to produce, develop, underwrite and supervise the business covered by this Agreement.
- T. Accounts Records: To keep and maintain separate, identifiable, orderly, accurate, complete and timely records and accounts of all business and transactions pertaining to policies bound or written under the Agreement including complete underwriting and rate files, all claims-related records, all accounting and financial records, regulatory records, and all other records relating to the operations of L&C. Such records and files shall be the property of L&C; provided that Manager may retain copies of all such records and files. In addition, any Insurance Commissioner shall have access to all books, accounts, records and files of Manager for business bound or written under this Agreement and any such books, accounts, records, and files shall be kept in a form acceptable by such Insurance Commissioner. Records of L&C shall be retained according to Section NRS 694C.410 Nevada Statutes.
- U. Electronic Files: All records maintained in electronic format shall be treated the same as hard copy records for purposes of this agreement. Manager shall maintain appropriate data backup procedures and transmit all required data on a timely basis.
- V. Audit: To permit L&C during the term of this agreement to visit, inspect, examine, audit and verify, at Manager's offices, within normal business hours, with or without prior notice any of the properties, accounts, files, documents, books, reports, work papers, and other records belonging to or in the possession or control of Manager or of any other person relating to the business covered by this agreement. L&C may make copies and extracts as may be reasonably necessary. L&C may conduct any audit through any person or persons it may designate.
- W. Services: To provide for all usual and customary services to Insureds, Policyholders and subproducers including delivery of policies, return of premiums due Insureds or policyholders and timely, appropriate responses to complaints.
- X. Policy Cancellation and Non-Renewal: To cancel, non-renew or otherwise terminate policies bound or written by or through Manager as required by applicable underwriting standards and consistent with applicable regulatory and policy conditions. L&C shall always retain the right to direct the termination or non-renewal of policies by Manager or to terminate or non-renew policies by direct notice to Insureds or policyholders in accordance with the provisions of applicable state insurance regulations. Manager shall not make, permit, or cause general or indiscriminate cancellations, termination or replacements of policies. Manager shall be responsible for notifying governmental agencies or other persons for whom Manager has certified coverage or provided evidence of insurance.
- Y. Limitations of Authority: Manager shall have no authority to do any of the following acts:
1. Bind reinsurance on behalf of L&C or commit L&C to participate in insurance or reinsurance syndicates. Manager shall have authority to negotiate reinsurance on behalf of, and recommend reinsurance to L&C.

2. Collect any payment from a reinsurer or commit L&C to any claims settlement with a reinsurer without prior approval of L&C. If prior approval is given, report must be forwarded promptly to L&C.
3. Jointly employ an individual who is employed by L&C.
4. Permit any producers appointed pursuant to Article III. C. to serve on the board of directors of Manager.
5. Appoint a submanaging general agent or manager.
6. Without prior approval of L&C, pay or commit L&C to pay a claim over a specified amount, net of reinsurance, which exceeds one (1) percent of L&C's policyholder's surplus as of December 31 of the last completed calendar year.
7. Exceed the maximum policy limits set forth in Exhibit A.
8. Charge a per-policy fee to insureds or policyholders of L&C.
9. Respond to third party or bad faith claims against L&C without the expressed consent of L&C.

#### ARTICLE IV. Manager's Compensation

L&C will pay the Manager as full compensation for all of its duties and responsibilities under this agreement as follows:

- A. Management Fee: For all services under this Agreement other than claims handling and Risk Management Manager shall receive fees as follows:
  1. During each year of L&C's operations, a sliding scale of commissions at the rate of 22% of the gross written premiums, net of cancellations and non-renewals, between 0-\$3,000,000; 20% of the gross written premiums, net of cancellations and non-renewals, greater than \$3,000,000.
  2. When gross written premiums, net of cancellations and non-renewals, exceed \$15 million the fee is reduced to 17.5%.
- B. Claims Handling Fees: For claims handling services under this Agreement, Manager shall receive a time-and-expense fee as follows:
  1. \$250 file setup fee for each claim or significant incident investigation.
  2. \$95 per hour for claim adjuster/nurse professional time, and actual travel expenses for investigations, mediations, trials, etc.
  3. Claims handling fees shall be billed monthly by Manager, by individual claim.
- C. Payment of Management Fees: Fees are to be paid to Manager monthly within 15 days after the end of each month, based on Manager's actual services provided during the month prior to the payment date.
- D. Profit Sharing Bonus: Manager shall receive a profit sharing bonus based on underwriting profitability of L&C. Such profitability shall be based on earned premiums and incurred losses on policies issued during each calendar year of operations of L&C. Determination of the bonus for each calendar year shall be as of December 31 of the fifth year following the end of each calendar



year, and shall be calculated and paid to Manager no later than March 1 of the year following such fifth year. (For example, for policies issued during 2004, the profit sharing bonus will be calculated as of December 31, 2009 and paid by March 1, 2010.) The amount of the bonus shall be as follows:

<u>Loss Ratio</u>	<u>Profit Sharing Bonus</u>
Greater than 60.1%	None
56.1% to 60.0%	1% of earned premium for calendar year
52.1% to 56.0%	2% of earned premium for calendar year
48.1% to 52.0%	3% of earned premium for calendar year
44.1% to 48.0%	4% of earned premium for calendar year
40.1% to 44.0%	5% of earned premium for calendar year
40.0% or less	6% of earned premium for calendar year

#### ARTICLE V. Representation with Respect to Policies

Manager will not make nor allow any other person to make any representation to applicants, insureds, policyholders or claimants as to the existence or extent of coverage either available from L&C or under a policy that is not consistent with the terms and conditions of coverages available from L&C or of a policy. Manager shall ensure that Manager or Manager's employees will make known to any applicant, insured or policyholder the full scope and effect of all exclusions and limitations upon or under coverage provided by the Policy.

#### ARTICLE VI. Insurance of Manager

Manager will maintain for as long as this Agreement remains in force with insurers and on forms acceptable to L&C:

- A. Professional Errors and Omissions policy in an amount not less than \$5,000,000.
- B. Blanket Employee Dishonesty bond covering all employees of Manager in an amount not less than \$1,000,000.

L&C may require certificates of insurance or other evidence that the insurance required by this article is in force. The limits of such coverage adequacy will be reviewed annually by L&C and shall periodically be increased by Manager as the L&C shall determine.

#### ARTICLE VII. Indemnification

Manager shall be responsible to L&C and shall indemnify, save, defend and hold L&C, including its affiliates, and all officers, directors and employees harmless against any and all claims, suits, hearings, actions, damages of any kind, liability, fines, penalties, loss or expense, including attorney's fees, caused by or arising from any allegation of any act or negligence, misconduct, error, omission or breach of this Agreement by Manager, or Manager's employees, or representatives, and unless the conduct giving rise to the allegation was performed at the specific direction of L&C, provided Manager has not contributed to or compounded the act alleged.

L&C shall be responsible to Manager and shall indemnify, save, defend and hold Manager, including its affiliates, and all officers, directors and employees harmless against any and all claims, suits, hearings, actions, damages of any kind, liability, fines, penalties, loss or expense, including attorney's fees caused by or arising from any act or allegation of any negligence, misconduct, error, omission or breach of this Agreement by L&C, or L&C's employees, or representatives, and unless the conduct giving rise to the allegation was performed at the specific direction of Manager, provided L&C has not contributed to or compounded this act alleged.

#### ARTICLE VIII. Ownership of Expirations

Records of insureds, policyholders and Policies and their use and control for solicitation of business written or bound by or through Manager, as between Manager and L&C, shall be the sole and exclusive property of L&C. Manager shall be allowed, at Manager's expense, to make and keep copies of all such records.

#### ARTICLE IX. Termination of Agreement

A. L&C may immediately terminate this Agreement as follows:

Immediately upon written notice to Manager in the event of the following:

1. License Suspension or Revocation: An order of suspension or revocation of Manager's license by any insurance regulatory authority; or
2. Misapplication of Funds: A misapplication, misdirection or misappropriation by Manager of funds or property of L&C or funds received from Policyholders by Manager; or
3. Default: A default under this Agreement by Manager or Manager's failure to timely and fully comply with L&C directives, rules, regulations or manuals; or
4. Conviction: Of a charge brought against Manager or any of Manager's executive officers of violation of the insurance laws or regulations of any jurisdiction or of any law constituting a felony in the jurisdiction in which committed, or of any law whose violation reflects adversely upon the honesty or integrity of Manager or any of Manager's executive officers whether or not classified as a felony; or

5. Bankruptcy: A court order of bankruptcy, receivership or common law composition of creditors, whether voluntary or involuntary.

B. Manager may terminate this Agreement as follows:

Immediately upon written notice to L&C in the event of the occurrence of items 1 or 3 in this Article X, B, and with respect to item 2 of this Article X.B, a finding by a court, government regulator or tribunal pursuant to Article XII hereunder against L&C:

1. Certificate of Authority Suspension or Revocation: An order of suspension or revocation of L&C's Certificate of Authority by an insurance regulatory authority; or
2. Default: A default under this Agreement by L&C.
3. Bankruptcy: A court order of bankruptcy, receivership or common law composition of creditors, whether voluntarily or involuntarily.

#### ARTICLE X. Cure Provision

In the event L&C shall be entitled to terminate this Agreement pursuant to Article IX, A, 3 above and if Manager shall submit a written plan of correction to L&C (which plan of correction must specifically outline the actions to be taken and the deadline for a final cure of the event which permits L&C's termination right) and if L&C accepts the written plan of correction, then L&C may thereafter terminate this Agreement if the plan of correction fails or is not completed by the deadline specified in the plan of correction:

#### ARTICLE XI. Continuing Duties of Manager after Termination

Following the effective date of termination of this Agreement, and following the transfer of all records and property of L&C by Manager to L&C, Manager shall have no continuing duties under this Agreement. However, Manager shall fulfill any obligations on Policies during the pendency of any dispute regarding the cause for termination.

#### ARTICLE XII. Arbitration

- A. Submission to Arbitration: Any dispute arising out of this Agreement shall be submitted to the decision of a board of arbitration composed of two arbitrators and an umpire meeting at the L&C offices in Nevada unless otherwise mutually agreed.
- B. Notice: The notice requesting arbitration shall state in particulars all principal issues to be resolved and shall set a date for the hearing, which date shall be no sooner than 90 days and no later than 120 days from the date that the notice requesting arbitration is mailed.
- C. Arbitration Board Membership: The members of the board of arbitration shall be active or retired and disinterested officials of insurance companies. Each party shall appoint its own arbitrator and the two arbitrators shall choose a third arbitrator as umpire before the date set for the hearing. If a party fails to appoint its arbitrator within 30 days after having received a written request

from the other, the other shall appoint the second arbitrator. If the two arbitrators fail to agree upon the appointment of the umpire within 30 days after their appointment, then the American Arbitration Association shall make the selection of the umpire. The umpire shall promptly notify all parties to the arbitration of his selection.

D. Submission of Briefs: The parties shall submit their initial briefs within 20 days from appointment of the umpire. Each may submit reply briefs within 10 days after filing the initial briefs.

E. Arbitration Board: The board shall make an award of monetary damages or other relief with regard to the custom and usage of the insurance business which shall be in writing. The award shall be based upon a hearing in which evidence may be introduced without following strict rules of evidence but in which cross examination and rebuttal shall be allowed. At its own election or at the request of the board, either party may submit a post-hearing brief for consideration of the board within 20 days of the close of the hearing. The board shall make its award within 30 days following the close of the hearing or the submission of post-hearing briefs, whichever is longer, unless the parties consent to an extension. A decision by the majority of the members of the board shall become the award of the board and shall be final and binding upon all parties to the proceeding, however, the board shall have no authority to issue an award for punitive damages. Either party may apply to the United States District Court or to a Nevada State Court of competent jurisdiction for an order confirming the award; a judgment of such Court shall thereupon be entered on the award. If such an order is issued, the attorney's fees of the party so applying and court costs will be paid by the party against whom confirmation is sought.

F. Arbitration Expenses: Each party shall bear the expense of its own arbitrator and shall jointly and equally bear with the other party the expense of the umpire. The remaining costs of the arbitration proceedings shall be allocated by the board.

G. Survival: This Article shall survive the termination of this Agreement.

#### ARTICLE XII. Other Terms and Conditions

A. Waiver: The failure of L&C or Manager to insist on strict compliance with this Agreement, or to exercise any right or remedy shall not constitute a waiver of any rights provided under this Agreement, nor enjoin the parties from thereafter demanding full and complete compliance nor prevent the parties from exercising such a remedy in the future.

B. Conflict with Law: If any provision of this Agreement should be declared invalid by a court of general jurisdiction and suspended by specific law or regulation, such law or regulation shall control to the extent of such conflict without affecting the remaining portions of this Agreement.

C. Assignment: This Agreement may not be assigned in whole or in part by Manager.

D. Headings: The headings preceding the text of the articles and paragraphs of the Agreement are intended solely for the convenience of reference and shall not affect the meaning, construction or effect of this Agreement.

- B. Governing Law: This Agreement shall be governed as to performance, administration and interpretation by the laws of the State of Nevada.
- F. Honorable Undertaking: This Agreement shall be considered as an honorable undertaking made in good faith and shall be subject to a liberal construction for the purpose of giving effect to the good faith and honorable intentions of Manager and L&C.
- G. Notices: Wherever notice is required under this Agreement, it shall be in writing, sent by certified mail or express delivery, and addressed:

If to L&C:

Vernon E. Leverly  
Lewis & Clark LTC Risk Retention Group, Inc.  
832 Willow St.  
Reno, Nevada 89502

Jeff C. Marshall  
President & CEO  
Eagle Healthcare Inc.  
7330 Northeast Bothell Way, Suite 201  
Kenmore, Washington 98028

If to Manager:

Smiford D. Elsass  
President  
Uni-Ter Underwriting Management Corporation  
1200 Ashwood Parkway, Suite 560  
Atlanta, GA 30338

- H. Independent Contractor: This Agreement is not a contract for employment and nothing contained in this Agreement shall be construed to create the relationship of joint venture, partnership, or employer and employee between L&C and Manager. Manager is an independent contractor and shall be free, subject to the terms and conditions of this Agreement, to exercise judgment and discretion with regard to the conduct of business.
- I. Entire Agreement: This Agreement supersedes all previous agreements, whether written or oral, between L&C and Manager, or their predecessors with respect to the duties under this Agreement.
  - 1. This Agreement may be amended, altered or modified only in writing signed by both parties.
  - 2. Manuals, rules, regulations, instructions and directions issued in writing by L&C and received by the manager from time to time as provided in this Agreement, shall bind the parties as though a part of this Agreement.

The Manager and L&C have executed this Agreement in duplicate, each of which shall serve as an original:

FOR L&C:

BY:  
TITLE:

W. C. Marshall  
President

FOR MANAGER:

BY:  
TITLE:

[Signature]  
President

Exhibit A - Underwriting Authority

To  
Management Agreement  
Between  
Lewis & Clark LTC Risk Retention Group, Inc.  
And  
Uni-Ter Underwriting Management Corporation

The authority granted Manager is subject to the following definitions and limitations:

- A. Eligibility: Eligible risks include skilled nursing facilities, assisted living facilities, independent living facilities, continuing care retirement communities, or any health care operation whose principal business is to provide long term health care, in accordance with indemnity guidelines, Exhibit C.
- B. Lines of Authority: Professional Liability and General Liability.
- C. Territory: Nevada, Iowa, Idaho, Montana, Oregon, Utah, Washington, Wyoming, Kansas, South Dakota, North Dakota, Colorado, Nebraska.
- D. Policy Form: Claims Made form.
- E. Maximum Limits of Liability: \$500,000 per claim, \$1,000,000 aggregate per insured location. Defense costs and supplementary payments are within the limits.
- F. Deductible: A \$5,000 deductible per claim will be assessed.
- G. Maximum Policy Period: One Year.
- H. Underwriting Guidelines: The guidelines contained in the form and rate filings approved for use of L&C by the Nevada Department of Insurance. These guidelines contain specific parameters of classifications, coverage, limits of liability, deductibles, risk selection, premium base, premium calculation, schedule rating plan, rates, extended reporting period option, policy issuance, and risk management.
- I. Cancellation and Nonrenewal: Manager shall comply with all applicable insurance laws and regulations pertaining to the cancellation or nonrenewal of any Policies bound or written under this Agreement.

Exhibit B - Claims Management Authority

To  
Management Agreement  
Between  
Lewis & Clark Risk Retention Group, Inc.  
And  
Uni-Ter Underwriting Management Corporation

Manager shall handle all aspects of claim processing, subject to the requirements and limitations set forth below, for all claims and allocated loss adjustment expenses subject to this Agreement. All claims shall be handled until settlement or other disposition, except as otherwise indicated in this Agreement.

Manager shall establish and maintain claim files on each reported claim and advise insureds of procedures to be followed when claims arise.

- A. Routine/Initial Reporting Requirements: Manager shall report every claim to L&C within thirty (30) days after it receives a claim notice. This reporting shall consist of recording the claim on the accounting records of L&C and advising L&C by means of periodic and special claim reports.
- B. Special Reporting Requirements: Separate notice shall be sent by Manager to L&C as soon as any of the following becomes known, or at any time earlier upon L&C's request:
  - 1. If the claim could potentially exceed policy limits or any limit set by L&C, whichever is less.
  - 2. The claim may exceed the Manager's claim settlement authority.
  - 3. The claim is open for more than six months.
  - 4. Involves a coverage dispute, bad faith allegation, or is a third party claim.
  - 5. The claim is closed by payment of one (1) percent of L&C's policyholder surplus or an amount set by L&C, whichever is less.
- C. Monthly Reporting: Within 20 days after the close of each month a claims report will be provided listing new claims reported, open reserves, paid claims and ending reserve balances for both indemnity and expense activity.
- D. Record Ownership and Access: All claim files shall be the joint property of L&C and Manager. However, upon an order of liquidation of L&C the claims and related application files shall become the sole property of L&C or its estate. Manager shall have reasonable access to and the right to copy the files on a timely basis.
- E. Settlement Authority: Manager shall have full authority to settle, issue payment and establish reserves up to the amount of the per claim policy limit of the policy on which a claim is made. Any settlement authority granted to Manager may be terminated for cause upon L&C's written notice to Manager or upon termination of this Agreement. L&C may suspend the settlement



authority during the pendency of any dispute regarding the cause for termination.

- F. Service of Suit: L&C hereby appoints Vernon E. Leverty, Leverty & Associates Law LTD., 832 Willow Street Reno, Nevada 89501 as agent for receiving service of process on any suit or proceeding involving a claim of loss arising out of a policy issued by Manager on L&C's behalf. Manager shall also have authority to appoint a suitable independent entity as agent for service of process in all states in which L&C may do business as necessary.
- G. Licensed Adjusters: All claims must be adjusted by properly licensed adjusters.
- H. Defense Counsel: Manager will identify defense counsel by state, and will review the qualifications with L&C and obtain the approval of L&C before engaging defense counsel and such review shall be on periodic basis.

FIRST AMENDMENT TO  
MANAGEMENT AGREEMENT

THIS FIRST AMENDMENT TO MANAGEMENT AGREEMENT is made between LEWIS & CLARK LTC RISK RETENTION GROUP, INC., a Nevada corporation ("L&C"), and UNI-TER UNDERWRITING MANAGEMENT CORPORATION, a Delaware corporation ("Manager"), effective as of January 1, 2004.

For good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Article IV, Subsection A of the Management Agreement is hereby amended to provide that the calculation of gross written premiums shall be made net of the per bed risk management fee charged from time to time, as well as net of cancellations and nonrenewals.

In all other respects, the Management Agreement remains in full force and effect.

LEWIS & CLARK LTC RISK RETENTION  
GROUP, INC.

By: [Signature]  
Name: Jeff Marshall  
Title: President

UNI-TER UNDERWRITING MANAGEMENT  
CORPORATION

By: [Signature]  
Name: Samuel Plaza  
Title: President

SECOND AMENDMENT TO  
MANAGEMENT AGREEMENT

THIS SECOND AMENDMENT TO MANAGEMENT AGREEMENT is made between LEWIS & CLARK LTC RISK RETENTION GROUP, INC., a Nevada corporation ("L&C"), and UNI-TER UNDERWRITING MANAGEMENT CORPORATION, a Delaware corporation ("Manager"), effective as of February 7, 2005.

For good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Article III, Subsection R of the Agreement is hereby deleted, as all risk management services will be performed under a separate agreement between L&C and Uni-Ter Risk Management Services, Inc.

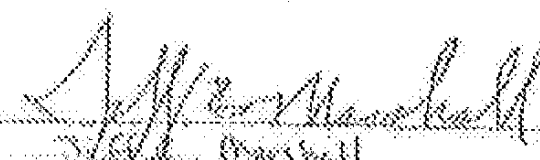
2. Article IV, Subsection A of the Management Agreement is hereby amended to read as follows:

A. Management Fee: For all services under this Agreement other than claims handling and except as provided below, the Manager shall receive fees as follows:

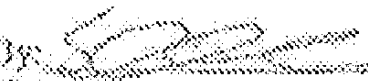
During each year of L&C's operations, commissions at the rate of 12% of the annual gross written premiums (net of cancellations and non-renewals) plus the amount of agency commissions (at rates approved by L&C) payable to retail and wholesale agents appointed by the Manager.

In all other respects, the Management Agreement remains in full force and effect.

LEWIS & CLARK LTC RISK RETENTION  
GROUP, INC.

By:   
Name: David Marshall  
Title: Gen. Sec.

UNI-TER UNDERWRITING  
MANAGEMENT CORPORATION

By:   
Name: Sanford Elsass  
Title: President

THIRD AMENDMENT TO  
MANAGEMENT AGREEMENT

THIS THIRD AMENDMENT TO MANAGEMENT AGREEMENT is made between LEWIS & CLARK LTC RISK RETENTION GROUP, INC., a Nevada corporation ("L&C"), and UNI-TER UNDERWRITING MANAGEMENT CORPORATION, a Delaware corporation ("Manager"), effective as of January 1, 2006.

For good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Article IV, Subsection B. 2. of the Management Agreement is hereby amended to provide that the hourly rate for claim adjuster/professional time is set at \$105 per hour.

In all other respects, the Management Agreement remains in full force and effect.

LEWIS & CLARK LTC RISK RETENTION  
GROUP, INC.

By: [Signature]  
Name: Jeff A. Marshall  
Title: Exec. Vice Pres.

UNI-TER UNDERWRITING  
MANAGEMENT CORPORATION

By: [Signature]  
Name: Sanford Elsass  
Title: President

lhw-ag03720310003 Amnd-Mgt Agt, Jan

FOURTH AMENDMENT TO  
MANAGEMENT AGREEMENT

THIS FOURTH AMENDMENT TO MANAGEMENT AGREEMENT is made between LEWIS & CLARK LTC RISK RETENTION GROUP, INC., a Nevada corporation ("L&C"), and UNI-TER UNDERWRITING MANAGEMENT CORPORATION, a Delaware corporation ("Manager"), effective as of January 1, 2004.

For good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

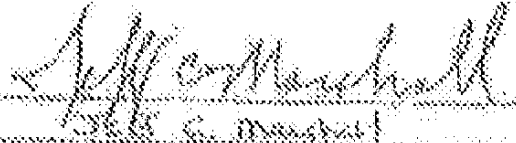
1. The following sentence is added after the second sentence in Article IV, Section D, Profit Sharing Bonus:

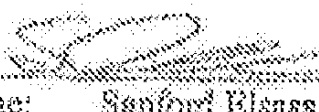
Thus, for example, for calendar year 2004, earned premiums and incurred losses shall be calculated for all policies issued during calendar year 2004, regardless of the calendar year in which such premiums were earned or in which such losses were incurred.

In all other respects, the Management Agreement, as amended from time to time, remains in full force and effect.

LEWIS & CLARK LTC RISK RETENTION  
GROUP, INC.

UNI-TER UNDERWRITING  
MANAGEMENT CORPORATION

By:   
Name: J. C. Marshall  
Title: President

By:   
Name: Sanford Blass  
Title: President

lhw-agi137202100014 Amnd-Mgt Agt.doc

FIFTH AMENDMENT TO  
MANAGEMENT AGREEMENT

THIS FIFTH AMENDMENT TO MANAGEMENT AGREEMENT is made between LEWIS & CLARK LTC RISK RETENTION GROUP, INC., a Nevada corporation ("L&C"), and UNI-TER UNDERWRITING MANAGEMENT CORPORATION, a Delaware corporation ("Manager"), effective as of January 1, 2004.

For good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Article IV, Section D, Profit Sharing Bonus is revised to read as follows:

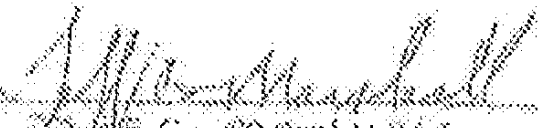
Profit Sharing Bonus: Manager shall receive a profit sharing bonus based on underwriting profitability of L&C. Such profitability shall be based on earned premiums and incurred losses on policies issued during each calendar year of operations of L&C. The bonus will be calculated on an accident/report year basis. Thus, for example, for calendar year 2004, premiums earned during 2004 and losses incurred during 2004 shall be calculated, regardless of the calendar year in which the relevant policy was written. Determination of the bonus for each calendar year shall be as of December 31 of the fourth year following the end of each calendar year, and shall be calculated and paid to Manager no later than March 1 of the year following such fourth year. (For example, for policies issued during 2004, the profit sharing bonus will be calculated as of December 31, 2008 and paid by March 1, 2009.) The amount of the bonus shall be as follows:

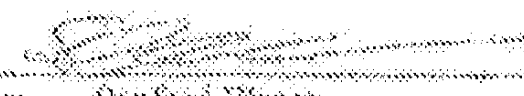
<u>Loss Ratio</u>	<u>Profit Sharing Bonus</u>
Greater than 60.1%	None
56.1% to 60.0%	1% of earned premium for calendar year
52.1% to 56.0%	2% of earned premium for calendar year
48.1% to 52.0%	3% of earned premium for calendar year
44.1% to 48.0%	4% of earned premium for calendar year
40.1% to 44.0%	5% of earned premium for calendar year
40.0% or less	6% of earned premium for calendar year

In all other respects, the Management Agreement, as amended from time to time, remains in full force and effect.

LEWIS & CLARK LTC RISK RETENTION  
GROUP, INC.

UNI-TER UNDERWRITING  
MANAGEMENT CORPORATION

By:   
Name: J. C. Marshall  
Title: President

By:   
Name: Sanford Elsass  
Title: President

SIXTH AMENDMENT TO  
MANAGEMENT AGREEMENT

THIS SIXTH AMENDMENT TO MANAGEMENT AGREEMENT is made between LEWIS & CLARK LTC RISK RETENTION GROUP, INC., a Nevada corporation ("L&C"), and UNI-TER UNDERWRITING MANAGEMENT CORPORATION, a Delaware corporation ("Manager"), effective as of April 1, 2007.

For good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Article IV, Subsection B, 2. of the Management Agreement is hereby amended to provide that the hourly rate for claim adjustment/professional time is set at \$125 per hour.

In all other respects, the Management Agreement remains in full force and effect.

LEWIS & CLARK LTC RISK RETENTION  
GROUP, INC.

By: 

Name: Sanford Elson

Title: Secretary

UNI-TER UNDERWRITING  
MANAGEMENT CORPORATION

By: 

Name: Sanford Elson

Title: President

SEVENTH AMENDMENT TO  
MANAGEMENT AGREEMENT

THIS SEVENTH AMENDMENT TO MANAGEMENT AGREEMENT is made between LEWIS & CLARK LTC RISK RETENTION GROUP, INC., a Nevada corporation ("L&C"), and UNI-TER UNDERWRITING MANAGEMENT CORPORATION, a Delaware corporation ("Manager"), effective as of December 1, 2009.

For good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. The following sentence is added at the end of Article IV, Section A. Management  
Esg:

The above provisions are applicable to L&C's long term care facility/home health care book of business. With respect to L&C's nurse/nurse practitioner book of business produced by agents, commissions shall be payable each year at a rate of 37.5% of the annual gross written premiums (net of cancellations and non-renewals) (with the Manager responsible for paying the amount of any agency commissions payable to retail and wholesale agents appointed by the Manager). For such business sold directly by the Company, the commission rate shall be 30.0%.

In all other respects, the Management Agreement, as amended from time to time, remains in full force and effect.

LEWIS & CLARK LTC RISK RETENTION  
GROUP, INC.

UNI-TER UNDERWRITING  
MANAGEMENT CORPORATION

By: [Signature]  
Name: Jeff C. McClellan  
Title: President

By: [Signature]  
Name: Sanford Higgs  
Title: President



EIGHTH AMENDMENT TO  
MANAGEMENT AGREEMENT

THIS EIGHTH AMENDMENT TO MANAGEMENT AGREEMENT is made between LEWIS & CLARK LTC RISK RETENTION GROUP, INC., a Nevada corporation ("L&C"), and UNI-TER UNDERWRITING MANAGEMENT CORPORATION, a Delaware corporation ("Manager"), effective as of January 1, 2004.

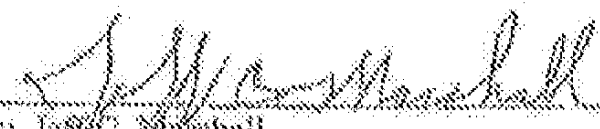
For good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Article IV, Section C is hereby revised to read as follows:

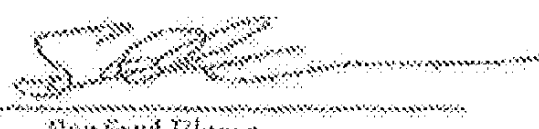
C. ~~Payment of Management Fees.~~ Fees are to be paid to Manager and adjusted on a continuing basis when and as premiums are collected or adjusted on behalf of L&C.

In all other respects, the Management Agreement, as amended from time to time, remains in full force and effect.

LEWIS & CLARK LTC RISK RETENTION  
GROUP, INC.

By:   
Name: Jeff C. Marshall  
Title: President

UNI-TER UNDERWRITING  
MANAGEMENT CORPORATION

By:   
Name: Sanford Elness  
Title: President

# EXHIBIT 3

## MANAGEMENT AGREEMENT

THIS AGREEMENT is made between Lewis & Clark LTC RISK RETENTION GROUP, INC. ("L&C"), a Nevada corporation, and UNI-TER UNDERWRITING MANAGEMENT CORPORATION and UNI-TER CLAIMS SERVICES CORPORATION ("UCS") (collectively "Manager"), which are direct or indirect subsidiaries of U.S. RE Companies, Inc. a Delaware corporation, and which shall continue as such subsidiaries during the term or extended term of this agreement.

### ARTICLE I. Term of Agreement

This Agreement is effective as of January 1, 2011 (except as specified in Article IV. D). It will continue for a period of five (5) years from the effective date hereof unless terminated prior thereto under the provisions of Article X of this Agreement, and automatically shall be renewed for an additional five (5) years, subject to mutual agreement between the parties as to the terms of such renewal. If the parties are unable to so agree, then L&C shall be free to enter into a selection process for a new managing general agent.

### ARTICLE II. Appointment of Manager; Lines of Authority

L&C appoints Manager as its underwriting, administrative, accounting, risk management and claims manager as follows:

- A. Lines of Authority: Manager's appointment and authority extends to the classes of business, policies of insurance, including all endorsements, (the "Policies"); and lines and limits of insurance described in Exhibit A attached to this Agreement (the "Business").
- B. Territory: Manager's appointment and authority extends to risks located in the states set forth in Exhibit A.
- C. Exclusions: Manager's appointment and authority is subject to any exclusions set forth in Exhibit A.
- D. Fiduciary: Manager will serve L&C in a fiduciary capacity for all legal duties.

### ARTICLE III. Manager's Duties and Responsibilities

Manager faithfully will perform all of its duties to the best of its professional knowledge, skill and judgment. Manager's duties include the following:

- A. Solicitation: To solicit risks and classes of risks at limits and for lines of insurance authorized in Exhibit A, that in their pricing and insurability meet or exceed the agreed upon underwriting and pricing standards established by L&C in writing.
- B. Bidding of Risks: To bid risks only in accordance with Exhibit A and any other agreed upon underwriting and pricing standards established by L&C in writing.
- C. Policy Issuances: To timely and properly issue, deliver and execute or countersign policies, certificates, endorsements, and binders on forms approved by L&C and appropriate regulatory authorities, as required by law, for the business described in Exhibit A.
- D. Risks Bound: To record on the books of L&C each risk or policy bound or written under this Agreement.
- E. Compliance with State and Federal Regulations: To comply fully, timely and promptly with all manuals, rules, guidelines, instructions and directions issued in writing by L&C relating to the business covered by this Agreement as well as to comply with all state and federal rules, regulations, and statutes including those relating to privacy and confidentiality for all L&C business covered hereby.
- F. Premium Rates: To quote accurate premiums and rates for policies bound or written under this agreement in compliance with the approved and applicable rating manuals or rating plans of L&C.
- G. Statistical Reporting: To provide the necessary data processing and statistical records, including the development of any specialized programs which may be required by L&C.
- H. Accounting: To timely account for the business and for the financial affairs of L&C as follows:
  1. Manager shall prepare and forward to L&C on a quarterly basis, within forty-five (45) calendar days of the end of each calendar quarter, a complete set of financial statements prepared in accordance with Generally Accepted Accounting Principles (GAAP) basis to include:
    - a. Operating Statement
    - b. Balance Sheet
    - c. Policies written for the quarter
    - d. Claims incurred for the quarter
    - e. Accounts receivable summary
    - f. Summary report of all claims, reserves and losses

2. As of the end of each calendar quarter or calendar year as appropriate, Manager shall prepare and file, in accordance with statutory standards or GAAP as required, quarterly and annual financial statements with the Nevada Department of Insurance and any other State requiring same, including all regulatory forms necessary to keep L&C's Certificate of Authority in good standing.

- I. Fiduciary Capacity - Premium Trust Funds and Assets of L&C: To hold all premiums and assets of L&C in a bank, which is a member of the Federal Reserve System and investment custodian accounts owned by L&C. The bank accounts shall be designated by Manager in such a manner as to clearly establish that Manager is a fiduciary for L&C with respect to all funds so held. L&C funds, under fiduciary control of Manager, may be used as necessary to pay return premiums, claims, and operating expenses of L&C. These funds shall not be used for the operating expenses of Manager.
- J. Copies of Policies: Manager shall maintain copies of all policies, endorsements, policy cancellations, and underwriting file documentation.
- K. Collection of Premiums: To invoice and collect premiums on all policies and capital assessments. Other than making a good faith effort to collect all premiums and capital, Manager is not responsible for uncollectible premiums and capital other than to cancel the related policies as applicable. All funds collected for the account of L&C shall be deposited directly into bank accounts owned by L&C. These account(s) shall be used for all payments as directed by L&C and by this Agreement.
- L. Reinsurance Transactions: To pay, collect, and otherwise account for any reinsurance transactions, as authorized by L&C.
- M. L&C Property: To safeguard, maintain and account for all policies, forms, manuals, accounting and claims records, equipment, supplies or anything else furnished Manager by L&C, all of which shall remain the property of L&C. Manager will return all property to L&C promptly upon demand.
- N. Manager Expenses: To pay, assume the obligation for and to be fully responsible for all costs and expenses associated with Manager's performance under this Agreement, including: travel expense, employee and clerical salaries, benefits and expense, postage, Manager's advertising etc. L&C shall be responsible for its own expenses such as license fees, income taxes, premium taxes and assessments, auditor fees, legal fees, investment adviser fees, investment custodian fees, actuarial fees, directors' fees, advertising and marketing expenses and fees as agreed by L&C from time to time, and salary, benefits and overhead of any direct employees of L&C.
- O. Legal Compliance: The Manager shall be responsible for the appointment of qualified agents and brokers (producers) after verification of the license of such producers to lawfully transact the designated line(s) of insurance and shall assure that such producers comply with all laws, regulations, rules and

requirements applicable to Manager's activities and, in addition, all written instructions provided from time to time by L&C concerning underwriting requirements and regulatory compliance in general; provided, however, that such written instructions shall not unreasonably alter or amend the terms of this Agreement.

- P. Governmental Contacts: To promptly respond to all contacts and correspondence received from insurance regulatory or other governmental authorities that pertain to business described in Exhibit A, to respond appropriately to all summonses, complaints, subpoenas or other court documents, and to advise L&C of any such items that are of a material nature.
- Q. Claims Handling: To respond to all claims, suits and losses reported to Manager and/or L&C, and to perform the investigation, settlement and payment of each and all claims, and to collect deductibles due and salvage or subrogation. Manager's specific claim handling duties are set forth in Exhibit B.
- R. Risk Management: To arrange or perform risk management services for the insureds of L&C. Such risk management shall have the primary goal of reducing the frequency of medical incidents that give rise to policy claims. Specific risk management duties and compensation therefore will be negotiated and involved directly between Manager and L&C insureds.
- S. Competent Staff: To maintain sufficient supplies and equipment, and a staff of competent and trained personnel, to produce, develop, underwrite and supervise the business covered by this Agreement.
- T. Accurate Records: To keep and maintain separate, identifiable, orderly, accurate, complete and timely records and accounts of all business and transactions pertaining to policies bound or written under the Agreement including complete underwriting and rate files, all claims-related records, all accounting and financial records, regulatory records, and all other records relating to the operations of L&C. Such records and files shall be the property of L&C; provided that Manager may retain copies of all such records and files. In addition, any Insurance Commissioner shall have access to all books, accounts, records and files of Manager for business bound or written under this Agreement and any such books, accounts, records, and files shall be kept in a form acceptable by such Insurance Commissioner. Records of L&C shall be retained according to Section NRS 694C.410 Nevada Statutes.
- U. Electronic Files: All records maintained in electronic format shall be treated the same as hard copy records for purposes of this agreement. Manager shall maintain appropriate data backup procedures and transmit all required data on a timely basis.
- V. Audit: To permit L&C during the term of this agreement to visit, inspect, examine, audit and verify, at Manager's offices, within normal business hours, with or without prior notice any of the properties, accounts, files, documents, books, reports, work papers and other records belonging to or in the possession or control of Manager or of any other person relating to the

business covered by this agreement. L&C may make copies and extracts as may be reasonably necessary. L&C may conduct any audit through any person or persons it may designate.

W. Services: To provide for all usual and customary services to Insureds, Policyholders and subproducers including delivery of policies, return of premiums due Insureds or policyholders and timely, appropriate responses to complaints.

X. Policy Cancellation and Non-Renewal: To cancel, non-renew or otherwise terminate policies bound or written by or through Manager as required by applicable underwriting standards and consistent with applicable regulatory and policy conditions. L&C shall always retain the right to direct the termination or non-renewal of policies by Manager or to terminate or non-renew policies by direct notice to Insureds or policyholders in accordance with the provisions of applicable state insurance regulations. Manager shall not make, permit, or cause general or indiscriminate cancellations, termination or replacements of policies. Manager shall be responsible for notifying governmental agencies or other persons for whom Manager has certified coverage or provided evidence of insurance.

Y. Limitations of Authority: Manager shall have no authority to do any of the following acts:

1. Bind reinsurance on behalf of L&C or commit L&C to participate in insurance or reinsurance syndicates, except as specifically authorized by L&C. Manager shall have authority to negotiate reinsurance on behalf of, and recommend reinsurance to L&C.
2. Jointly employ an individual who is employed by L&C.
3. Permit any producers appointed pursuant to Article III. O. to serve on the board of directors of Manager.
4. Appoint a submanaging general agent or manager.
5. Exceed the maximum policy limits set forth in Exhibit A.
6. Charge a per-policy fee to insureds or policyholders of L&C.

Manager shall have full authority to settle claims on L&C's behalf or commit L&C to pay claims. However, Manager shall give prompt written notice to L&C if it identifies claims which it believes may exceed ten percent (10%) of L&C's policy holder surplus.

#### ARTICLE IV. Manager's Compensation

L&C will pay the Manager as full compensation for all of its duties and responsibilities under this agreement as follows:

\*



- A. Management Fees: For all services under this Agreement other than claims handling and except as provided below, the Manager shall receive fees as follows:

During each year of L&C's operations, commissions at the rate of 12% of the annual gross written premiums (net of cancellations and non-renewals) plus the amount of agency commissions (at rates approved by L&C) payable to retail and wholesale agents appointed by the Manager. The calculation of gross written premiums shall be made net of the per bed risk management fee charged from time to time.

The above provisions are applicable to L&C's long term care facility/home health care book of business. With respect to L&C's nurse/nurse practitioner book of business produced by agents, commissions shall be payable each year at a rate of 37.5% of the annual gross written premiums (net of cancellations and non-renewals) (with the Manager responsible for paying the amount of any agency commissions payable to retail and wholesale agents appointed by the Manager). For such business sold directly by the Company, the commission rate shall be 30.0%.

- B. Claims Handling Fees: For claims handling services under this Agreement, Manager shall receive a time-and-expense fee as follows:

1. \$250 file setup fee for each claim or significant incident investigation.
2. \$155 per hour for claim adjuster/nurse professional time and actual travel expenses for investigations, mediations, trials, etc.
3. Claims handling fees shall be billed monthly by Manager, by individual claim.

- C. Payment of Management Fees: Fees are to be paid to Manager and adjusted on a continuing basis when and as premiums are collected or adjusted on behalf of L&C.

- D. Profit Sharing Bonus: Manager shall be entitled to a profit sharing bonus equal to twenty percent (20%) of L&C's Profit (as defined below) for each calendar year or partial calendar year from 2007 forward through the term of this Agreement. The calculation of the Profit Sharing Bonus under the prior agreement between the parties shall apply for the 2006 calendar year. For purposes of this Agreement, L&C's Profit shall, except as provided below, be equal to L&C's pre-tax net income for the applicable calendar year from all sources, before deduction of such profit sharing bonus, determined on the basis of generally accepted accounting principles (U.S. GAAP) and in accordance with L&C's audited financial statements adjusted for changes in the applicable accident year's (a) loss ratio, (b) allocated loss adjustment expense ratio, and (c) reinsurance payables and receivables (including reinsurance profit commissions payable to L&C) through December 31 of the



fourth year following the end of each such calendar year. The profit sharing bonus shall be paid to Manager no later than June 1<sup>st</sup> of the year following such fourth year (for example, for 2011, the profit sharing bonus will be calculated as of December 31, 2013 and paid by June 1, 2016). In no event will a profit sharing bonus be earned, accrued or paid to Manager for a calendar year for which L&C has no Profit (or a Loss ("Loss") based upon the above methodology). L&C's Profit for any calendar year, and the calculation of Manager's profit sharing bonus for such calendar year, shall not be affected by a Loss in any other calendar year for the calendar years 2007 - 2009. However, any Loss in any calendar year beginning with 2010 shall not be carried back to prior years, but shall be carried forward to reduce the Profit, and/or increase the Loss, as applicable, in the succeeding calendar year.

#### ARTICLE V. Representation with Respect to Policies

Manager will not make nor allow any other person to make any representation to applicants, insureds, policyholders or claimants as to the existence or extent of coverage either available from L&C or under a policy that is not consistent with the terms and conditions of coverages available from L&C or of a policy. Manager shall ensure that Manager or Manager's employees will make known to any applicant, insured or policyholder the full scope and effect of all exclusions and limitations upon or under coverage provided by the Policy.

#### ARTICLE VI. Insurance of Manager

Manager will maintain for as long as this Agreement remains in force with insurers and on forms acceptable to L&C:

- A. Professional Errors and Omissions policy in an amount not less than \$5,000,000.
- B. Blanket Employee Dishonesty bond covering all employees of Manager in an amount not less than \$1,000,000.

L&C may require certificates of insurance or other evidence that the insurance required by this article is in force. The limits of such coverage adequacy will be reviewed annually by L&C and shall periodically be increased by Manager as the L&C shall determine.

#### ARTICLE VII. Indemnification

Manager shall be responsible to L&C and shall indemnify, save, defend and hold L&C, including its affiliates, and all officers, directors and employees harmless against any and all claims, suits, hearings, actions, damages of any kind, liability, fines, penalties, loss or expense, including attorney's fees, caused by or arising from any allegation of any act or negligence, misconduct, error, omission or breach of this Agreement by Manager, or Manager's employees, or representatives, and unless the conduct giving rise to the

allegation was performed at the specific direction of L&C, provided Manager has not contributed to or compounded the act alleged.

L&C shall be responsible to Manager and shall indemnify, save, defend and hold Manager, including its affiliates, and all officers, directors and employees harmless against any and all claims, suits, hearings, actions, damages of any kind, liability, fines, penalties, loss or expense, including attorney's fees earned by or arising from any act or allegation of any negligence, misconduct, error, omission or breach of this Agreement by L&C, or L&C's employees, or representatives, and unless the conduct giving rise to the allegation was performed at the specific direction of Manager, provided L&C has not contributed to or compounded the act alleged.

#### ARTICLE VIII. Ownership of Explanations

Records of insureds, policyholders and Policies and their use and control for solicitation of business written or bound by or through Manager, as between Manager and L&C, shall be the sole and exclusive property of L&C. Manager shall be allowed, at Manager's expense, to make and keep copies of all such records.

#### ARTICLE IX. Termination of Agreement

A. L&C may immediately terminate this Agreement as follows:

Immediately upon written notice to Manager in the event of the following:

1. License Suspension or Revocation: An order of suspension or revocation of Manager's license by any insurance regulatory authority; or
2. Misapplication of Funds: A misapplication, misdirection or misappropriation by Manager of funds or property of L&C or funds received from Policyholders by Manager; or
3. Default: A default under this Agreement by Manager or Manager's failure to timely and fully comply with L&C directives, rules, regulations or manuals; or
4. Conviction: Of a charge brought against Manager or any of Manager's executive officers of violation of the insurance laws or regulations of any jurisdiction or of any law constituting a felony in the jurisdiction in which committed, or of any law whose violation reflects adversely upon the honesty or integrity of Manager or any of Manager's executive officers whether or not classified as a felony; or
5. Bankruptcy: A court order of bankruptcy, receivership or common law composition of creditors, whether voluntary or involuntary.

B. Manager may terminate this Agreement as follows:

Immediately upon written notice to L&C in the event of the occurrence of items 1 or 3 in this Article IX, B, and with respect to item 2 of this Article IX, B, a finding by a court, government regulator or tribunal pursuant to Article XII hereunder against L&C:

1. Certificate of Authority Suspension or Revocation: An order of suspension or revocation of L&C's Certificate of Authority by an insurance regulatory authority; or
2. Default: A default under this Agreement by L&C.
3. Bankruptcy: A court order of bankruptcy, receivership or common law composition of creditors, whether voluntarily or involuntarily.

#### ARTICLE X. Cure Provision

In the event L&C shall be entitled to terminate this Agreement pursuant to Article IX, A, 3 above, and if Manager shall submit a written plan of correction to L&C (which plan of correction must specifically outline the actions to be taken and the deadline for a final cure of the event which permits L&C's termination right), and if L&C accepts the written plan of correction, then L&C may thereafter terminate this Agreement if the plan of correction fails or is not completed by the deadline specified in the plan of correction.

#### ARTICLE XI. Continuing Duties of Manager after Termination

Following the effective date of termination of this Agreement, and following the transfer of all records and property of L&C by Manager to L&C, Manager shall have no continuing duties under this Agreement. However, Manager shall fulfill any obligations on Policies during the pendency of any dispute regarding the cause for termination.

#### ARTICLE XII. Arbitration

- A. Submission to Arbitration: Any dispute arising out of this Agreement shall be submitted to the decision of a board of arbitration composed of two arbitrators and an umpire meeting at the L&C offices in Nevada unless otherwise mutually agreed.
- B. Notice: The notice requesting arbitration shall state in particulars all principal issues to be resolved and shall set a date for the hearing, which date shall be no sooner than 90 days and no later than 120 days from the date that the notice requesting arbitration is mailed.
- C. Arbitration Board Membership: The members of the board of arbitration shall be active or retired and disinterested officials of insurance companies. Each party shall appoint its own arbitrator and the two arbitrators shall choose a third arbitrator as umpire before the date set for the hearing. If a party fails to appoint its arbitrator within thirty days after having received a written request from the other, the other shall appoint the second arbitrator. If the two

arbitrators fail to agree upon the appointment of the umpire within thirty days after their appointment, then the American Arbitration Association shall make the selection of the umpire. The umpire shall promptly notify all parties to the arbitration of his selection.

- D. Submission of Briefs: The parties shall submit their initial briefs within twenty days from appointment of the umpire. Each may submit reply briefs within ten days after filing the initial briefs.
- E. Arbitration Award: The board shall make an award of monetary damages or other relief with regard to the conduct and usage of the insurance business which shall be in writing. The award shall be based upon a hearing in which evidence may be introduced without following strict rules of evidence but in which cross examination and rebuttal shall be allowed. At its own election or at the request of the board, either party may submit a post-hearing brief for consideration of the board within twenty days of the close of the hearing. The board shall make its award within thirty days following the close of the hearing or the submission of post-hearing briefs, whichever is longer, unless the parties consent to an extension. A decision by the majority of the members of the board shall become the award of the board and shall be final and binding upon all parties to the proceeding, however, the board shall have no authority to issue an award for punitive damages. Either party may apply to the United States District Court or to a Nevada State Court of competent jurisdiction for an order confirming the award; a judgment of such Court shall thereupon be entered on the award. If such an order is issued, the attorney's fees of the party so applying and court costs will be paid by the party against whom confirmation is sought.
- F. Arbitration Expenses: Each party shall bear the expense of its own arbitrator and shall jointly and equally bear with the other party the expense of the umpire. The remaining costs of the arbitration proceedings shall be allocated by the board.
- G. Survival: This Article shall survive the termination of this Agreement.

#### ARTICLE XIII. Other Terms and Conditions

- A. Waiver: The failure of L&C or Manager to insist on strict compliance with this Agreement, or to exercise any right or remedy shall not constitute a waiver of any rights provided under this Agreement, nor entitle the parties from thereafter demanding full and complete compliance nor prevent the parties from exercising such a remedy in the future.
- B. Conflict with Law: If any provision of this Agreement should be declared invalid by a court of general jurisdiction and mandated by specific law or regulation, such law or regulation shall control to the extent of such conflict without affecting the remaining portions of this Agreement.
- C. Assignment: This Agreement may not be assigned in whole or in part by Manager.

- D. Headings: The headings preceding the text of the articles and paragraphs of the Agreement are intended solely for the convenience of reference and shall not affect the meaning, construction or effect of this Agreement.
- E. Governing Law: This Agreement shall be governed as to performance, administration and interpretation by the laws of the State of Nevada.
- F. Honorable Undertaking: This Agreement shall be considered as an honorable undertaking made in good faith and shall be subject to a liberal construction for the purpose of giving effect to the good faith and honorable intentions of Manager and L&C.
- G. Notices: Wherever notice is required under this Agreement, it shall be in writing, sent by certified mail or express delivery, and addressed:

If to L&C:

c/o Constance Akridge  
 Jones Vargas  
 3773 Howard Hughes Parkway  
 3rd Floor South  
 Las Vegas, NV 89169

Jeff C. Marshall  
 President & CEO  
 Eagle Healthcare Inc.  
 12015 115<sup>th</sup> Avenue NE  
 Suite B-195  
 Kirkland, Washington 98034

If to Manager:

Sanford D. Elsass  
 President  
 Uni-Ter Underwriting Management Corporation  
 3655 Brookside Parkway, Suite 200  
 Alpharetta, GA 30022

- H. Independent Contractor: This Agreement is not a contract for employment and nothing contained in this Agreement shall be construed to create the relationship of joint venture, partnership, or employer and employee between L&C and Manager. Manager is an independent contractor and shall be free, subject to the terms and conditions of this Agreement, to exercise judgment and discretion with regard to the conduct of business.
- I. Entire Agreement: This Agreement supercedes all previous agreements, whether written or oral, between L&C and Manager, or their predecessors with respect to the dates under this Agreement.

1. This Agreement may be amended, altered or modified only in writing signed by both parties.
2. Manuals, rules, regulations, instructions and directives issued in writing by L&C and received by Manager from time to time as provided in this Agreement, shall bind the parties as though a part of this Agreement.

The Manager and L&C have executed this Agreement in duplicate, each of which shall serve as an original:

FOR L&C:

BY:

TITLE:

DATE:

FOR MANAGER: UNI-TER UNDERWRITING MANAGEMENT CORPORATION

BY:

TITLE:

DATE:

UNI-TER CLAIMS SERVICES CORPORATION

BY:

TITLE:

DATE:

Exhibit A - Underwriting Authority

To  
Management Agreement  
Between  
Lewis & Clark LTC Risk Retention Group, Inc.  
And  
Uni-Ter Underwriting Management Corporation and  
Uni-Ter Claims Services Corporation

The authority granted Manager is subject to the following definitions and limitations:

- A. Eligibility: Eligible risks include skilled nursing facilities, assisted living facilities, independent living facilities, continuing care retirement communities, or any health care operation whose principal business is to provide long term health care, home healthcare, and nurses and skilled healthcare.
- B. Lines of Authority: Professional Liability and General Liability.
- C. Territory: Continental United States, excluding Hawaii and Alaska, and in Florida, excluding long term care and home healthcare.
- D. Policy Form: Claims Made form and Occurrence form.
- E. Maximum Limits of Liability: \$2,000,000 per claim, \$4,000,000 aggregate per insured location. Defense costs and supplementary payments are within the limits, except for Florida and other states as required by law.
- F. Deductible: As agreed from time to time.
- G. Maximum Policy Period: One Year.
- H. Underwriting Guidelines: These guidelines, as developed by Manager from time to time, shall contain specific parameters of classifications, coverage, limits of liability, deductibles, risk selection, premium base, premium calculation, schedule rating plan, rates, extended reporting period option, policy issuance, and risk management.
- I. Cancellation and Nonrenewal: Manager shall comply with all applicable insurance laws and regulations pertaining to the cancellation or nonrenewal of any Policies bound or written under this Agreement.



Exhibit B - Claims Management Authority

To  
Management Agreement  
Between  
Lewis & Clark LTC Risk Retention Group, Inc.  
And  
Uni-Ter Underwriting Management Corporation and  
Uni-Ter Claims Services Corporation

UCS shall handle all aspects of claim processing, subject to the requirements and limitations set forth below, for all claims and allocated loss adjustment expenses subject to this Agreement. All claims shall be handled until settlement or other disposition, except as otherwise indicated in this Agreement.

UCS shall establish and maintain claim files on each reported claim and advise insureds of procedures to be followed when claims arise.

- A. Routine/Initial Reporting Requirements: UCS shall report every claim to L&C on a quarterly basis. This reporting shall consist of recording the claim on the accounting records of L&C and advising L&C by means of periodic and special claim reports.
- B. Special Reporting Requirements: Separate notice shall be sent by UCS to L&C as soon as any of the following becomes known, or at any time earlier upon L&C's request:
  - 1. If the claim could potentially exceed ten percent (10%) of L&C's policyholder surplus.
  - 2. The claim may exceed the Manager's claim settlement authority.
  - 3. Involves a coverage dispute or a bad faith allegation.
  - 4. The claim is closed by payment of ten percent (10%) of L&C's policyholder surplus.
- C. Quarterly Reporting: On a quarterly basis, a claims report will be provided listing new claims reported, open reserves, paid claims and ending reserve balances for both indemnity and expense activity.
- D. Record Ownership and Access: All claim files shall be the joint property of L&C and UCS. However, upon an order of liquidation of L&C, the claims and related application files shall become the sole property of L&C or its estate. UCS shall have reasonable access to and the right to copy the files on a timely basis.
- E. Settlement Authority: Manager shall have full authority to settle, issue payment and establish reserves up to the amount of the per claim policy limit of the policy on which a claim is made. Any settlement authority granted to UCS may be terminated for cause upon L&C's written notice to Manager or upon termination of this Agreement. L&C may suspend the



settlement authority during the pendency of any dispute regarding the cause for termination.

- F. Service of Suit: L&C hereby appoints Constance Akridge, Jones Vargas, 3773 Howard Hughes Parkway, 3<sup>rd</sup> Floor, Las Vegas, Nevada 89169, as agent for receiving service of process on any suit or proceeding involving a claim or loss arising out of a policy issued by Manager on L&C's behalf. Manager shall also have authority to appoint a suitable independent entity as agent for service of process in all states in which L&C may do business as necessary.
- G. Licensed Adjusters: All claims must be adjusted by properly licensed adjusters.

FIRST AMENDMENT TO  
MANAGEMENT AGREEMENT

THIS FIRST AMENDMENT TO MANAGEMENT AGREEMENT dated January 1, 2011 (the "Management Agreement") is made between LEWIS & CLARK LTC RISK RETENTION GROUP, INC., a Nevada corporation ("L&C"), and UNITER UNDERWRITING MANAGEMENT CORPORATION, a Delaware corporation ("Manager"), effective as of January 1, 2011.

For good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

For calendar year 2011 only, Item 4 of Article IV, Section A is hereby revised to provide for a rate of commissions at 10% (rather than 12%). Continuation of this 2% differential (or portion thereof) for subsequent periods covered by this Management Agreement is subject to mutual agreement of the parties.

In all other respects, the Management Agreement, as amended from time to time, remains in full force and effect.

LEWIS & CLARK LTC RISK RETENTION  
GROUP, INC.

By: 

Name: Jeff C. Marshall  
Title: President

UNITER UNDERWRITING  
MANAGEMENT CORPORATION

By: 

Name: Sanford Blass  
Title: President

*This was revised  
on February 7<sup>th</sup>, 2011*

SECOND AMENDMENT TO  
MANAGEMENT AGREEMENT

THIS SECOND AMENDMENT TO MANAGEMENT AGREEMENT dated January 1, 2011 (the "Management Agreement") is made between LEWIS & CLARK LTC RISK RETENTION GROUP, INC., a Nevada corporation ("LRC") and UHILL UNDERWRITING MANAGEMENT CORPORATION, a Delaware corporation ("UHM"), effective as of November 10, 2010.

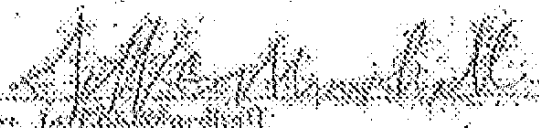
For good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree that the following amendments shall be added to the end of Article IV, Section 1.1:

For so long as any dividends are distributed to the holders of Common Stock, the dividends of LRC for the first quarter of 2012, the participating interest payable to Manager may be applied in the second quarter, but not later.

In all other respects, the Management Agreement as amended from time to time, remains in full force and effect.

LEWIS & CLARK LTC RISK RETENTION  
GROUP, INC.

UHILL UNDERWRITING  
MANAGEMENT CORPORATION

By:   
Name: Jeffery A. Marshall  
Title: President

By: \_\_\_\_\_  
Name: Sanford Elmer  
Title: President

SECOND AMENDMENT TO  
MANAGEMENT AGREEMENT

THIS SECOND AMENDMENT TO MANAGEMENT AGREEMENT dated January 1, 2011 (the "Management Agreement") is made between LEWIS & CLARK LTC RISK RETENTION GROUP, INC., a Nevada corporation ("L&C"), and UNITER UNDERWRITING MANAGEMENT CORPORATION, a Delaware corporation ("Manager"), effective as of November 15, 2011.

For good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree that the following sentence shall be added at the end of Article IV, Section D:

For so long as any amounts are outstanding and unpaid to the holders of Surplus Subordinated Debentures of L&C issued in 2011 and the first quarter of 2012, the profit sharing bonus payable to Manager may be accrued in the normal course, but not paid.

In all other respects, the Management Agreement, as amended from time to time, remains in full force and effect.

LEWIS & CLARK LTC RISK RETENTION  
GROUP, INC.

UNITER UNDERWRITING  
MANAGEMENT CORPORATION

By: \_\_\_\_\_  
Name: Jeff C. Marshall  
Title: President

By: Donna R. DeLeon  
Name: Sandra L. DeLeon Donna DeLeon  
Title: President Co-CEO

THIRD AMENDMENT TO  
MANAGEMENT AGREEMENT

THIS THIRD AMENDMENT TO MANAGEMENT AGREEMENT dated December 31, 2011 (the "Management Agreement") is made between LEWIS & CLARK LTC RISK RETENTION GROUP, INC., a Nevada corporation ("L&C"), and UNI-TER UNDERWRITING MANAGEMENT CORPORATION, a Delaware corporation ("Manager"), effective as of December 31, 2011.

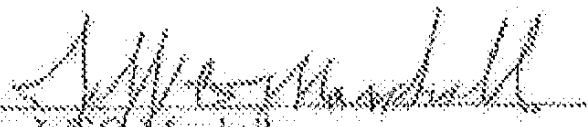
For good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

The parties agree that under Article IV Section D of the Agreement, no profit sharing bonus shall be accrued or paid with respect to the 2008 calendar year, absent mutual agreement otherwise.

In all other respects, the Management Agreement, as amended from time to time, remains in full force and effect.

LEWIS & CLARK LTC RISK RETENTION  
GROUP, INC.

UNI-TER UNDERWRITING  
MANAGEMENT CORPORATION

By:   
Name: Jeff C. Marshall  
Title: President

By: \_\_\_\_\_  
Name: Sanford Blass  
Title: President

THIRD AMENDMENT TO  
MANAGEMENT AGREEMENT

THIS THIRD AMENDMENT TO MANAGEMENT AGREEMENT dated December 31, 2011 (the "Management Agreement") is made between LEWIS & CLARK LTC RISK RETENTION GROUP, INC., a Nevada corporation ("L&C"), and UNI-TER UNDERWRITING MANAGEMENT CORPORATION, a Delaware corporation ("Manager"), effective as of December 31, 2011.

For good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

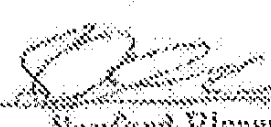
The parties agree that under Article IV Section D of the Agreement, no profit sharing bonus shall be accrued or paid with respect to the 2008 calendar year, absent mutual agreement otherwise.

In all other respects, the Management Agreement, as amended from time to time, remains in full force and effect.

LEWIS & CLARK LTC RISK RETENTION  
GROUP, INC.

UNI-TER UNDERWRITING  
MANAGEMENT CORPORATION

By: \_\_\_\_\_  
Name: Jeff C. Marshall  
Title: President

By:   
Name: Sanford Elsass  
Title: President

# EXHIBIT 4

LEWIS AND CLARK LTC RISK RETENTION GROUP, INC.  
[ADDRESS]

(Date) 12/22/03

Mr. Tal Piccione  
Chairman, President & CEO  
U.S. RE Corporation  
745 Fifth Avenue, 19<sup>th</sup> Floor  
New York, N.Y. 10151

Re: Broker of Record Letter Agreement

Dear Mr. Piccione:

Effective as of (date of receipt of insurance license from domiciliary State), Lewis and Clark LTC Risk Retention Group, Inc. (the "Company") hereby constitutes and appoints U.S. RE Corporation ("U.S. RE") as its exclusive reinsurance intermediary/broker and grants U.S. RE full and complete authority to negotiate the placement of reinsurance or retrocessions on all classes of insurance with unspecified limits of coverage as specifically requested by any underwriter of the Company.

In recognition of the substantial and essential efforts expended by U.S. RE and its affiliates in the organization and licensing of the Company, this appointment is for a period of seven (7) years commencing with the effective date hereof, and during this period U.S. RE shall serve as the exclusive intermediary in connection with the placement of all of the Company's reinsurance. U.S. RE will exercise its best efforts in the discharge of its duties on behalf of the Company. If during this period the Company fails to honor the aforementioned exclusivity, other than as a result of U.S. RE's failure to comply with applicable law, its obligations hereunder, or other than as a result of U.S. RE's gross negligence or intentional breach of this Agreement, the Company will pay to U.S. RE fees equivalent to the amounts of brokerage it would have received had such exclusivity been honored by the Company, and such fees shall be paid on the same schedule as such brokerage amounts would have been paid.

U.S. RE shall render accounts to the Company accurately detailing all material transactions, including information necessary to support all commissions, charges and other fees received by or owing to U.S. RE, and remit all funds to the Company within 30 days of receipt.

All funds collected for the Company's account will be handled by U.S. RE in a fiduciary capacity in a bank which is a qualified United States financial institution. The Company consents to U.S. RE's withdrawal and retention of interest earned on funds in the fiduciary account.



U.S. RE will comply with applicable State Insurance Laws with respect to the content, maintenance and retention of books and records for reinsurance transactions.

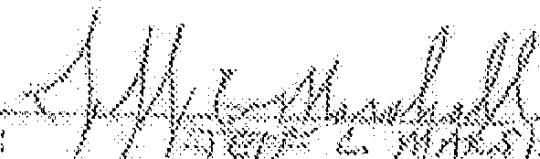
U.S. RE will comply with written standards established by the Company for the cession or retrocession of all insured risks.

U.S. RE will disclose to the Company any relationships with any reinsurer to which business will be ceded or retroceded.

U.S. RE will comply with the provisions of the State Insurance Codes, Rules and Regulations governing reinsurance intermediaries/brokers, including the National Association of Insurance Commissioners Reinsurance Intermediary Model Act, as adopted by each state in which the Company is a domiciled or licensed insurer.

Very truly yours,

LEWIS AND CLARK LTC RISK RETENTION GROUP, INC.

  
By: Peter L. Marshall  
Title: Chief Executive Officer (Resident)

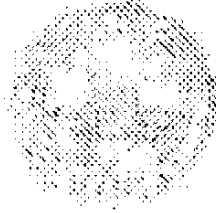
# EXHIBIT 5

JIM GIBBONS  
Governor

STATE OF NEVADA

BRETT L. BARILETT  
Commissioner of Insurance

JEFF CONNOR  
Chairman



DEPARTMENT OF BUSINESS AND INDUSTRY  
DIVISION OF INSURANCE

788 Fairview Drive, Suite 300  
Carson City, Nevada 89701-5491  
(775) 687-0771 • Fax (775) 687-3931  
Website: [dai.nv.gov](http://dai.nv.gov)  
E-mail: [insurance@state.nv.us](mailto:insurance@state.nv.us)

September 8, 2010

Jeff C. Marshall, President  
Lewis & Clark LTC Risk Retention Group, Inc.  
500 Northridge Rd, Suite 330  
Atlanta, GA 30350

RE: Lewis & Clark Deteriorating Financial Condition

Dear President Marshall:

The Division's review of the June 30, 2010 financial statement of the above risk retention group revealed a deteriorating financial condition which the company's management must address.

The following are items that must be considered:

- Increase in reserves has increased liabilities \$3.1 million above the 12/31/10 pro-forma amounts and has resulted in a liquidity ratio (liabilities / liquid assets) of 116.0%.
- Due to underwriting and operating losses, \$1.1 million and \$792.7 thousand, respectively, policyholder surplus has declined by 11.6% from December 31, 2009.
- Underwriting losses are the result of increasing loss and loss administration expense coupled with high other underwriting/administrative expenses (which

\* Risk Based Capital (RBC) ratio of 210.5% is hardly adequate. If the RBC ratio declines to 200%, a corrective action plan will be required of the company.

We are available for a conference call at the below telephone number:

Cc: Company file  
Deputy Commissioner Lynch

# EXHIBIT 6

## PRAXIS CLAIMS CONSULTING

---

36 Boat Mountain Road  
Peterborough, NH 03458  
Mobile: (603) 783-6001  
Toll free & Fax: (877) 783-6001  
~~www.praxisclaims.com~~

September 15, 2011

Tai Pictione, Director and Chairman of the Board  
Sanford Elsass, Director and President  
Dick Davies, Director  
Uni-Ter Claims Services, Inc.  
3635 Brookside Parkway, Suite 200  
Alpharetta, GA 30022

RE: Uni-Ter Claims Services, Inc.  
On-site Claims Audit -- September 8-9, 2011

On September 7, 2010, Brian D. Shanks, CFCU, of Praxis Claims Consulting ("Praxis") traveled to Alpharetta, Georgia to perform on-site meetings with the claim staff and to review claims handling at Uni-Ter Claims Services Inc., ("Uni-Ter"). Uni-Ter's claims staff handles claims generated by the Lewis & Clark LSC ("Lewis & Clark") RRG.

The audit scheduling and coordination of travel was done through William Donnelly, Reinsurance Claims Manager, U.S. RE Corporation. Mr. Donnelly was onsite and took part in the meetings during the first day of the visit. The audit took place at Uni-Ter's offices at 3635 Brookside Parkway, Suite 200 Alpharetta, Georgia. Praxis was onsite at Uni-Ter's office for a total of two days (September 8-9). Prior to the on-site visit, Praxis was able to review specific claims file documents supplied by Mr. Donnelly via e-mail. Although the supplied attachments did not contain all of the claim file contents, they did serve to help Praxis become familiar with the claim handling process at Uni-Ter.

The core focus of the audit was to review and comment on the current administrative practices and procedures in place as well to review and comment on the reserving methodology being utilized by Uni-Ter's claim staff. On the first day, Praxis met with Joshua Miller, ARM, Vice President of Claims, to discuss the claims workflow and administrative processes in place. For the remainder of the first day on site, Praxis met with Ms. Miller, Cindy Ann Ross, JD and Debra Kay-Volk, BSN, RN, LNC. Ms. Ross and Ms. Volk are the claims adjusters handling the core of the open claims inventory for Lewis & Clark. During the meetings with the claim staff, the claims handling process as well as specific cases were discussed.

During the second day onsite, Praxis reviewed open cases that were either discussed in day one's meetings or identified as cases that would illustrate the current reserving methodology.

Although only one day was allotted to the actual review of claims files, the meetings with Mr. Miller and her claims staff on the prior day served to accelerate the process of understanding the overall claims handling approach at Uni-Ter. This report is based on the pre-visit review of attachments, as well as the on-site meetings, discussions, observations, and limited file reviews conducted in this two-day period. Although Praxis feels that the observations and recommendations contained in this report accurately reflect the claims handling by Uni-Ter, a larger statistical sampling of claim files to be reviewed may be done to confirm Praxis' findings.

#### PROGRAM OVERVIEW

Lewis & Clark is a risk retention group that provides long-term care coverage for their insureds and currently has policies in force in 17 states.

Lewis & Clark retains the first \$350,000 of ultimate net loss (which includes loss adjustment expenses). Reinsurers provide coverage for amounts exceeding Lewis & Clark's retention, not to exceed \$650,000 as respects each claim and each insured.

#### EXECUTIVE SUMMARY

- Jones Miller joined Uni-Ter in September 2009 as a senior claims analyst and was promoted to the Vice President of Claims in April 2011. Her specialty is physician and surgeon's professional liability, but she is also experienced in handling claims involving long-term care facilities and hospitals.
- Uni-Ter has recently added two attorneys and a nurse to their claims staff. The law backgrounds of the two attorneys are New York and Florida.
- Uni-Ter's claim staff has most recently adopted a new reserve philosophy. Going forward they will set reserves based on known liability and damages.
- Uni-Ter is revising their existing litigation management guidelines to reflect a more detailed and aggressive approach to managing defense counsel and the litigation process.
- Uni-Ter is currently in the process of changing claims systems (from Pyramid to Risk Master).
- Country Villa, a problematic insured account, has been non-renewed; however, there are pending claims that need diligent oversight and handling.
- Standardizing the claims documentation, evaluation and reporting process is recommended.
- The claim staff possesses the knowledge and experience needed to properly handle the claims generated by the Lewis & Clark LTC RRG.

- \* The creation of a serious claims committee perhaps made up by members of the board of directors and/or qualified insured members not current serving on the board, is recommended.

## CLAIMS STAFF OVERVIEW

The claims department is managed by Jenna Miller, Vice President of Claims. She has been employed by Uni-Ter since September 2009.

Ms. Miller manages four claims staff, comprising of three adjusters and one claims administrator, based in Uni-Ter's Atlanta office. James Martin is retained as an outside consultant. He was formerly employed by Uni-Ter. The adjusters have up to \$50,000 reserve and settlement authority. Any reserve or claim settlement above \$50,000 must be submitted to and approved by Ms. Miller, who has up to \$500,000 reserve and settlement authority. Any claims above \$250,000 are submitted to Sandy Elms, President, and Donna Dahan, COO/CFO of Uni-Ter.

Bios for the key people handling files for Lewis & Clark

Jenna Miller, ARM  
Vice President of Claims  
Joined Uni-Ter in September 2009

Jenna Miller has spent her entire career handling medical malpractice claims. She was Litigation Supervisor and Branch Manager of Citicorp Corporation in Atlanta before coming to Uni-Ter. Her specialty is physician and surgeon's professional liability, but she is also experienced in handling claims involving long-term care facilities and hospitals. In addition to holding her adjuster's license in multiple states, Jenna has an ARM designation and has served as an adjunct professor for the Insurance Institute of America, training others interested in obtaining this degree. She has taught classes in Risk Management, Risk Control and Risk Financing at Georgia State University.

In addition to her managerial duties Ms. Miller is currently handling 40 Lewis & Clark cases.

Cindy Ann Ross, JD  
Joined Uni-Ter in April 2010

Cindy Ann Ross received a BS degree in Biology from Marietta College and a law degree from Hofstra University School of Law. She has been practicing law in New York State since 1995. For the past ten years she has worked at firms in the New York City metropolitan area where her practice focused on the defense of healthcare professionals and institutions in medical malpractice and health related litigation, disciplinary and regulatory matters. Her practice included handling all aspects of medical malpractice litigation from inception through trial. She is admitted to practice law in New York State Courts; United States District Court for the Eastern and Southern Districts of New York; United States District Court for the Northern District of Illinois; and the United States Patent & Trademark Office.



Cindy handles approximately 102 Lewis Clark cases.

**Debra Kay-Volk, BSN, RN, LNC**  
Joined Uni-Ter in June 2010

Debra Kay-Volk is a Senior Claims Analyst with Uni-Ter Services Corp. with over 28 years' experience as both a licensed claims adjuster and legal nurse consultant focusing on defending health care providers. Before joining Uni-Ter, Debra was an independent claims consultant and insurance adjuster for several nationally known self-insured health care providers. Before branching out on her own, she was the Director of Risk Control for Marine Post Acute Network. There she developed and implemented a successful system to promote early incident reporting and claims resolution. Debra entered the world of medical malpractice defense as a legal nurse consultant for a large law firm in New York, bringing to them several years of valuable clinical experience. After receiving her adjuster license she signed on with a TPA in Florida servicing the South Florida health care community. As this company became national and grew into Cambridge Integrated Services Group she became a Regional Vice President in the health care division, relocating to Atlanta. There she opened the Atlanta-based office servicing the southeast region providing claims management, investigation and evaluation to all kinds of health care clients. Debra received a bachelor's degree in nursing from Adelphi University in 1983, and is a licensed insurance adjuster in several states.

**Naveed Khalidi**  
Joined Uni-Ter in May 2010

Naveed Khalidi is a Senior Claims Analyst. He is a graduate of Emory University and University of Miami School of Law. Naveed spent three years managing high-risk malpractice claims involving pediatricians and obstetrician/gynecologists, and has significant experience working with external counsel in arbitration and litigation. His familiarity with the Florida professional liability market and with Hispanic physicians will be assets to the company as it expands.

**James E. Martin**  
Independent 1099 Consultant

Jim was formerly the Vice President of Uni-Ter Claims Services Corp. He established and developed the claims department including a professional staff, policies, procedures, litigation management guide, and management of all liability claims and litigation involving nursing homes in 23 states. Jim was employed by RRM from October 1995-January 2000 as an R&S Claims Supervisor and as the Vice President of Claims at Washington Community/Washington from July 1990-July 1994. He was with Medico Legal Network, Inc., Crosby, Texas, from April 1986-July 1996 as a Claim Director. His employment in the medical malpractice and long term care industry dates back to January 1980.

Jim has a BA Pre-Law, California State University, Los Angeles, and BA Claims Diploma.

## TECHNICAL REVIEW

### ~~File Review~~

Praxis' claim file review was undertaken to evaluate the performance of Uni-Ter's handling of claims for Lewis & Clark. All claim files were reviewed for the following areas: coverage analysis and confirmation; investigation; determination of liability; reporting to include file notes, file documentation and reporting to reinsurers; evaluation; litigation management; disposition strategy and reserving.

### ~~Coverage~~

Uni-Ter issues one-year "claims made and reported" professional liability insurance policies with up to \$1 million of coverage per claim (and a \$3 million annual aggregate limit). The majority of policies have \$250,000/\$500,000 limits.

Claims handling practices required that coverage must be verified for all claims presented to Uni-Ter. In cases where there were questions of coverage requiring additional investigation, the files were reviewed to be sure that steps necessary to clarify such issues were taken. Once coverage was verified, the files were reviewed to determine if the adjuster analyzed the details of the loss and provided coverage analysis to determine the extent to which the policy applies to the claim being presented.

In the files reviewed the declarations page of the policy in force at the time the claim was made and was attached into the claim file. This was supported with the applicable rate sheet. The file notes also contained comments confirming that the adjuster has reviewed the applicable coverage as it relates to the facts of the loss. Policy limits as well as policy effective and expiration dates were noted as well.

In files where there were any concerns or questions of coverage, a reservation of rights letter was issued.

### ~~Investigation~~

We evaluated the initial timeliness and scope of investigation being done. We also looked to confirm that proper timing and/or doctor experts are retained as soon as possible and that a proposed plan of investigation is documented in the file when there is additional information needed.

Although evidence of immediate and ongoing investigation was documented in the file notes, it was not always apparent as to what has been done and what investigation needs to be completed. Many of the files reviewed were already in suit when reported. Generally, insurers are filed by defense counsel to prevent default and the process of investigation and discovery begins. However, some of the files reviewed did not contain any adjuster notes specifically delineating investigation needed or assessment of the information currently provided, and it was only through the reading of defense counsel's reports that it could be determined what investigation

had been done, what experts were or may potentially be retained and what the outstanding investigation issues were. Generally, defense counsel appears to have taken appropriate initial steps towards investigating loss.

Dialogues between defense counsel and Uni-Tor was primarily through e-mail correspondence. It was difficult to determine if all e-mail traffic specific to a file was included in the paper files.

In general there was no files which displayed any lack of investigation; however, a more detailed documented action plan would be advised.

#### Liability

It is imperative early on in the establishment of files in investigation that liability is determined. If a case is one of liability, then the next logical steps toward resolving it could be developed. However, if liability is unclear or uncertain, the early retention of experts to assist in the defense of the case is imperative.

Overall the file documentation through defense counsel's report and subsequent e-mail correspondence reflected that investigation was conducted. Defense counsel's reports to the file were detailed and described the nature of the claim being made and gave a clear preliminary assessment of liability.

The timing of the retention of Standard of Care ("SOC") experts was difficult to determine; however, the retention of experts was appropriate in all cases reviewed. While discovery delays can impact a complete expert assessment, there are times when an early review of at least the insured's records could identify areas for potential concern and affect strategy. There was documented confirmation that this is being done.

As a good portion of the cases discussed on day one and reviewed on day two relate to one insured (Country Villas), we found that once the preliminary investigation was completed, it was difficult to determine from the insured what the current status was or if there was a specific plan of action moving forward. This particular insured retains a very aggressive defense counsel; however, counsel does not report status and/or a proposed game plan to the adjuster. It should be noted that they are no longer part of the Lewis & Clark LTC KRG, but there are still open claims files that will need to be actively managed.

#### Reporting/Documentation

Here it is confirmed that all files are monitored on diary, contain adequate documentation and the ones qualifying are in fact reported to reinsurers via an approved report format.

All files reviewed were handlist on diary with no significant gaps in activity. Praxis was able to determine the status of the cases reviewed via the file notes, defense counsel's reports and/or e-mail traffic. However, it was difficult to determine from the file content if the case qualified for and was being reported to reinsurers.

It is recommended that the use of an enhanced "Case Review Reserve Analysis" worksheet along with a revised attorney "Cases Analysis Report" (discussed below) will supplement reporting and facilitate reporting to reinsurers, enhance the roundtable process and allow other adjusters, management or a subsequent file handler to very quickly know the status of a case.

#### Evaluation

It is important that the adjuster attempt to analyze and measure the range of potential financial impact of a particular claim and the documentation within the claim file should support this evaluation. Here we look for the development and the documentation of liability probabilities together with an estimate of reasonable economic and general damages. Further, we look to see that the adjuster has updated further evaluation and exposure of the particular claim as additional facts are developed.

Although the claim staff utilizes a "Case Review Reserve Analysis" worksheet, it was not always utilized consistently from one adjuster to another. We primarily relied on the reports from defense counsel to determine the opinion of liability and damages as well as settlement and jury verdict values.

Whereas the adjuster and/or claims management must quite often roundtable their cases within the department, request settlement authority, recommend reserves, report to re-insurers for cases that qualify and occasionally assume the handling of another's file, the detailed and consistent recording and reporting of claim facts, liability and damages is key.

To that end it is recommended that Uni-Ter utilize a claim evaluation worksheet that accomplishes all of the above.

#### Litigation Management

Managing legal expenses cannot be segregated from managing the actual legal work. Every phase of the lawyer-client relationship from the attorney selection to dispute resolution should be managed with the goal being to streamline the process and optimize performance, not just cost.

In the files reviewed that contained defense counsel reports, it was apparent that there was some interaction between defense counsel and Uni-Ter. In the reviewed reports, defense counsel confirmed and acknowledged the legal issues, liability assessment and in some cases, proposed a litigation plan as well as a legal budget. Some files did contain documented discussion between Ms. Miller and defense counsel. The documented interaction between Uni-Ter and defense counsel should be consistent reflecting the acknowledgment of the proposed analysis, strategy, action plans and proposed budget.

Uni-Ter is currently in the process of completely rewriting their litigation management guidelines. Ms. Miller has compiled volumes of input from various sources and will be finalizing and distributing the new guidelines.

The new guidelines should at a minimum address the following areas.

- Initial defense counsel retention
- Pricing & billing procedures
- Initial case analysis
- Proposed litigation plan and the documented approval of the submitted plan
- Proposed budget through discovery, pre-trial and through trial if needed
- Template reports for initial analysis, status, pre-trial and post-trial reports

#### Disposition Strategy

Although Praxis' discussions with the claim staff confirmed their knowledge and expertise, the documentation of the disposition strategy for each case should be streamlined. The increased use of a claim evaluation worksheet and the implementation of revised litigation management procedures will support the documentation needed to determine the disposition strategy of each case reviewed.

#### Reserving

Until recently it seems that Uni-Ter was establishing reserves early in the life of the file that reflected the ultimate potential exposure of each case prior to the completion of supporting investigation and expert review to determine liability and damages. While this methodology would prevent under-reserving, it may also create reserve redundancy. Accurate timely reserving is crucial to an RRC as the exposure and settlement value in most cases fall with the RRC's layer. Praxis supports and recommends a reserving methodology that does not overstate or understate the specific claim exposure, but rather reflects the most likely outcome for each case. The investigation and confirmation of liability and damages and the ultimate reserve must reflect current claim settlement trends and legal climates for the venue in which the loss occurs.

Uni-Ter reports that the entire inventory of open claims has just recently been reviewed by the claims staff and reserves were adjusted to conform with Uni-Ter's new reserve methodology.

Uni-Ter has just recently adopted the following reserving approach:

- Uni-Ter reports that when a new claim is reported and there is little information specific to liability and damages, the initial indemnity reserve to be set will be \$1,000. The initial reserve will be set within 24 hours.
- After the receipt of medical records, a medical record review is done by either the in-house or an outside nurse. Upon the nurse expert review of the records, liability and damages can begin to be assessed. If the facts dictate, the reserve is adjusted at this time to the projected exposure.
- During the investigative process, interviews of the involved staff and claimant/resident are done. If the case is in sub, depositions of involved parties are completed and the analysis of liability and damages is done. Uni-Ter reports that reserves will be reviewed at this time to determine adequacy. If needed, they are adjusted.

- \* If needed, the opinion of another expert is sought through defense counsel. Upon receipt of defense counsel's report and/or the receipt of an expert's report, the exposure and the reserve is reviewed and adjusted to reflect the exposure.

It is recommended that when significant facts affecting liability or damages are secured, a corresponding adjustment in the reserve be done within 30 days.

The following discussion is specific to files reviewed on day two and reflective of the most recent reserve review and adjustment.

Claim No.: 201101180407  
 Insured: Country Villa Services Corp.  
 Claimant: Aaron Allen  
 Description: This case involves a debridement of proximal wounds due to alleged negligent care. Damages are worsening pressure ulcers at the coccyx, LLE and sacrum.  
 Indemnity Reserve: \$175,000  
 Indemnity Paid: \$0  
 Expense Reserve: \$55,000  
 Expense Paid: \$32,357

Discussion: This patient was transferred to a hospital and once at the hospital heel material was found in the wound. The podiatrist who was caring for this resident is also extremely critical of the insured's care as the skin breakdown has led to the amputation of the resident's toes due to osteomyelitis. There is also pressure necrosis of both legs. Apparently a donut/pressure relieving device was not used as ordered. Defense counsel values the settlement of this case in the \$350,000 range.

The indemnity reserve was set at \$350,000 on July 5, 2011. File notes indicate that on August 19, 2011 this matter was discussed in a reserving committee session. As a result, the reserve was set at \$175,000. File notes reflect that the basis for the \$175,000 reserve is that at this time there have been no expert reviews or any depositions taken. File notes indicate that this is not a case to take to trial as recent verdicts on similar cases in this venue have not produced favorable results. There is much investigation and discovery needed in this case in order to determine the ultimate value. While the \$175,000 reserve may be reflective of the lack of discovery, defense counsel's opinion of ultimate exposure should be considered. File notes reflect that this case is not being aggressively pursued by the plaintiff. Motions to compel have been filed by the defense and to date there has not been any response. This case should be monitored for potential development.

Claim No.: 201003150134  
 Insured: Braswell's Hampton Manor  
 Patient: Mary Ann Helberg

Claimant: Her successor in interest, Wanda Bortner  
 Description: Plaintiff's specific allegations are weight loss relating to the care that the resident received. The complaint alleges the resident lost a total of 23 pounds during her stay at the HCL. Dehydration, urinary tract infections and an unexplained shoulder injury. The plaintiff also has listed specific allegations that relate to the HCL admission which was Braeswell's Colonial Care versus the allegations stated above which are applicable to Braeswell's Hampton Manor, Ridd. The BHSI dates range are 8/23/09 to 12/15/09 and HCL relate to a timeframe of 12/15/09 to 12/29/09. The allegations specific to the HCL admission are weight loss, dehydration, urinary tract infections, leg wounds, decubitus ulcer, pneumonia and sepsis. The plaintiff is also alleging there was understaffing at both Hampton Manor and Colonial Care.  
 Indemnity Reserve: \$150,000  
 Indemnity Paid: \$0  
 Expense Reserve: \$24,396  
 Expense Paid: \$3,604

Discussion: Defense counsel is recommending that this case should be resolved early. Defense counsel opines that this case has a settlement range of \$100,000 to \$250,000 with a cost of defense through arbitration in the range of \$200,000 to \$250,000. The file notes indicate that this case was reserved at \$250,000. However, based on the fact that little discovery has been done to support this reserve, it was dropped to \$150,000 and is now reflective of the current reserve philosophy being utilized. It also falls within defense counsel's opinion of settlement value. This file will require re-evaluation once defense counsel has had the opportunity to review hospital records and, if needed, to obtain an expert review.

Claim No.: 201010180311  
 Insured: Braeswell's Family Senior Care  
 Resident/Claimant: Phillip Coffin  
 Description: This claim involves the death of an 89-year-old resident who aspirated his partial dentures while eating.  
 Indemnity Reserve: \$1,000  
 Indemnity Paid: \$0  
 Expense Reserve: \$6,641.30  
 Expense Paid: \$6,358.70

Discussion: According to the administrator, the decedent's wife was in attendance when he started spitting up his food. She asked the nurse to suction him, which she did. That afternoon as symptoms persisted, the wife said she thought he may have swallowed his dentures. An X-ray confirmed this and then he was taken to the hospital and treated where he expired one week later. Diary notes reflect the suit was filed on May 16, 2011. Although much discovery is still needed, at this point there does not appear to be any negligence or liability relating to the care of this resident. There is no indication the resident has any difficulty swallowing due to his Parkinson's.



disease. His wife was present at the time that he was calling and never told anyone about the loose dentures until after the resident was having respiratory difficulty.

While the indemnity reserve is reflective of the claims staff analysis of exposure, the legal expense reserve will have to be adjusted to reflect the expected legal cost to defend. Praxia recommends that the outstanding expense reserves be raised to \$15,000.

Claim No.: 201011040318  
Insured: Braswell's Hampton Manor  
Resident/Claimant: Robert Bell  
Description: The event involves the death of a resident, Mr. Bell, who was a resident from 1/27/07 until his death on 2/22/09. Mr. Bell died from fractures sustained during a fall.  
Indemnity Reserve: \$500  
Indemnity Paid: \$0  
Expense Reserve: \$1,000  
Expense Paid: \$2,580

Discussion: File notes indicate that Mr. Bell had a fall at the facility on 2/10/09 at 8 a.m., sustaining a head fracture and underwent surgery on 2/11/09. One of Mr. Bell's daughters is alleging that Mr. Bell had been unoriented for his fracture all day long after his fall that morning, but the facility notes indicate he was performing his usual activities earlier that day and they did not learn of the fracture until around 5 p.m., just as the physician was arriving to visit. Mr. Bell returned to the facility on 2/17/09 and then on 2/22/09 he was sent out via 911 with respiratory distress and died. The death certificate lists cause of death as hypersensitive cardiovascular disease with the onset of years. The file notes indicate that suit has not been filed in this matter. The Department of Health is currently investigating this matter and has not issued any citations at this time. When and if they do so, the citations can be reviewed to determine how this affects this particular case. The file notes of 6/16/11 list this case as a potential claim only and will carry forward. File notes of 8/18/11 state that there has still been no activity and the reserve has been reduced from \$10,000 to \$500 and placed on a 90-day diary.

Claim No.: 201006280240  
Insured: Braswell Family, LP, Braswell's Hampton Manor  
Dr. Parnav Mohita, who is listed as a codefendant  
Resident/Claimant: Kenneth Cololleser and is through his successor in interest, April Saldivar  
Description: This case involves the death of Mr. Cololleser, who was 56 years old at the time. The patient was admitted from LLUMC where he was treated for endocarditis, colonic ileus and renal insufficiency. The patient underwent a mitral valve replacement and suffered postoperative complications with multi-organ dysfunction as a result of sepsis, metabolic acidosis and hyponatremia. He was admitted to Braswell to undergo rehabilitation.  
Indemnity Reserve: \$150,000  
Indemnity Paid:



Expense Reserve:  
Expense Paid:

800

Discussion: This patient also required long-term antibiotic therapy which is required to treat endocarditis, an infection involving the inner layers of the heart. Defense counsel reports that an error was made by the admitting nurse as she transcribed the order for the antibiotic ceftriaxone 1.3 grams IV. Basically the transcription error resulted in the antibiotic not being dosed properly each day; also the dosage stopped a full month early. File notes indicate that when Dr. Mehta apparently was told that the antibiotic was discontinued, he ordered it restarted to continue until 2/6/09 for endocarditis. Mr. Colclough died on 2/14/09. The cause of death was listed as cardiopulmonary arrest, pulmonary edema and coronary artery disease. The death certificate also listed the significant contributing conditions as endocarditis and deep vein thrombosis. Defense counsel's reviews of the insured's records show the multiple medication errors. In addition to the errors noted above, there was a failure to give the metoprolol which treats hypertension and properly document the blood pressure associated with its use.

Defense counsel has expressed concern that the nature of the medication errors may have contributed to the development of this patient's sepsis and deep vein thrombosis. At the present time counsel puts the defensibility of this case in the range of 60-70%. It should be noted that in California the Elder Abuse and Adult Protection Act limits the remedies available to adult heirs. The heirs may recover up to \$250,000 for the wrongful death and \$250,000 for non-economic damages as well as attorney's fees.

The file notes indicate that the reserve has been set at \$150,000 with the intention of resolving this matter during early mediation.

However, should that prove to be unsuccessful it is likely that the reserve in this case will need to be raised to at least \$300,000.

Claim No.:	201011100341
Insured:	Brewell's Hampton Manor
Claimant:	Sanchez
Description:	The patient was transferred to acute care in bad condition and ultimately died of a gangrenous left foot, secondary cause diabetes 2.
Indemnity Reserve:	\$250,000
Indemnity Paid:	\$0
Expense Reserve:	\$10,000
Expense Paid:	\$4,237

Discussion: Libby Sanchez was transferred to San Geronimo Hospital by ambulance. A complaint was called into the APS regarding her condition upon arrival at the hospital. It was noted that she had decubitus ulcers as well as fecal matter in her wounds, and a gangrenous foot wound. Consequently the hospital notified APS who notified the Department of Justice and an investigation was undertaken. The facility says this resident was incontinent and probably defecated on the way to the hospital, getting feces all over her. Her albumin level was low at 5

upon her hospital arrival. Defense counsel expects that she got a letter from plaintiff attorney who wants to agree to arbitrate this case. Defense counsel sees this as a good sign as this case could go badly as there are multiple concerns about the wound care to the foot and the death that was a result of gangrene. The attorney general is still investigating and defense counsel expects that criminal charges will be brought against the DON. Defense counsel opines that this case could have a value of \$500,000 to \$700,000 but states that they are dealing with a fairly unknown plaintiff attorney and may be able to get this case settled at mediation for less.

It should be noted that on or around August 19 the former DON was arrested with two of the dietary employees to be charged with wandering the DON's husband. An employed CNA was also involved and she provided care to the dietary employees to perform the act. The former DON's husband was shot in the parking lot garage as the DON recently took out a large insurance policy. This apparently has made the local news and news reports and could adversely affect this case as the negative publicity could influence a jury, and some of those individuals were directly involved in the care of the deceased. The reserve is at \$250,000 and settlement authority has been granted to defense counsel for same at mediation. No demand from plaintiff.

It is recommended that this file be reviewed for reserve adjustment if it does not settle at mediation.

Claim No.:	201102070426
Insured:	Country Villa
Claimant:	Kellye Chelette
Description:	This case involves a young obese diabetic with brittleman who was admitted to Country Villa with a history of psychosis and a stroke at a young age.
Indemnity Reserve:	\$175,000
Indemnity Paid:	\$0
Expense Reserve:	\$50,000
Expense Paid:	\$42,706

Discussion: It was known that she was high risk for falls and exhibiting poor judgment. She had a fall on July 16 and her M.D. was notified. No new orders, but her mother requested a tub alarm on her wheelchair and on her bed, which was in a lowered position. On July 29 she fell out of bed and suffered a fractured hip. When she arrived at the hospital after her fall, her blood sugar was 499 after insulin at the ER and she crashed to 24. She never recovered from this hypoglycemic event and is comatose to this point. Defense counsel thinks that all of her subsequent problems including her comatose status will be linked back to her fractured hip and he has requested \$175,000 in authority and file notes reflect it was extended to him on May 11, 2011.

Medical specials are claimed to be \$930,000 with a demand for \$3,300,000. This is slated for arbitration but no date has been set. The arbitrator is a former judge who is deemed to be fair minded. This case is currently reserved at \$175,000; however, this is one to watch as it is very likely that the exposure in this case will increase.

Claim No.: 201101030400

Insured: Country Villa

Claimant: Gordon Stout

Description: The suit alleges this 79-year-old was admitted with skin breakdown at the coccyx and both heels and dehydration. There is a separate allegation of elder abuse involving a CNA pushing him down, causing a hip injury.

Indemnity Reserve: \$10,000

Indemnity Paid: \$0

Expense Reserve: \$1,075

Expense Paid: \$6,722

Discussion: Defense counsel believes that an adverse award potential in this case is probably in the range of \$175,000 to \$275,000 assuming 100 percent liability. Defense counsel believes settlement value is probably somewhere in the range of \$23,000 to \$115,000. There is a mediation scheduled sometime in the last two weeks of October 2011. The file notes reflect that this case was roundtabled on August 19, 2011, at which time the reserve was changed to \$10,000 in response to a roundtable discussion. Although defense counsel believes there is some exposure in this matter, his reports reveal that he feels that this is defensible. The resident's first stay was brief and his wounds were over treated by a number of days. It appears this reserve was reduced because there have been no staff interviews and no expert review, only the defense counsel's read on the settlement value and that is simply not enough to move the reserve to \$175,000 at this point according to the file notes. The file notes also noted the resident's first stay was brief and his wounds were over treated by a number of days. If the wounds were healing within 14 days there would have been no need for additional treatment. Even the hospital MR shows that this man's wounds, which were there upon admission, were healing. In addition, they got worse at the hospital as evidenced by nursing notes from Country Villa upon his return. This does appear to be a case to defend.

Claim No.: 201104060476

Insured: Country Villa Rehab

Claimant: Mildred Miles

Description: This is a lawsuit that alleges unauthorized dental surgery on March 8, 2009. Basically it is a case resulting in a full mouth extraction due to infection of a patient. After surgery the resident developed septicemia and shock death. The claim is also alleging fraud profits over residential care and suits for punitive damages.

Indemnity Reserve: \$10,000

Indemnity Paid: \$0

Expense Reserve: \$30,000

Expense Paid: \$21,876

Discussion: The complaint alleges that the resident was not provided oral hygiene care by the staff causing a mouth infection. Defendant's on premises dental care performed surgical extraction of Mrs. Miles' remaining teeth without an informed consent in the facility. As a result

- Standardizing the claims documentation, evaluation and reporting process is recommended. It is expected that U.S. NA will be recommending a reporting form to be utilized.
- The creation of a claims committee, perhaps made up by members of the board of directors and/or qualified insured members not currently serving on the board, is recommended. The committee should include Sandy Blass, President, and Donna Detton, COO/CFO of Uni-Per.
- The change in the reserve methodology should be reported to the actuary so that it can be factored into future actuarial report results.

If you should require any further information or have any questions or concerns, please feel free to contact me.

Sincerely,

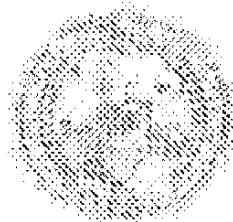


Brian D. Stiefel, CPCU  
President  
Stiefel Claims Consulting

# EXHIBIT 7

THESE  
 THESE

DOI: 10.1002/for



## DEPARTMENT OF BUSINESS AND INDUSTRY DIVISION OF INSURANCE

1818 East College Drive, Suite 103  
 Carson City, Nevada 89706  
 (775) 687-0783 Fax: (775) 687-9787  
 Website: [doh.wy.gov](http://doh.wy.gov)  
 E-mail: [janet.feld@state.nv.us](mailto:janet.feld@state.nv.us)

September 23, 2011

Jeff C. Marshall, President  
Lewis & Clark LTC Risk Retention Group, Inc.  
3655 Brookside Parkway, Suite 200  
Alpharetta, GA 30022

RE: June 30, 2011 Lewis &amp; Clark Deteriorating Financial Condition

Dear President Marshall:

The Division's review of the June 30, 2011 financial statement of the above risk retention group revealed a deteriorating financial condition which the company's management must address. A prior letter advised the Board of Directors of deteriorating financial condition and admonished the Board and management to consider a correction plan. The Board and management must now prepare a short-term (3 month) action plan and based on this action plan how they forecast their 12/31/2011 statement to appear.

The following must be considered:

- Of particular concern is the Combined ratio which has increased since prior year-end from 99.4% to 153.9% - a 54.8% increase -- post-merger.
- A major concern is Risk Based Capital ("RBC") = 208.8%, This RBC calculation results from year-end 2010 financial statement. The RBC is now well below that level considering the reserve (Liability) increases and net loss reducing policyholder surplus by 40.3% for only one-half (Six Months) of a year of operating activity.
- Reserves = 428.8% of policyholder surplus
- Liquidity = 148.7%
- Net loss ratio = 114.4%
- Expense ratio = 39.6%
- Net underwriting loss has deteriorated to \$3.1 million
- Net loss = \$1.8 million

- Net Premiums Written = 499.9% of policyholder surplus

~~On 2/28/11~~ Since prior year-end, policyholder surplus has declined by 40.3%. Company is experiencing adverse claims Development and is becoming extremely leveraged. Total Liabilities have increased by 26.5% primarily due to a 28.0% Reserve increase which now represent 428.8% of policyholder surplus. Net Loss is \$1.8 million; a result of \$3.1 million net underwriting loss for six months and \$1.7 million underwriting loss for just the second quarter. Unassigned Funds have deteriorated further to a negative (\$1.4 million). Since prior year-to-date, net premiums earned have improved nominally by 5.8% while net losses incurred has increased by 117.6% causing a net loss ratio of 114.4% and resulting in a 153.9% combined ratio. Company is highly leveraged. Cash and invested assets only represent 59.2% of total assets resulting in a 148.7% liquidity ratio coupled with gross premiums written representing 571.6% of policyholder surplus and net premiums written representing 499.9% of policyholder surplus. Due to profit sharing agreement with the reinsurer, like last year, these results may be cyclical. However one of the 2010 year-end transactions was a one-time event, so only the year-end profit sharing transaction may be inadequate to compensate for the poor earnings.

We are available for a conference call at the below telephone number.

John C. Marshall, CFIE  
 Management Analyst III  
 Phone: (775) 434-9821  
 Fax: (775) 687-3937  
 jcmarshall@dof.state.nv.us

Co: Company file  
 Deputy Commissioner Lynch  
 Enc

# EXHIBIT 8



MINUTES OF A MEETING OF THE  
BOARD OF DIRECTORS OF  
LEWIS & CLARK LTC RISK RETENTION GROUP, INC.  
ON AUGUST 12, 2005

---

A meeting of the Board of Directors of Lewis & Clark LTC Risk Retention Group, Inc. (the "Corporation") was held at Incline Village, Nevada at 9:30 a.m., PST, on August 12, 2005.

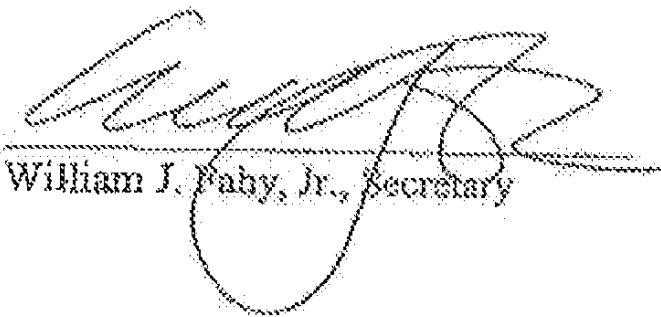
The Board of Directors noted that all directors were present, in addition to Sanford Elsass and Doc Malone of Uni-Ter Underwriting Management Corporation ("Uni-Ter"), Mario Vitiello of U.S. RE Risk Alternatives, LLC, and Curtis H. Sitterson of Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A. Donna Dalton and Kathi Cavallo of Uni-Ter attended all or a portion of the meeting by telephone.

The following matters were presented to the Board and were discussed and/or approved as noted.

1. The Board approved the minutes of the Board meeting of March 9, 2005.
2. The Board approved the use of facsimile signatures of Board members and officers of the Corporation, subject to prior written submission (including e-mail) by Uni-Ter of any document subject to execution, and written approval (including e-mail) by the relevant director or officer.
3. Ms. Dalton presented a report on financial results for the quarter ending June 30, 2005.
4. Mr. Elsass presented an investment report for the quarter ending June 30, 2005.
5. The Board discussed the request by Delta Rehabilitation Services that the Corporation redeem its stock. The Board concluded that, for purposes of dissenters' rights under Nevada law arising from the merger of Henry Hudson LTC Risk Retention Group, Inc. with and into the Corporation, the GAAP book value of the Corporation's shares would be an appropriate measure of "fair value," and Mr. Marshall agreed to communicate with Delta consistent therewith.
6. Ms. Cavallo presented a risk management report. The Board approved a clarification to the risk management services agreement regarding the compensation paid to Uni-Ter.
7. Mr. Elsass presented a claims report.

8. Mr. Malone reviewed the Corporation's underwriting procedures conducted by Uni-Ter and summarized the proposed terms of a fronting-type arrangement with TLC Management, which was approved by the Board.
9. Mr. Fahy, Mr. Preston, and Mr. Elsass reviewed the state of the market. The Board approved the geographic expansion of the Corporation's potential business to include a total of 35 states as set forth on Exhibit A attached hereto. The Board also approved the offering of coverage at levels of \$2 Million/\$3 Million for limited accounts, subject to underwriting and reinsurance.
10. The Board expressed its concern regarding the lack of follow through by Uni-Ter with respect to the marketing plans presented at the March 9, 2005 meeting, including nonreceipt of periodic marketing reports, lack of contact with (a) state associations for which the Corporation had expended substantial sums for membership and (b) potential new agents, and generally, a lack of production of new business to date during 2005.
11. The Board tentatively set its next meeting as a telephonic meeting in September 2005.

There being no further business to come before the meeting, upon motion duly made and seconded, the meeting was adjourned.

  
William J. Fahy, Jr., Secretary

1:\w-agt\37202\000\minutes 8-12-05.doc

# EXHIBIT 9

MINUTES OF A MEETING OF THE  
BOARD OF DIRECTORS OF  
LEWIS & CLARK LTC RISK RETENTION GROUP, INC.  
ON SEPTEMBER 14, 2005

A telephonic meeting of the Board of Directors of Lewis & Clark LTC Risk Retention Group, Inc. (the "Corporation") was held at 10:00 a.m., PST, on September 14, 2005.

The Board of Directors noted that all directors were present with the exception of Eric Stickels, in addition to Sanford Elsass and Doc Malone of Uni-Ter Underwriting Management Corporation ("Uni-Ter"), and Curtis H. Sitterson of Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.

The following matters were presented to the Board and were discussed and/or approved as noted.

1. Mr. Fahy, Mr. Preston and Mr. Elsass each reported on recent marketing efforts. The Board approved the premium rate reductions recommended by Uni-Ter and approved by Corporation's actuaries.
2. The Board approved the revised claims trigger for the Corporation's policies.
3. Ms. Elsass reported to the Board on the process of establishing appropriate loss reserves for the Corporation.

There being no further business to come before the meeting, upon motion duly made and seconded, the meeting was adjourned.

  
William J. Fahy, Jr., Secretary

# EXHIBIT 10

MINUTES OF A MEETING OF THE  
BOARD OF DIRECTORS OF  
LEWIS & CLARK LTC RISK RETENTION GROUP, INC.  
ON MAY 30, 2006

---


A telephonic meeting of the Board of Directors of Lewis & Clark LTC Risk Retention Group, Inc. (the "Corporation") was held at 3:30 p.m., EST, on May 30, 2006.

The Board of Directors noted that all directors were present with the exception of Dr. Carol Harter and Mark S. Garber, in addition to Sanford Elsass, Jerry Lambert, Kathi Cavallo, Donna Dalton and Nadeene Wood-Clater of Uni-Ter Underwriting Management Corporation ("Uni-Ter"), and Curtis H. Sitterson of Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.

The following matters were presented to the Board and were discussed and/or approved as noted.

1. The Board approved the 2005 annual audit and management letter prepared by the Company's outside auditors, Marcum and Kliegman.
2. The Board, based upon Uni-Ter's recommendations, approved the renewal of the Company's D & O coverage for 2006-07, and the non-renewal of the Company's E & O coverage for 2006-07.
3. Mr. Elsass reported on the cancellation of Uni-Ter's program with Arch Insurance and the efforts to renew the affected insureds with the Company.
4. Mr. Elsass and Ms. Wood-Clater reported on premium production and marketing efforts year to date. The Board approved revision to the current retail commission rates to 15% for new business and 10% for renewals.
5. The Board approved miscellaneous clarifying revisions to the Company's management agreements.
6. Ms. Lambert delivered a claims report.
7. Kathi Cavallo delivered a risk management report.
8. The Board tentatively set its next meeting and the annual shareholders meeting for October 19-20, 2006 in Las Vegas, Nevada.

There being no further business to come before the meeting, upon motion duly made and seconded, the meeting was adjourned.

  
William J. Ramey, Jr., Secretary  
Nadeene Dood-Clatter

I:\w-ag037202\000\minutes 05-30-06.doc

# EXHIBIT 11



MINUTES OF A MEETING OF THE  
BOARD OF DIRECTORS OF  
LEWIS & CLARK LTC RISK RETENTION GROUP, INC.  
ON OCTOBER 20, 2006

---

A meeting of the Board of Directors of Lewis & Clark LTC Risk Retention Group, Inc. (the "Corporation") was held in Las Vegas, Nevada at 8:00 a.m., PST, on October 20, 2006.

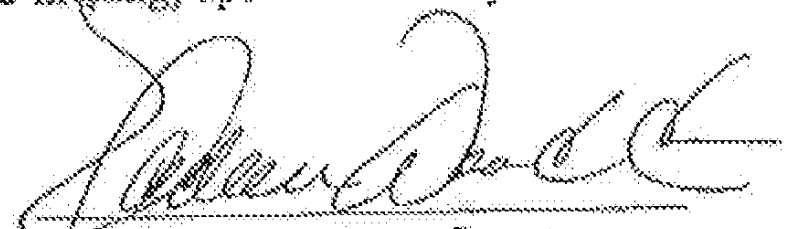
The Board of Directors noted that all directors were present (with Eric Stickels attending by telephone), in addition to Sanford Elsass, Nadeene Wood-Clater, Kathi Cavallo, and Doc Malone of Uni-Ter Underwriting Management Corporation ("Uni-Ter"), Peter Rawlings of Logan Capital Management, Constance Akridge of Jones Vargas and Curtis H. Sitterson of Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A. Dennis Cagan of TWL Knowledge Group attended a portion of the meeting. Donna Dalton and Jim Martin of Uni-Ter attended all or a portion of the meeting by telephone.

The following matters were presented to the Board and were discussed and/or approved as noted.

1. The Board welcomed Steve Fogg of the Marquis Companies as a new member of the Board and voted to accept the resignation of William Fahy as an officer and director of the Company. The Board appointed Nadeene Wood-Clater as Secretary and Eric Stickels as Treasurer of the Company.
2. The Board approved the minutes of the Board meetings of February 10, 2006 and May 30, 2006 and the minutes of the Audit Committee of the Board meeting on May 30, 2006.
3. The Board reviewed the draft Nevada Market Conduct Audit, and in general, approved the terms of same. The Board did, however, instruct Ms. Dalton, in coordination with counsel, to give comments back to the Department regarding certain issues, including loss reserving, surplus note terms, reinsurance receivables, and Risk Retention Act requirements.
4. Ms. Dalton and Mr. Elsass presented a brief report on financial results for the period ending June 30, 2006. However, the full report was deferred until the next meeting.
5. Mr. Malone presented, and the Board approved, an underwriting report for the period ending June 30, 2006.
6. Mr. Martin presented, and the Board approved, a claims report for the period ending June 30, 2006.

7. Mr. Rawlings presented, and the Board approved, an investment report for the period ending June 30, 2006.
8. Ms. Cavallo presented, and the Board approved, a risk management report for the period ending June 30, 2006.
9. Ms. Wood-Clater presented, and the Board approved, a marketing report for the period ending June 30, 2006.
10. The Board approved the Fourth Amendment to the Uni-Ter Management Agreement, clarifying the calculation of the profit commission.
11. The Board discussed the letter received by Mr. Marshall from Health Cap and concluded no action was warranted at this time.
12. The Board discussed stock buy back inquiries from Beehive Retirement Center and Manos Barbury/Paradise Hill Convalescent Center and concluded to continue its current policy of generally not offering to redeem shares in view of the Company's surplus note terms and regulatory matters.
13. Mr. Cagan gave a presentation regarding the educational activities of TWL Knowledge Group. The Board discussed the concept of teaming with TWL to develop nurses educational opportunities for long term care facilities and directed Uni-Ter to work with TWL to develop a formal proposal for Board consideration.
14. The Board, with Mr. Preston excusing himself, discussed the current competitive environment in relation to other insurers and agent activities. The Board concluded that, from a governance perspective, it would be more appropriate for the Board composition to further emphasize membership by long term care owners and operators. In view of same, the Board accepted Mr. Preston's resignation from the Board.
15. The Board, with Mr. Stickels abstaining, approved the request to Oneida Savings Bank to extend the term of the \$750,000 Surplus Subordinated Debenture to May 27, 2008, upon the same terms and conditions, upon payment of accrued interest through November 27, 2006.
16. The Board tentatively scheduled its next Board meeting and annual shareholders meeting for March 8-9, 2007.

There being no further business to come before the meeting, upon motion duly made and seconded, the meeting was adjourned.



Madeene Wood-Clater, Secretary

IN THE SUPREME COURT OF THE STATE OF NEVADA

---

*Supreme Court Case No. 78301*

---

Electronically Filed  
Mar 13 2019 11:33 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER,  
ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, ERIC  
STICKELS;

*Petitioners,*

v.

EIGHTH JUDICIAL DISTRICT COURT of the State of Nevada, in and for Clark  
County; THE HONORABLE NANCY L. ALLF, DISTRICT JUDGE, DEPT. 27,

*Respondent,*

and

UNI-TER UNDERWRITING MANAGEMENT CORP., UNI-TER CLAIMS  
SERVICES CORP., and U.S. RE CORPORATION; COMMISSIONER OF  
INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF LEWIS AND  
CLARK LTC RICK RETENTION GROUP, INC.

*Real Parties in Interest*

---

**PETITIONER'S APPENDIX  
(VOLUME I OF VI)  
(APP00001 – APP00240)**

---

HOLLAND & HART LLP  
J. Stephen Peek, Esq. (1758)  
Jessica E. Whelan, Esq. (14781)  
Ryan A. Semerad, Esq. (14615)  
9555 Hillwood Drive, 2nd Floor  
Las Vegas, Nevada 89134  
Telephone No. (702) 669-4600

LIPSON NEILSON P.C  
Joseph P. Garin, Esq. (6653)  
Angela T. Nakamura Ochoa, Esq.  
(10164)  
9900 Covington Cross Drive, Ste 120  
Las Vegas, Nevada 89144

*Attorneys for Petitioners*

## INDEX TO APPENDIX IN CHRONOLOGICAL ORDER

<u>DATE</u>	<u>EXHIBIT DESCRIPTION</u>	<u>VOLUME</u>	<u>PAGE NOS.</u>
2016-01-27	Transcript of Defendant Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbra Lumpkin, Jeff Marshall and Eric Stickels' Motion to Dismiss	I	APP00001 –  APP00009
2016-04-18	Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbra Lumpkin, Jeff Marshall and Eric Stickels Motion to Dismiss First Amended Complaint	I	APP00010 –  APP00036
2016-08-05	Third Amended Complaint	I - III	APP00037 –  APP00565
2016-09-15	Defendant Uni-Ter Underwriting Management Corp's Motion to Dismiss Negligent Misrepresentation Claim of Third Party Complaint Defendant's Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall, and Eric Stickels Motion to Dismiss First Amended Complaint – Hearing Transcript	III	APP00566 –  APP00601
2016-10-10	Notice of Entry of Order Denying Defendant Uni-Ter Underwriting Management Corp.'s Motion to Dismiss Negligent Misrepresentation Claim of Third Amended Complaint	III	APP00602 –  APP00606
2018-08-14	Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbra Lumpkin, Jeff Marshall and Eric Stickels' Motion for Judgment on the Pleadings Pursuant to NRCP 12(C)	III - IV	APP00607 –  APP00886

2018-09-19	Plaintiff's (1) Opposition to Director Defendants' Motion for Judgment on the Pleadings And (2) Countermotion for Summary Judgment as to Liability Only	IV - VI	APP00887 – APP01238
2018-10-04	Reply in Support of Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbra Lumpkin, Jeff Marshall and Eric Stickels; Motion for Judgment on the Pleadings Pursuant to NRCP 12(C)	VI	APP01239 – APP01354
2018-10-11	Transcript of Proceedings Re: All Pending Motions	VI	APP01355 – APP01376
2018-11-07	Notice of Entry of Order	VI	APP01377 – APP01381
2018-11-29	Motion for Reconsideration	VI	APP01382 – APP01400
2018-12-27	Plaintiff's Opposition to Director Defendants' Motion for Reconsideration – and – Countermotion for Attorney's Fees	VI	APP01401 – APP01414
2019-01-04	Reply In Support of Motion for Reconsideration and Opposition to Countermotion for Attorney's Fees	VI	APP01415 – APP01428
2019-02-11	Notice of Entry of Decision and Order	VI	APP01429 – APP01433

## INDEX TO APPENDIX IN ALPHABETICAL ORDER

<u>DATE</u>	<u>EXHIBIT DESCRIPTION</u>	<u>VOLUME</u>	<u>PAGE NOS.</u>
2016-04-18	Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbra Lumpkin, Jeff Marshall and Eric Stickels Motion to Dismiss First Amended Complaint	I	APP00010 –  APP00036
2016-09-15	Defendant Uni-Ter Underwriting Management Corp’s Motion to Dismiss Negligent Misrepresentation Claim of Third Party Complaint Defendant’s Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall, and Eric Stickels Motion to Dismiss First Amended Complaint – Hearing Transcript	III	APP00566 –  APP00601
2018-11-29	Motion for Reconsideration	VI	APP01382–  APP01400
2019-02-11	Notice of Entry of Decision and Order	VI	APP01429 –  APP01433
2018-11-07	Notice of Entry of Order	VI	APP01377 –  APP01381
2016-10-10	Notice of Entry of Order Denying Defendant Uni-Ter Underwriting Management Corp.’s Motion to Dismiss Negligent Misrepresentation Claim of Third Amended Complaint	III	APP00602 –  APP00606
2018-09-19	Plaintiff’s (1) Opposition to Director Defendants’ Motion for Judgment on the Pleadings And (2) Countermotion for Summary Judgment as to Liability Only	IV - VI	APP00887 –  APP01238

2018-12-27	Plaintiff's Opposition to Director Defendants' Motion for Reconsideration – and – Countermotion for Attorney's Fees	VI	APP01401 – APP01414
2019-01-04	Reply In Support of Motion for Reconsideration and Opposition to Countermotion for Attorney's Fees	VI	APP01415 – APP01428
2018-10-04	Reply in Support of Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbra Lumpkin, Jeff Marshall and Eric Stickels; Motion for Judgment on the Pleadings Pursuant to NRCP 12(C)	VI	APP01239 – APP01354
2018-08-14	Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbra Lumpkin, Jeff Marshall and Eric Stickels' Motion for Judgment on the Pleadings Pursuant to NRCP 12(C)	III - IV	APP00607 – APP00886
2016-08-05	Third Amended Complaint	I - III	APP00037 – APP00565
2016-01-27	Transcript of Defendant Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbra Lumpkin, Jeff Marshall and Eric Stickels' Motion to Dismiss	I	APP00001 – APP00009
2018-10-11	Transcript of Proceedings Re: All Pending Motions	VI	APP01355 – APP01376

## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of Holland & Hart, LLP, and that on this 12th day of March 2019, I electronically filed and served by electronic mail and United States Mail a true and correct copy of the above and foregoing **PETITIONER'S APPENDIX (VOLUME I OF VI) (APP00001 – AP00240)**

properly addressed to the following:

James L. Wadhams, Esq.  
Brenoch Wirthlin, Esq.  
FENNEMORE CRAIG, P.C.  
300 South Fourth Street, Suite 1400  
Las Vegas, NV 89101

*Attorneys for Commissioner of  
Insurance for the State of Nevada as  
Receiver of Lewis and Clark LTC Risk  
Retention Group, Inc.*

George F. Ogilvie III, Esq.  
MCDONALD CARANO LLP  
2300 West Sahara Ave., Suite 1200  
Las Vegas, NV 89102

Jon M. Wilson, Esq.  
Kimberly Freedman, Esq.  
Erin Kolmansberger, Esq.  
NELSON MULLINS BROAD AND  
CASSEL  
2 S. Biscayne Boulevard, 21st Floor  
Miami, FL 33131

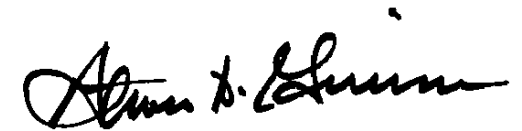
*Attorneys for Uni-Ter Underwriting  
Management Corp., Uni-Ter Claims  
Services Corp., and U.S. RE  
Corporation*

### **SERVED VIA U.S. MAIL:**

The Honorable Nancy L. Allf,  
District Court, Department 27  
Regional Justice Center  
200 S. Lewis Ave.  
Las Vegas, NV 89155

/s/ Valerie Larsen  
An Employee of Holland & Hart LLP





CLERK OF THE COURT

1 **TRAN**

2  
3 **EIGHTH JUDICIAL DISTRICT COURT**  
4 **CIVIL/CRIMINAL DIVISION**  
5 **CLARK COUNTY, NEVADA**

6 COMMISSIONER OF INSURANCE )  
7 FOR THE STATE OF NEVADA AS )  
8 RECEIVER OF LEWIS AND CLARK, )

9 Plaintiff, )

10 vs. )

11 ROBERT CHUR, et al, )

12 Defendants. )

13 BEFORE THE HONORABLE NANCY ALLF, DISTRICT COURT JUDGE

14 WEDNESDAY, JANUARY 27, 2016

15 **TRANSCRIPT RE:**

16 DEFENDANTS ROBERT CHUR, STEVE FOGG, MARK GARBER,  
CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN,  
JEFF MARSHALL AND ERIC STICKELS' MOTION TO DISMISS

17 **APPEARANCES:**

18 For the Plaintiff:

BRENOCH R. WIRTHLIN, ESQ.  
KARL L. NIELSON, ESQ.

19 For Defendants U.S. RE Corporation,  
20 Uni-Ter Underwriting Management Corp.,  
and Uni-Ter Claims Services Corp.:

GEORGE F. OGILVIE, III, ESQ.

21 For Defendants Robert Chur, Steve Fogg,  
22 Mark Garber, Carol Harter, Robert Hurlbut,  
Barbara Lumpkin, Jeff Marshall, and  
23 Eric Stickels:

ANGELA NAKAMURA OCHOA, ESQ.

24 RECORDED BY: Traci Rawlinson, Court Recorder

1 CLARK COUNTY, NEVADA

WEDNESDAY, JANUARY 27, 2016

2 **PROCEEDINGS**

3 (PROCEEDINGS BEGAN AT 10:01:30 A.M.)

4 THE COURT: Calling the case of Commissioner of Insurance versus Chur.

5 MR. NIELSON: Good morning, Your Honor. Karl Nielson and Brenoch  
6 Wirthlin on behalf of the plaintiff.

7 THE COURT: Thank you.

8 MS. OCHOA: Good morning, Your Honor. Angela Ochoa on behalf of Robert  
9 Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin,  
10 Jeff Marshall and Eric Stickels, who I'll call the board of director defendants.

11 THE COURT: Thank you.

12 MR. OGILVIE: Good morning, Your Honor. George Ogilvie on behalf of  
13 U.S. RE Corporation and the Uni-Ter defendants.

14 THE COURT: Thank you all. This is the board of directors defendants'  
15 motion to dismiss the first and second causes of action for gross negligence and  
16 for a deepening of the insolvency.

17 Ms. Ochoa.

18 MS. OCHOA: Yes, Your Honor. This is my motion to dismiss, and it's not  
19 based on an assertion of the business judgment rule. I'm asking for the Court to  
20 dismiss this case because under NRS 78.138(7) directors and officers cannot be  
21 personally liable for anything less than a breach of fiduciary duty arising out of an  
22 intentional, fraudulent or knowing violation of the law. None of those allegations are  
23 presented within the complaint as against my clients. So that's the basis. That's  
24 the gist and that's why we want it dismissed.

1                   Alternatively, this Court can also dismiss this case because of the  
2 plaintiff's failure to state a claim. Now, the standard is to accept all factual  
3 allegations as true, but the Court can dismiss conclusory statements. And in this  
4 case there's no doubt there's a lot of factual allegations, but they all support that  
5 my clients acted, they tried to be informed, and they took immediate action upon  
6 knowing or having been informed that in September of 2011 the corporation was  
7 in financial straits. So we think there's another basis to dismiss this case.

8                   Finally, at the very least we ask that this Court dismiss the claim for  
9 deepening insolvency. It just has not been recognized in the state of Nevada.

10                  THE COURT: Thank you, Ms. Ochoa.

11                  Mr. Ogilvie, do you have anything to add?

12                  MR. OGILVIE: No, Your Honor.

13                  THE COURT: All right. Plaintiff, your opposition, please.

14                  MR. WIRTHLIN: Thank you, Your Honor. Your Honor, may I use the  
15 lectern?

16                  THE COURT: Of course.

17                  MR. WIRTHLIN: Your Honor, I'm happy to address any questions the Court  
18 has at any time. I'll just start very briefly. I believe that the key statute here is  
19 NRS 78.138. That's the business judgment rule that the Nevada Supreme Court  
20 has codified at that statute. There's really -- the two claims that are at issue are  
21 the gross negligence and deepening of the insolvency. On gross negligence the  
22 Nevada Supreme Court in Shoen that we cited has very clearly delineated what  
23 the business judgment rule covers and what it doesn't. And I think that the critical  
24 understanding for -- with respect to the defendants, individual defendants' arguments

1 is that what they're really doing is confusing the separate duties that they have  
2 to the company, the duty of care and the duty of loyalty. And if you look at the  
3 Shoen language, the court very clearly points that out. And they -- I don't know,  
4 I think it was just inadvertent in their motion and reply, left out the key distinction  
5 there.

6 If we look at that paragraph that we cited, it's 640 in Shoen; 122 Nev.  
7 640. The Court says: "And directors and officers may only be found personally  
8 liable for breaching their fiduciary duty of loyalty if that breach involves intentional  
9 misconduct, fraud, or a knowing violation of the law." And that's true, but the issue  
10 here is the duty of care, which is a separate duty. And the preceding sentence the  
11 court says very clearly, quote: "With regard to the duty of care, the business  
12 judgment rule does not protect the gross negligence of uninformed directors and  
13 officers." So those are two separate duties. It's true, as the Shoen court pointed  
14 out, that some type of allegation of fraud must be alleged for breach of the duty  
15 of loyalty, but a number of -- a director or officer could potentially be loyal to a  
16 company without being properly informed, and that would be a violation of a duty  
17 of care and that's really is what is at issue here is a duty of care. We're alleging  
18 through multiple paragraphs and allegations that the directors and officers were  
19 not properly informed.

20 And in fact, the individual defendants really cite only Section 7 as  
21 kind of an exclusion and assert that that's the business judgment rule or that's the  
22 provision they're relying on. The business judgment rule really is the entire section,  
23 though, and that's critical to note because Section 2 provides that, quote: "A  
24 director or officer is not entitled to rely on such information, opinions, reports, books

1 of account or statements if the director or officer has knowledge concerning the  
2 matter in question that would cause reliance thereon to be unwarranted.” That’s  
3 really the genesis, the basis of our complaint against them. They knew, they had  
4 information that what they were receiving wasn’t accurate or complete, and yet did  
5 not properly inform themselves going forward. That’s consistent with Delaware law,  
6 which much of Nevada case law is obviously based on. And we cited the Dodgers  
7 case, Los Angeles Dodgers, 457 B.R. 308, where the court says the business  
8 judgment rule will govern unless the opposing party can show one of the four  
9 elements, one of which is the directors were uninformed; another is grossly  
10 negligent. And that’s really what the Shoen court was delineating in this case.

11 As far as the allegations, we go through it in some detail in our  
12 opposition, but obviously paragraphs 162, 63, 64, we talk about several instances  
13 in which the requisite diligence was not shown. The directors and officers knew  
14 that they were not receiving information, requested further information, didn’t receive  
15 it; failed to inform themselves. That’s really the basis for that claim for relief.

16 With respect to the deepening of the insolvency claim, that is a  
17 recognized claim in Nevada. The district court chief judge, Judge Pro, held that  
18 a trustee had standing to pursue those claims. Now, in their reply the individual  
19 defendants try to distinguish that case, saying that the court was only recognizing  
20 that as a claim or rather a measure of damages. That’s inaccurate. The language  
21 actually of that case, and we cite to that, it’s 319 B.R. 216. The court talks about  
22 the counts that allege acts and omissions that caused damages by permitting the  
23 effective date accounting to prolong the corporation’s life. And the court said  
24 specifically, and I’m quoting here: “Accordingly, the trustee has standing to pursue

1 these claims.”

2 In doing that, Judge Pro cites to Lafferty, which the defendants actually  
3 cite in their motion, as recognizing it as a separate claim. And there is a distinction  
4 between those. They’re not superfluous. Gross negligence can exist without a  
5 deepening of the insolvency. But as the case law that we cited makes clear,  
6 deepening of the insolvency is itself a separate and distinct claim for relief, and we  
7 have alleged that. It is a recognized claim in Nevada. We would as that the motion  
8 to dismiss be denied.

9 THE COURT: Thank you, Mr. Wirthlin.

10 Ms. Ochoa.

11 MS. OCHOA: Several issues, Your Honor. NRS 78.138(7) is not the  
12 business judgment rule. It’s separate and apart. You have to show a breach of  
13 fiduciary duty arising out of an intentional or fraudulent act or a knowing violation  
14 of the law. That is the threshold. In Shoen, that was not an issue. They were  
15 not looking at the validity of that limited liability provision. They were not even  
16 contesting it. The issue was what did the plaintiff have to do with respect to  
17 pleading futility in a derivative claim. They were not talking about this statute that  
18 I’m trying to have this case dismissed under, so I don’t think Shoen is applicable.

19 You know, I gave the history of this statute and it shows, you know,  
20 in 2001 people considered NRS 78.138 a codification of the business judgment rule.  
21 But thereafter this limited liability provision was provided, which all of the Nevada  
22 Legislature understood they wanted to give more protections to board of directors  
23 and officers, more than whatever the business judgment rule had. They wanted to  
24 provide more so people would bring their businesses here. And so that’s why this

1 is separate from that business judgment rule. And I think this Court has a basis  
2 to dismiss it under that basis -- under that statute.

3 Finally, I think they're reading In re Agribiotech wrong. You know, first  
4 of all, it was a case by a bankruptcy judge or by Judge Pro in a bankruptcy case.

5 THE COURT: It was an appeal. And frankly, I was a lawyer involved in the  
6 case years ago. So, go ahead.

7 MS. OCHOA: Right. And it's about -- it's against accountants, it's not against  
8 a board of directors, so I don't think it's applicable.

9 THE COURT: Well, it deals with the same allegations, though, made in the  
10 gross negligence cause of action here, the same type of inattention, infrequency of  
11 reporting. So, but I hate to cut you off.

12 MS. OCHOA: Right. So either way, I don't think it's applicable. But I think  
13 that the Court does have a basis to dismiss it under the Subsection 7 of NRS 78.138.

14 THE COURT: Thank you, both. This is the defendant -- rather than reciting  
15 the members, it is basically the board of directors' motion to dismiss the receiver's  
16 first two causes of action for gross negligence and for a deepening of the  
17 insolvency. The motion will be granted in part and denied in part as follows.

18 With regard to the motion to dismiss the first cause of action for gross  
19 negligence, the motion is granted but with leave to amend for the reason that when  
20 I first reviewed the complaint and certainly, you know, there are factual allegations  
21 that would support a negligence cause of action, but I don't see where it's kicked  
22 up into the gross negligence. The business judgment rule is applicable. Intentional  
23 conduct would have to be pled in order to proceed on that gross negligence cause  
24 of action. Just the infrequency of board meetings, the change of position from 2007

1 to 2009, the failure to record the computation of profit commissions in October 2010,  
2 those are negligence causes of action but it's not sufficiently pled to be pled as  
3 gross negligence. So it will be dismissed with leave to amend.

4 With regard to the second cause of action for the deepening of the  
5 insolvency, I think it can exist as a collateral cause of action. I don't think it can  
6 stand on its own in Nevada. I find that the district court opinion by Judge Pro is  
7 persuasive authority. And the Nevada Supreme Court hasn't recognized but they  
8 also haven't said that that cause of action doesn't exist in the state of Nevada. So  
9 if the plaintiff chooses to -- if the plaintiff chooses to amend the first cause of action,  
10 then I will allow the second cause of action to continue.

11 Ms. Ochoa, will you work with plaintiff's counsel to prepare an order?

12 MS. OCHOA: I will, Your Honor.

13 THE COURT: Very good. Mr. Ogilvie, do you wish to sign off on that?

14 MR. OGILVIE: No, that's fine, Your Honor. Thank you.

15 THE COURT: Very good. So approve as to form. Any questions?

16 MR. WIRTHLIN: No, Your Honor.

17 MS. OCHOA: Can we just put a date in which to amend by?

18 THE COURT: Thirty days.

19 MS. OCHOA: Okay, thank you.

20 THE COURT: Thirty days from entry of the order.

21 MS. OCHOA: Okay.

22 THE COURT: Thank you both.

23 MR. WIRTHLIN: Thank you, Your Honor.

24 MR. OGILVIE: Your Honor, I have a collateral matter.



1 THE COURT: Yes?

2 MR. OGILVIE: I filed a motion to associate counsel yesterday.

3 THE COURT: I see that.

4 MR. OGILVIE: And it's set for a hearing or decision on March 1st, which is  
5 after the February 25th hearing date of U.S. RE and Uni-Ter's motion to dismiss.  
6 I'd just like to advance that decision date so my --

7 THE COURT: In all business court cases I entertain orders shortening time.  
8 And very often we set these on chambers calendar, so if the matter was set on  
9 the court's -- it's on the chambers calendar March 1st. So if you ask for an order  
10 shortening time, I will be happy to grant it. If we know there's no opposition, I'll be  
11 happy to grant it.

12 MR. OGILVIE: I'll work with counsel to see if there's any opposition and I'll  
13 inform the Court.

14 THE COURT: Very good.

15 MR. OGILVIE: Thank you.

16 THE COURT: Thank you.

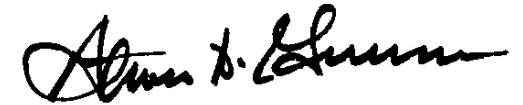
17 MR. WIRTHLIN: Thank you, Your Honor.

18 (PROCEEDINGS CONCLUDED AT 10:15 A.M.)

19 \* \* \* \* \*

20 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-  
21 video recording of this proceeding in the above-entitled case to the best of my ability.

22   
23 \_\_\_\_\_  
24 Liz Garcia, Transcriber  
LGM Transcription Service



CLERK OF THE COURT

**MDSM**  
LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.  
JOSEPH P. GARIN, ESQ.  
Nevada Bar No. 6653  
ANGELA T. NAKAMURA OCHOA, ESQ.  
Nevada Bar No. 10164  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144  
(702) 382-1500 - Telephone  
(702) 382-1512 - Facsimile  
[jgarin@lipsonneilson.com](mailto:jgarin@lipsonneilson.com)  
[aocchoa@lipsonneilson.com](mailto:aocchoa@lipsonneilson.com)  
*Attorneys for Defendants/Third-Party  
Plaintiffs Robert Chur, Steve Fogg,  
Mark Garber, Carol Harter,  
Robert Hurlbut, Barbara Lumpkin,  
Jeff Marshall, and Eric Stickels*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

COMMISSIONER OF INSURANCE FOR  
THE STATE OF NEVADA AS RECEIVER  
OF LEWIS AND CLARK LTC RISK  
RETENTION GROUP, INC.,

Plaintiff,

vs.

ROBERT CHUR, STEVE FOGG, MARK  
GARBER, CAROL HARTER, ROBERT  
HURLBUT, BARBARA LUMPKIN, JEFF  
MARSHALL, ERIC STICKELS, UNI-TER  
UNDERWRITING MANAGEMENT  
CORP., UNI-TER CLAIMS SERVICES  
CORP., and U.S. RE CORPORATION;;  
DOES 1-50, inclusive; and ROES 51-100,  
inclusive,

Defendants.

CASE NO.: A-14-711535-C

DEPT. NO.: 27

**DEFENDANTS ROBERT CHUR, STEVE  
FOGG, MARK GARBER, CAROL  
HARTER, ROBERT HURLBUT,  
BARBARA LUMPKIN, JEFF  
MARSHALL, AND ERIC STICKELS'  
MOTION TO DISMISS FIRST AMENDED  
COMPLAINT**

**Date of Hearing:** 05/26/16

**Time of Hearing:** 10:30 AM

Defendants ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL  
HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, and ERIC  
STICKELS by and through its counsel of record at the law firm of Lipson, Neilson, Cole,  
Seltzer & Garin, P.C., hereby submits its Motion to Dismiss First Amended Complaint.

1 This motion is based upon the attached memorandum of points and authorities,  
2 the pleadings and papers on file with this Court, and any oral argument this Court may  
3 allow at the hearing on this motion.

4 DATED this 18<sup>th</sup> day of April, 2016.

5 LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.

6 By: 

7 Joseph P. Garin, Esq. (6653)  
8 Angela T. Nakamura Ochoa, Esq. (10164)  
9 9900 Covington Cross Dr., Suite 120  
10 Las Vegas, NV 89144  
11 (702) 382-1500 – Telephone  
12 (702) 382-1512 – Facsimile  
13 jgarin@lipsonneilson.com  
14 aochoa@lipsonneilson.com

15 *Attorneys for Defendants/Third-Party*  
16 *Plaintiffs Robert Chur, Steve Fogg,*  
17 *Mark Garber, Carol Harter,*  
18 *Robert Hurlbut, Barbara Lumpkin,*  
19 *Jeff Marshall, and Eric Stickels*

**Lipson, Neilson, Cole, Seltzer & Garin, P.C.**  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144  
(702) 382-1500 FAX: (702) 382-1512

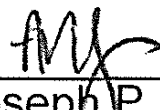
**NOTICE OF MOTION**

TO: ALL PARTIES AND THEIR COUNSEL OF RECORD:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that counsel for Defendants will bring the foregoing DEFENDANTS ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, AND ERIC STICKELS' MOTION TO DISMISS FIRST AMENDED COMPLAINT on for hearing before the above-entitled Court, on the 26 day of May, 2016, at the hour of 10:30 a.m. in Department 27, of the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada, or as soon thereafter as counsel may be heard.

DATED this 18<sup>th</sup> day of April, 2016.

LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.

By:   
Joseph P. Garin, Esq. (6653)  
Angela T. Nakamura Ochoa, Esq. (10164)  
9900 Covington Cross Dr., Suite 120  
Las Vegas, NV 89144  
[jgarin@lipsonneilson.com](mailto:jgarin@lipsonneilson.com)  
[aocchoa@lipsonneilson.com](mailto:aocchoa@lipsonneilson.com)

*Attorneys for Defendants/Third-Party  
Plaintiffs Robert Chur, Steve Fogg,  
Mark Garber, Carol Harter,  
Robert Hurlbut, Barbara Lumpkin,  
Jeff Marshall, and Eric Stickels*

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

This is a case against former directors of a corporation that is now in a liquidation receivership. Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall, and Eric Stickels (collectively "BOD") were directors for Lewis & Clark, LTC Risk Retention Group, Inc. (L&C), a risk retention group of skilled nursing facilities. Plaintiff, the Commissioner of Insurance for the State of Nevada, is the court-appointed receiver for L&C and asserts claims against the BOD for gross negligence and deepening insolvency.

This Court granted in part the BOD's Motion to Dismiss the original complaint, holding that Plaintiff's claim for deepening insolvency was collateral to the claim for gross negligence, but that the claim for gross negligence failed because the Complaint alleged facts arising to mere negligence, not gross negligence.<sup>1</sup> Plaintiff's First Amended Complaint is no different. It is in all material respects the same complaint this Court has already dismissed, updated to include legal conclusions that this Court has already rejected. Plaintiff alleges no new facts supporting a claim for gross negligence.

In fact, the First Amended Complaint establishes another basis for dismissal. Plaintiff now alleges that the BOD's "negligence" dates to as early as 2009 and was known by the Nevada Division of Insurance (DOI) as early as September 2010.<sup>2</sup> Accepting these allegations as true, the applicable statute of limitations required the Plaintiff, Nevada's Division of Insurance Commissioner of Insurance, to file suit against the BOD on or before September 2014. This action, however, commenced in

---

<sup>2</sup> See First Amended Complaint at ¶¶77-79.

<sup>2</sup> See First Amended Complaint at ¶¶77-79.

December 2014.

## II. SUMMARY OF PLAINTIFF'S ALLEGATIONS

L&C was formed in Nevada as a risk retention group in and around 2003 for purposes of writing professional and general liability coverage for long term care facilities. First Amended Complaint (FAC), ¶ 30. The L&C board of directors at the time retained Defendants Uni-Ter UMC and Uni-Ter CS (collectively "Uni-Ter") for purposes of managing L&C. *Id.* at ¶ 33. According to Plaintiff, BOD knew that Uni-Ter was just recently formed and therefore placed undue reliance on Uni-Ter. *Id.* at ¶ 34 (new allegation).

Defendant Uni-Ter held themselves out as leaders in providing liability insurance to the healthcare industry. *Id.* at ¶ 39. Uni-Ter created at least five risk retention groups. *Id.* at ¶ 40. Over the years, L&C board of directors entered into various management agreements with Uni-Ter, where Uni-Ter was to 1) market the insurance products, 2) handle underwriting, 3) handle claims, 4) conduct audits and maintain the records for L&C, 5) facilitate re-insurance, and 6) provide the record keeping and financials for L&C. *Id.* at ¶¶ 45-50.

In 2009, at Uni-Ter's direction, BOD accepted multi-site operators, such as Sophia Palmer into the risk retention group as policy holders. *Id.* at ¶ 55 (new allegation). According to Plaintiff, in accepting Sophia Palmer into the group, along with other multi-site operators, BOD failed to "exercise a slight degree of diligence," or exercise "scant care in informing itself based upon the information available." These multi-site operators "constituted a significant divergence from the established business model." *Id.* at ¶ 58-60 (new allegation). At this time, apparently, the DOI reprimanded the BOD for a failure to submit a Conflict of Interest Statement as required under NAC 694C. *Id.* at ¶ 57 (new allegation).

According to Plaintiff, a financial disaster occurred in September 2010, evidenced by the DOI sending the BOD a letter advising BOD of the "dangerous financial position

1 of L&C.” *Id.* at ¶ 77 (new allegation). According to Plaintiff, BOD “failed to exercise  
2 even slight diligence in correcting the substantial problems L&C was facing, and the  
3 alarming financial problems of L&C outlined by the DOI in its September 2010 Letter  
4 were not corrected, and in fact were dramatically worsened by the Board’s actions.” *Id.*  
5 at ¶ 80 (new allegation).

6 According to Plaintiff, on September 1, 2011, Sanford Elsass and Donna Dalton  
7 sent a memo to the BOD outlining the causes of the financial difficulties and  
8 represented that Uni-Ter would hire a consultant to perform an analysis on the claims  
9 process. *Id.* at ¶ 83 (new allegation). According to Plaintiff, the acceptance of the multi-  
10 state operators in 2009 was disastrous to the company, so it should not have relied  
11 upon Uni-Ter’s representations at the time. *Id.* at ¶ 85 (new allegation). According to  
12 Plaintiff, BOD should have verified whether accurate information was provided to the  
13 consultant and “failed to exercise even a slight degree of care.” *Id.* at ¶ 86 (new  
14 allegation).

15 The BOD approved the retention of Praxis Claim Consulting to conduct a sample  
16 review of L&C’s claims handling process. *Id.* at ¶¶ 84, 87 (new allegation).

17 On September 23, 2011, the DOI sent another letter to BOD regarding its  
18 disastrous financial condition which the BOD had failed to take action to correct. *Id.* at ¶  
19 90-91 (new allegation).

20 Throughout L&C’s existence, BOD met quarterly and were provided various  
21 reports by Uni-Ter. *Id.* at ¶¶ 99-100. In and around October, 2011, BOD received news  
22 of L&C’s bad finances. At that time, BOD also approved capital contributions by  
23 shareholders Oneida, Eagle Healthcare, Pinnacle, Marquis, Elderwood, Rohm and Uni-  
24 Ter. *Id.* at ¶ 125. The capital infusion was approximately \$2.2 million. *Id.* at ¶ 186.  
25 Moreover, BOD retained professionals to conduct additional audits, specifically that of  
26 L&C’s claims. *Id.* at ¶¶ 128, 140.

27 Oneida, Eagle Healthcare, Pinnacle, Marquis, Elderwood, and Rohm were  
28 shareholders of the risk retention group, L&C. See *Id.* at ¶ 37. They were also

1 companies represented by defendant board of directors: Eric Stickels, Jeff Marshall,  
2 Mark Garber, Steve Fogg, Robert Chur, and Robert Hurlbut. See *Id.* at ¶¶ 25, 22, 11,  
3 8, 3.

4 Between December 2011 through January 2012, BOD received more news  
5 (when it met more frequently than required by their by-laws) about L&C's apparent  
6 down turn, including an increase in claim reserves and a decrease in surplus. *Id.* at ¶¶  
7 127, 130. Near the end of January 2012, L&C's Nevada attorney (Connie Akridge)  
8 began communicating with the DOI about the state of L&C. *Id.* at ¶¶ 132-133. In May  
9 2012, the DOI scheduled a date to examine L&C. *Id.* at ¶ 138. By July 2012, BOD  
10 received news of more increases in the claims loss reserve and decided that no new  
11 business would be written. *Id.* at ¶ 141. By September 24, 2012, the BOD decided to  
12 contact the DOI to request that L&C be placed into rehabilitation. *Id.* at ¶ 144.

13 On November 2012, the DOI instituted its Receivership Action before  
14 Department 11. *Id.* at ¶ 2. This instant action was not commenced until December 23,  
15 2014.<sup>3</sup>

### 16 **III. LEGAL ARGUMENT**

#### 17 **A. A Motion To Dismiss is Appropriate**

18 A defendant is entitled to dismissal of a claim when a plaintiff fails "to state a  
19 claim under which relief can be granted." NRCP 12(b)(5). "When considering a motion  
20 to dismiss made under NRCP 12(b)(5), a district court must construe the complaint  
21 liberally and draw every fair reference in favor of the plaintiff." *Cohen v. Mirage Resorts,*  
22 *Inc.*, 119 Nev. 1, 22, 62 P.3d 720, 734 (2003). However, due process demands "more  
23 than labels and conclusions" or a "formulaic recitation of the elements of a cause of  
24 action." *Ashcroft v. Iqbal*, 556 US 662, 678 (2009) (citations omitted). In reviewing a  
25 motion to dismiss, the "court can accept the plaintiffs' factual allegations as true, but the  
26 allegations must be legally sufficient to constitute elements of the claim asserted."

27 \_\_\_\_\_  
28 <sup>3</sup> Defendants respectfully request the Court take judicial notice of its docket, specifically the date the  
Complaint was filed.



1 *Munda v. Summerlin Life & Health Ins., Co.*, 127 Nev. Adv. Op. 83 (2011). The court is  
2 "not bound to accept as true a legal conclusion couched as a factual allegation."  
3 *Papasan v. Allain*, 478 U.S. 265, 286, 106 S. Ct. 2932, 2944 (1986). "Factual  
4 allegations must be enough to rise above the speculative level." *Bell Atlantic v*  
5 *Twombly*, 550 US 544, 555. To survive a motion to dismiss, a complaint must contain  
6 sufficient factual matter to "state a claim to relief that is plausible on its face." *Iqbal*, 556  
7 U.S. at 678 (citation omitted).

8 Additionally, when the defense of the statute of limitations appears on the face of  
9 the complaint, a motion to dismiss for failure to state a claim is proper. *Kellar v.*  
10 *Snowden*, 87 Nev. 488, 491, 489 P.2d 90, 92 (1971).

11 **B. Plaintiff has still failed to plead factual claims to support Gross**  
12 **Negligence**

13 Plaintiff's First Amended Complaint was revised to add conclusory allegations,  
14 mainly upon information and belief, despite it being the holder of all documents relevant  
15 to this action.<sup>4</sup> Some of the new allegations Plaintiff added, infers earlier bad acts,  
16 widening the scope of alleged bad acts to the year 2004, rather than what originally  
17 appeared to be Plaintiff's focus of September 23, 2011.

18 As the Court already observed, Plaintiff could not establish gross negligence  
19 arising out of the alleged failure to timely act after receipt of the September 23, 2011  
20 news of L&C's dire finances. As previously discussed, Plaintiff's own factual allegations  
21 and documents show that indeed the BOD acted to remedy L&C's financial situation,  
22 including but not limiting to infusing capital into the risk retention group, requesting  
23 retention of another consultant/audit and asking for more frequent reporting. Although  
24 BOD was unable to save L&C and eventually asked for it to be placed into receivership,  
25 the inability to produce a successful company is by no means evidence of gross  
26 negligence. There are no factual allegations that show BOD acted or failed to act to the

27  
28 <sup>4</sup> See First Amended Complaint, Exhibit 1, Order of Liquidation.

1 level of gross negligence. In summary, Plaintiff's theory remains unchanged, that L&C  
2 failed, because the BOD relied too heavily on Uni-Ter's recommendations, and did not  
3 take immediate action to remedy L&C's financial position.

4 1. The Case Law Establishes that Gross Negligence is "want of care," and  
5 "absence of slight diligence," which is not established by the facts here.

6 Although there are no cases in Nevada establishing the standard of gross  
7 negligence within the context of directors and officers liability, there are cases in other  
8 jurisdictions. In a Ninth Circuit case reviewing the California's business judgment rule,  
9 the court determined gross negligence is not a well-meaning director who is  
10 "misinformed, misguided and honestly mistaken." *FDIC v. Castetter*, 184 F.3d 1040,  
11 1046 (9<sup>th</sup> Cir. 1999). Further, a director has no duty to possess specialized knowledge.  
12 *Id.* The Ninth Circuit ultimately granted summary judgment in favor of the board of  
13 directors because the plaintiff could only muster arguments that directors made bad  
14 choices, but could not dispute that the board of directors requested and received  
15 "information, opinions, reports, or statements including financial statements and other  
16 financial data." *Id.* at 1045. The mere request and receipt of information was sufficient  
17 to insulate the board from liability.

18 As discussed in the first Motion to Dismiss, the Nevada Supreme Court  
19 described gross negligence as the following:

20 "Gross negligence is substantially and appreciably higher in magnitude  
21 and more culpable than ordinary negligence. **Gross negligence is**  
22 **equivalent to the failure to exercise even a slight degree of care.** It is  
23 materially **more want of care than constitutes simple inadvertence.** It  
24 is an act or omission respecting legal duty of an aggravated character as  
25 distinguished from a mere failure to exercise ordinary care. It is very great  
26 negligence, or **the absence of slight diligence, or the want of even**  
27 **scant care.** It amounts to indifference to present legal duty, and to utter  
28 forgetfulness of legal obligations so far as other persons may be affected.  
It is a heedless and palpable violation of legal duty respecting the rights of  
others. The element of culpability which characterizes all negligence is, in  
gross negligence, magnified to a higher degree as compared with that  
present in ordinary negligence. Gross negligence is manifestly a smaller  
amount of watchfulness and circumspection than the circumstances  
require of a prudent man. But it falls short of being such reckless disregard

1 of probable consequences as is equivalent to a willful and intentional  
2 wrong. Ordinary and gross negligence differ in degree of inattention, while  
3 both differ in kind from willful and intentional conduct which is or ought to  
4 be known to have a tendency to injure." *Hart v. Kline*, 61 Nev. 96, 116  
5 P.2d 672, 674 (1941). (Emphasis bolded).

6 These bolded phrases were thrown throughout Plaintiff's First Amended  
7 Complaint, but they are conclusory and do not arise to facts of gross negligence.

8 2. The failure to timely act cannot be gross negligence, because simple action  
9 defeats gross negligence.

10 Under no circumstances can failure to take immediate action be gross  
11 negligence. As discussed in *Hart*, gross negligence is failure to exercise a slight degree  
12 of care. The very act of acting is sufficient to overcome the gross negligence standard.  
13 In essence Plaintiff's claim that BOD failed to timely act is subsumed by the allegation  
14 that BOD acted without an informed basis. The inaccuracy of these allegations are  
15 discussed below.

16 3. Plaintiff's Factual Allegations and Documents Support the Fact that BOD  
17 received information, questioned that information at times and acted with a  
18 slight degree of care, sufficient to insulate them from liability.

19 As to these claims that BOD should have known that Uni-Ter was providing  
20 inadequate information, that BOD did not take the time to verify the accuracy of Uni-  
21 Ter's work and that BOD did not even understand the information provided by Uni-Ter,  
22 California has already determined gross negligence is not established when one is  
23 simply misinformed or misguided. A board of director is not charged with the duty of  
24 having specialized knowledge such as knowing the ins and outs of the insurance  
25 industry<sup>5</sup>. A BOD can be informed through its management company, who was Uni-  
26 Ter. According to BOD's Complaint, BOD met quarterly, received reports, questioned  
27 reports and asked for further information when necessary, infused capital into L&C, and

28 <sup>5</sup> See NRS 78.138.

required direct handling of operations when L&C's financial problems were apparent. Had BOD not done any this, potentially Plaintiff could come to this Court and allege "gross negligence." The fact is that the Complaint is filled with factual allegations that BOD did more than simply "want of care." BOD exercised some degree, even a slight degree, based on the factual allegations set forth in the Complaint and this slight degree of care is sufficient to overcome gross negligence.

Because the first Complaint and Motion to Dismiss was focused on the BOD's acts subsequent to the September 23, 2011 news of L&C's financial condition, in which the Court has already determined was not an exemplification of gross negligence, BOD will show how Plaintiff has provided the facts to support that as early as 2004, BOD exercised some degree of care. A summary of Plaintiff's Exhibits, exemplifying the BOD acting with a slight degree of care are as follows:

On or about January 1, 2004	In entering the Management Agreement BOD retained counsel, Vernon E. Leverty, Esq. of Reno, Nevada.	FAC, Exhibit 1.
August 12, 2005	A majority of directors were present at the L&C Annual Meeting, and counsel for L&C including, Ms. Connie Akridge and Mr. Curtis Sitterson.	FAC, Exhibit 8.
September 14, 2005	A majority of directors were present at the L&C board meeting along with L&C's counsel. At the meeting the BOD received reports and took affirmative actions regarding premium rate reductions, and claims handling.	FAC, Exhibit 9.
May 30, 2006	All directors were present at the L&C audit committee meeting, in which the BOD received and approved the audit prepared by outside auditors Marcum & Khegman.	FAC, Exhibit 10.
October 30, 2006	All directors were present at the L&C board meeting, in which they were presented a number of reports and discussed a number of issues, including clarifying the calculation of the profit commission component of the Uni-Ter Management Agreement.	FAC, Exhibit 11.
March 23, 2007	In addition to holding the annual meeting, the board met in which all directors and counsel attended. The BOD were presented with various financial reports and discussed various issues including reinsurance, underwriting, marketing	FAC, Exhibit 12.

	and the DOI's examination report for 2003-2005.	
October 12, 2007	All directors were present at the board meeting, including counsel. The BOD received various reports and based on the recommendation of L&C's actuary, reduced IBNR by \$934,000.	FAC, Exhibit 13.
January 10, 2008	All directors were present at the board meeting in which the BOD was presented with various reports. In an attempt to increase policies, the BOD discussed creating an in-house retail agency.	FAC, Exhibit 14.
April 24, 2008	All directors were present for the board meeting in which various reports were presented to the BOD and a discussion of the 2007 financials.	FAC, Exhibit 15.
December 10, 2008,	A majority of directors attended the annual meeting.	FAC, Exhibit 16.
December 2, 2009,	A majority of directors, including counsel attended the annual meeting.	FAC, Exhibit 17
May 21, 2010,	All directors attended the board meeting, including counsel. The BOD reviewed and executed the Conflicts of Interest Statements for 2010. The BOD was presented with various reports, including but not limited to the audited financials prepared by outside auditor Johnson Lambert & Co. LLP, the quarterly financials, the status of claims, risk management, retention of D&O insurance and marketing.	FAC, Exhibit 18.
November 10, 2010	All directors attended the board meeting in which various reports were presented to the BOD in which the BOD affirmatively increased certain agents' commissions to increase the sale of policies and discussed the terms of Uni-Ter's Management Agreement.	FAC, Exhibit 19.
May 4-5, 2011	All directors attended the board meeting in which various reports were presented to the BOD, the Conflicts of Interest statement was executed, and other matters were discussed, including Sophia Palmer.	FAC, Exhibit 20.
September 7, 2011	The BOD had approved the retention of Praxis Consulting to perform a review of the claims process and reserve methodology. The Praxis Report stated that it was retained to "review and comment on the current administrative practices and procedures in place as well as to review and comment on the reserving methodology." It further stated that although this report was based on a sampling of claims, "Praxis feels that the observations and recommendations contained in	FAC, Exhibit 6.

1		this report accurately reflect the claims handling.”	
2	September 21, 2011,	All directors were present at the board meeting in which various reports were presented to the BOD.	FAC, Exhibit 21.
3			

4 The reality is that BOD acted with the minimum slight degree of care. BOD  
5 retained counsel who had some involvement in the formation of L&C and Uni-Ter’s  
6 Management Agreement. Plaintiff has provided no factual allegation to support its  
7 conclusory claim that BOD placed undue reliance on Uni-Ter.

8 The BOD received reports and even questioned reports and recommendations  
9 throughout the life of L&C. This was not a case of the BOD rubber stamping all  
10 recommendations made by Uni-Ter. On the contrary, there were discussions and there  
11 were votes tabled for further information and discussion. Outside audits were  
12 conducted by various auditors. BOD questioned and reviewed Uni-Ter’s compensation  
13 schedule. The BOD was concerned with growth, marketing and increasing  
14 policyholders to share risk, as exemplified in the board meeting minutes. There were  
15 consistent discussions of different areas for L&C to expand to diversify, for example,  
16 with the creation of in-house agents. Insofar as Plaintiff claims that BOD should not  
17 have accepted the multi-operators into L&C because it deviated from the original  
18 business model, that is not an example of gross negligence, but an example of how the  
19 BOD was willing to take risks in order to facilitate growth and diversification.

20 Plaintiff takes issue with whether BOD took sufficient efforts to verify the  
21 accuracy of the reporting, but does not acknowledge that retention of two separate  
22 auditors of claims are an example of checking Uni-Ter reports and recommendations.  
23 Plaintiff takes issue with the use of sample data, when it has provided no evidence of  
24 why a sample would be insufficient or consideration of the fact that there is a cost  
25 benefit in using sample data. Further, Plaintiff has provided no factual allegations that  
26 support that BOD should not have relied on these reports from L&C’s outside auditors.

27 Ultimately, BOD retains professionals to provide expert advice. BOD is not  
28

1 charged with the duty of having specialized knowledge and is certainly not charged with  
2 guaranteeing the success of the corporation. BOD is only required to act in good faith  
3 and on an informed basis, which is exactly what the exhibits to Plaintiff's First Amended  
4 Complaint and the factual allegations show.

5 **C. Plaintiff's Claims are Barred by the Statute of Limitations**

6 Plaintiff's claims should have been brought by September 2014.<sup>6</sup>

7 NRS 11.220 is the catch-all statute of limitation. *Siragusa v. Brown*, 114 Nev.  
8 1384, 1391 (1998). The statute states that, "an action for relief, not hereinbefore  
9 provided for, must be commenced within 4 years after the cause of action shall have  
10 accrued." The date of accrual has been previously interpreted as the date of injury, not  
11 the date of discovery. *Siragusa*, 114 Nev at 1392.

12 In this case, although conclusory, Plaintiff alleges that as early as 2004, the BOD  
13 placed an undue reliance on Uni-Ter and failed to exercise even slight diligence or care  
14 in verifying or correcting the misinformation provided by Uni-Ter. FAC at ¶ 34.  
15 According to Plaintiff, an example of this failure to exercise slight diligence was in the  
16 acceptance of the multi-site operators and Sophia Palmer into the risk retention group in  
17 2009.<sup>7</sup> See *id.* at ¶¶ 55-60. Plaintiff alleges that the BOD should have known of the  
18 mismanagement when it had to reprimand the BOD for failing to submit a Conflict of  
19 Interest Statement pursuant to NAC 694C. *Id.* at ¶ 57. These alleged bad acts  
20 culminated in September 2010, when the Division of Insurance had to send the BOD a  
21 letter regarding L&C's deteriorating financial condition and requiring a corrective action  
22 plan. *Id.* at ¶¶ 77-88. According to Plaintiff, significant losses occurred between 2009-  
23 2011. *Id.* at ¶ 82. According to Plaintiff, the BOD could not rely on anything presented

24 <sup>6</sup> The Court has already determined that deepening the insolvency could not stand on its own but as a  
25 collateral claim to gross negligence. See Transcript of January 27, 2016 hearing attached hereto as  
26 Exhibit A.

27 <sup>7</sup> This argument was not brought in Defendants' first Motion to Dismiss because Plaintiff omitted the  
28 allegation about the BOD placing undue reliance on Uni-Ter as early as 2004, or that the cause of L&C's  
financial demise was because of acts that occurred in 2009. Additionally, Plaintiff omitted any fact that it  
was on notice of L&C's dire financial condition as early as September 2010.



1 by Uni-Ter thereafter because of the damage that already occurred as a result of the  
2 acceptance of the multi-site operators in 2009. See *id.* at ¶ 85.

3 Given Plaintiff's own allegations, the injury occurred in 2009 when the BOD  
4 accepted multi-state operators and Sophia Palmer into the risk retention group without  
5 adequate information. The Division of Insurance actually discovered these injuries in  
6 September 2010. Therefore, any claim for gross negligence against the BOD should  
7 have been filed at the very least by 2013, but definitely no later than September 2014.  
8 Because the Complaint was filed on December 23, 2014, it was untimely and it should  
9 be dismissed.

#### 10 **IV. CONCLUSION**

11 Although L & C ultimately filed and was placed in receivership, the board of  
12 directors did not cause its demise. Board of directors are not required to be omniscient  
13 or guarantors of a corporation. They are protected by the statute of limitations and the  
14 business judgment rule. Based on the allegations set forth regarding Lewis & Clark's  
15 demise, the Complaint in this case should have been filed no later than September  
16 2014. Because it was filed in December 2014, it was untimely, and the claims against  
17 the Board of directors should be dismissed due to the passing of the statute of  
18 limitations. Alternatively, this Court should grant the Motion to Dismiss because Plaintiff  
19 has still failed to state factual allegations to support a claim for gross negligence.

20 \\\

21 \\\

22 \\\



1 Based on the foregoing, Defendants ROBERT CHUR, STEVE FOGG, MARK  
2 GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF  
3 MARSHALL, and ERIC STICKELS respectfully request this Court dismiss Plaintiff's  
4 Complaint, as it relates to them, specifically Plaintiff's First and Second Causes of  
5 Action.

6 DATED this 18th day of April, 2016.

7 LIPSON, NEILSON, COLE, SETLZTER &  
8 GARIN, P.C.

9  
10 By:



11 Joseph P. Garin, Esq. (Bar No. 6653)  
12 Angela T. Nakamura Ochoa, Esq. (Bar No. 10164)  
13 9900 Covington Cross Dr., Suite 120  
14 Las Vegas, NV 89148

15 *Attorneys for Defendants/Third-Party*  
16 *Plaintiffs Robert Chur, Steve Fogg,*  
17 *Mark Garber, Carol Harter,*  
18 *Robert Hurlbut, Barbara Lumpkin,*  
19 *Jeff Marshall, and Eric Stickels*

Lipson, Neilson, Cole, Seltzer & Garin, P.C.

9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144  
(702) 382-1500 FAX: (702) 382-1512

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and Administrative Order 14-2, I certify that on the 18<sup>th</sup> day of April, 2016, I electronically transmitted the foregoing **DEFENDANTS ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, AND ERIC STICKELS' MOTION TO DISMISS FIRST AMENDED COMPLAINT** to the Clerk's Office using the Odyssey E-File & Serve System for filing and transmittal to the following Odyssey E-File & Serve registrants:

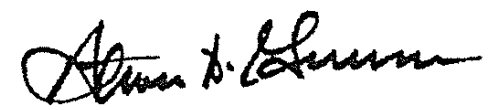
James L. Wadhams, Esq.  
Karl L. Nielson, Esq.  
Brenoch, Wirthlin, Esq.  
FENNEMORE CRAIG, P.C.  
300 S. Fourth St., Suite 1400  
Las Vegas, NV 89101  
[knielson@fclaw.com](mailto:knielson@fclaw.com)  
[bwirthlin@fclaw.com](mailto:bwirthlin@fclaw.com)  
*Attorneys for Plaintiff*

George F. Ogilvie III, Esq.  
James W. Bradshaw, Esq.  
Jeffrey S. Riesenmy, Esq.  
MCDONALD CARANO WILSON LLP  
2300 West Sahara Avenue, Suite 1200  
Las Vegas, NV 89102  
[gogilvie@mcdonaldcarano.com](mailto:gogilvie@mcdonaldcarano.com)  
[jbradshaw@mcdonaldcarano.com](mailto:jbradshaw@mcdonaldcarano.com)  
[jriesenmy@mcdonaldcarano.com](mailto:jriesenmy@mcdonaldcarano.com)  
*Attorneys for Defendants U.S. RE Corporation,  
Uni-Ter Underwriting Management Corp.  
and Uni-Ter Claims Services Corp.*

  
\_\_\_\_\_  
Employee of  
LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.

**EXHIBIT “A”**

**EXHIBIT “A”**



CLERK OF THE COURT

1 TRAN

2  
3 EIGHTH JUDICIAL DISTRICT COURT  
4 CIVIL/CRIMINAL DIVISION  
5 CLARK COUNTY, NEVADA

6 COMMISSIONER OF INSURANCE )  
7 FOR THE STATE OF NEVADA AS )  
8 RECEIVER OF LEWIS AND CLARK, )

9 Plaintiff, )

10 vs. )

11 ROBERT CHUR, et al, )

12 Defendants. )

CASE NO. A-14-711535

DEPT. NO. XXVII

13 BEFORE THE HONORABLE NANCY ALLF, DISTRICT COURT JUDGE

14 WEDNESDAY, JANUARY 27, 2016

15 **TRANSCRIPT RE:**

16 DEFENDANTS ROBERT CHUR, STEVE FOGG, MARK GARBER,  
CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN,  
JEFF MARSHALL AND ERIC STICKELS' MOTION TO DISMISS

17 APPEARANCES:

18 For the Plaintiff:

BRENOCH R. WIRTHLIN, ESQ.  
KARL L. NIELSON, ESQ.

19 For Defendants U.S. RE Corporation,  
20 Uni-Ter Underwriting Management Corp.,  
and Uni-Ter Claims Services Corp.:

GEORGE F. OGILVIE, III, ESQ.

21 For Defendants Robert Chur, Steve Fogg,  
22 Mark Garber, Carol Harter, Robert Hurlbut,  
Barbara Lumpkin, Jeff Marshall, and  
23 Eric Stickels:

ANGELA NAKAMURA OCHOA, ESQ.

24 RECORDED BY: Traci Rawlinson, Court Recorder

1 CLARK COUNTY, NEVADA

WEDNESDAY, JANUARY 27, 2016

2 PROCEEDINGS

3 (PROCEEDINGS BEGAN AT 10:01:30 A.M.)

4 THE COURT: Calling the case of Commissioner of Insurance versus Chur.

5 MR. NIELSON: Good morning, Your Honor. Karl Nielson and Brenoch  
6 Wirthlin on behalf of the plaintiff.

7 THE COURT: Thank you.

8 MS. OCHOA: Good morning, Your Honor. Angela Ochoa on behalf of Robert  
9 Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin,  
10 Jeff Marshall and Eric Stickels, who I'll call the board of director defendants.

11 THE COURT: Thank you.

12 MR. OGILVIE: Good morning, Your Honor. George Ogilvie on behalf of  
13 U.S. RE Corporation and the Uni-Ter defendants.

14 THE COURT: Thank you all. This is the board of directors defendants'  
15 motion to dismiss the first and second causes of action for gross negligence and  
16 for a deepening of the insolvency.

17 Ms. Ochoa.

18 MS. OCHOA: Yes, Your Honor. This is my motion to dismiss, and it's not  
19 based on an assertion of the business judgment rule. I'm asking for the Court to  
20 dismiss this case because under NRS 78.138(7) directors and officers cannot be  
21 personally liable for anything less than a breach of fiduciary duty arising out of an  
22 intentional, fraudulent or knowing violation of the law. None of those allegations are  
23 presented within the complaint as against my clients. So that's the basis. That's  
24 the gist and that's why we want it dismissed.

1           Alternatively, this Court can also dismiss this case because of the  
2 plaintiff's failure to state a claim. Now, the standard is to accept all factual  
3 allegations as true, but the Court can dismiss conclusory statements. And in this  
4 case there's no doubt there's a lot of factual allegations, but they all support that  
5 my clients acted, they tried to be informed, and they took immediate action upon  
6 knowing or having been informed that in September of 2011 the corporation was  
7 in financial straits. So we think there's another basis to dismiss this case.

8           Finally, at the very least we ask that this Court dismiss the claim for  
9 deepening insolvency. It just has not been recognized in the state of Nevada.

10       THE COURT: Thank you, Ms. Ochoa.

11       Mr. Ogilvie, do you have anything to add?

12       MR. OGILVIE: No, Your Honor.

13       THE COURT: All right. Plaintiff, your opposition, please.

14       MR. WIRTHLIN: Thank you, Your Honor. Your Honor, may I use the  
15 lectern?

16       THE COURT: Of course.

17       MR. WIRTHLIN: Your Honor, I'm happy to address any questions the Court  
18 has at any time. I'll just start very briefly. I believe that the key statute here is  
19 NRS 78.138. That's the business judgment rule that the Nevada Supreme Court  
20 has codified at that statute. There's really -- the two claims that are at issue are  
21 the gross negligence and deepening of the insolvency. On gross negligence the  
22 Nevada Supreme Court in Shoen that we cited has very clearly delineated what  
23 the business judgment rule covers and what it doesn't. And I think that the critical  
24 understanding for -- with respect to the defendants, individual defendants' arguments

1 is that what they're really doing is confusing the separate duties that they have  
2 to the company, the duty of care and the duty of loyalty. And if you look at the  
3 Shoen language, the court very clearly points that out. And they -- I don't know,  
4 I think it was just inadvertent in their motion and reply, left out the key distinction  
5 there.

6           If we look at that paragraph that we cited, it's 640 in Shoen; 122 Nev.  
7 640. The Court says: "And directors and officers may only be found personally  
8 liable for breaching their fiduciary duty of loyalty if that breach involves intentional  
9 misconduct, fraud, or a knowing violation of the law." And that's true, but the issue  
10 here is the duty of care, which is a separate duty. And the preceding sentence the  
11 court says very clearly, quote: "With regard to the duty of care, the business  
12 judgment rule does not protect the gross negligence of uninformed directors and  
13 officers." So those are two separate duties. It's true, as the Shoen court pointed  
14 out, that some type of allegation of fraud must be alleged for breach of the duty  
15 of loyalty, but a number of -- a director or officer could potentially be loyal to a  
16 company without being properly informed, and that would be a violation of a duty  
17 of care and that's really is what is at issue here is a duty of care. We're alleging  
18 through multiple paragraphs and allegations that the directors and officers were  
19 not properly informed.

20           And in fact, the individual defendants really cite only Section 7 as  
21 kind of an exclusion and assert that that's the business judgment rule or that's the  
22 provision they're relying on. The business judgment rule really is the entire section,  
23 though, and that's critical to note because Section 2 provides that, quote: "A  
24 director or officer is not entitled to rely on such information, opinions, reports, books

1 of account or statements if the director or officer has knowledge concerning the  
2 matter in question that would cause reliance thereon to be unwarranted." That's  
3 really the genesis, the basis of our complaint against them. They knew, they had  
4 information that what they were receiving wasn't accurate or complete, and yet did  
5 not properly inform themselves going forward. That's consistent with Delaware law,  
6 which much of Nevada case law is obviously based on. And we cited the Dodgers  
7 case, Los Angeles Dodgers, 457 B.R. 308, where the court says the business  
8 judgment rule will govern unless the opposing party can show one of the four  
9 elements, one of which is the directors were uninformed; another is grossly  
10 negligent. And that's really what the Shoen court was delineating in this case.

11 As far as the allegations, we go through it in some detail in our  
12 opposition, but obviously paragraphs 162, 63, 64, we talk about several instances  
13 in which the requisite diligence was not shown. The directors and officers knew  
14 that they were not receiving information, requested further information, didn't receive  
15 it; failed to inform themselves. That's really the basis for that claim for relief.

16 With respect to the deepening of the insolvency claim, that is a  
17 recognized claim in Nevada. The district court chief judge, Judge Pro, held that  
18 a trustee had standing to pursue those claims. Now, in their reply the individual  
19 defendants try to distinguish that case, saying that the court was only recognizing  
20 that as a claim or rather a measure of damages. That's inaccurate. The language  
21 actually of that case, and we cite to that, it's 319 B.R. 216. The court talks about  
22 the counts that allege acts and omissions that caused damages by permitting the  
23 effective date accounting to prolong the corporation's life. And the court said  
24 specifically, and I'm quoting here: "Accordingly, the trustee has standing to pursue



1 these claims.”

2 In doing that, Judge Pro cites to Lafferty, which the defendants actually  
3 cite in their motion, as recognizing it as a separate claim. And there is a distinction  
4 between those. They’re not superfluous. Gross negligence can exist without a  
5 deepening of the insolvency. But as the case law that we cited makes clear,  
6 deepening of the insolvency is itself a separate and distinct claim for relief, and we  
7 have alleged that. It is a recognized claim in Nevada. We would as that the motion  
8 to dismiss be denied.

9 THE COURT: Thank you, Mr. Wirthlin.

10 Ms. Ochoa.

11 MS. OCHOA: Several issues, Your Honor. NRS 78.138(7) is not the  
12 business judgment rule. It’s separate and apart. You have to show a breach of  
13 fiduciary duty arising out of an intentional or fraudulent act or a knowing violation  
14 of the law. That is the threshold. In Shoen, that was not an issue. They were  
15 not looking at the validity of that limited liability provision. They were not even  
16 contesting it. The issue was what did the plaintiff have to do with respect to  
17 pleading futility in a derivative claim. They were not talking about this statute that  
18 I’m trying to have this case dismissed under, so I don’t think Shoen is applicable.

19 You know, I gave the history of this statute and it shows, you know,  
20 in 2001 people considered NRS 78.138 a codification of the business judgment rule.  
21 But thereafter this limited liability provision was provided, which all of the Nevada  
22 Legislature understood they wanted to give more protections to board of directors  
23 and officers, more than whatever the business judgment rule had. They wanted to  
24 provide more so people would bring their businesses here. And so that’s why this

1 is separate from that business judgment rule. And I think this Court has a basis  
2 to dismiss it under that basis -- under that statute.

3 Finally, I think they're reading In re Agribiotech wrong. You know, first  
4 of all, it was a case by a bankruptcy judge or by Judge Pro in a bankruptcy case.

5 THE COURT: It was an appeal. And frankly, I was a lawyer involved in the  
6 case years ago. So, go ahead.

7 MS. OCHOA: Right. And it's about -- it's against accountants, it's not against  
8 a board of directors, so I don't think it's applicable.

9 THE COURT: Well, it deals with the same allegations, though, made in the  
10 gross negligence cause of action here, the same type of inattention, infrequency of  
11 reporting. So, but I hate to cut you off.

12 MS. OCHOA: Right. So either way, I don't think it's applicable. But I think  
13 that the Court does have a basis to dismiss it under the Subsection 7 of NRS 78.138.

14 THE COURT: Thank you, both. This is the defendant -- rather than reciting  
15 the members, it is basically the board of directors' motion to dismiss the receiver's  
16 first two causes of action for gross negligence and for a deepening of the  
17 insolvency. The motion will be granted in part and denied in part as follows.

18 With regard to the motion to dismiss the first cause of action for gross  
19 negligence, the motion is granted but with leave to amend for the reason that when  
20 I first reviewed the complaint and certainly, you know, there are factual allegations  
21 that would support a negligence cause of action, but I don't see where it's kicked  
22 up into the gross negligence. The business judgment rule is applicable. Intentional  
23 conduct would have to be pled in order to proceed on that gross negligence cause  
24 of action. Just the infrequency of board meetings, the change of position from 2007

1 to 2009, the failure to record the computation of profit commissions in October 2010,  
2 those are negligence causes of action but it's not sufficiently pled to be pled as  
3 gross negligence. So it will be dismissed with leave to amend.

4 With regard to the second cause of action for the deepening of the  
5 insolvency, I think it can exist as a collateral cause of action. I don't think it can  
6 stand on its own in Nevada. I find that the district court opinion by Judge Pro is  
7 persuasive authority. And the Nevada Supreme Court hasn't recognized but they  
8 also haven't said that that cause of action doesn't exist in the state of Nevada. So  
9 if the plaintiff chooses to -- if the plaintiff chooses to amend the first cause of action,  
10 then I will allow the second cause of action to continue.

11 Ms. Ochoa, will you work with plaintiff's counsel to prepare an order?

12 MS. OCHOA: I will, Your Honor.

13 THE COURT: Very good. Mr. Ogilvie, do you wish to sign off on that?

14 MR. OGILVIE: No, that's fine, Your Honor. Thank you.

15 THE COURT: Very good. So approve as to form. Any questions?

16 MR. WIRTHLIN: No, Your Honor.

17 MS. OCHOA: Can we just put a date in which to amend by?

18 THE COURT: Thirty days.

19 MS. OCHOA: Okay, thank you.

20 THE COURT: Thirty days from entry of the order.

21 MS. OCHOA: Okay.

22 THE COURT: Thank you both.

23 MR. WIRTHLIN: Thank you, Your Honor.

24 MR. OGILVIE: Your Honor, I have a collateral matter.

1 THE COURT: Yes?

2 MR. OGILVIE: I filed a motion to associate counsel yesterday.

3 THE COURT: I see that.

4 MR. OGILVIE: And it's set for a hearing or decision on March 1st, which is

5 after the February 25th hearing date of U.S. RE and Uni-Ter's motion to dismiss.

6 I'd just like to advance that decision date so my --

7 THE COURT: In all business court cases I entertain orders shortening time.

8 And very often we set these on chambers calendar, so if the matter was set on

9 the court's -- it's on the chambers calendar March 1st. So if you ask for an order

10 shortening time, I will be happy to grant it. If we know there's no opposition, I'll be

11 happy to grant it.

12 MR. OGILVIE: I'll work with counsel to see if there's any opposition and I'll

13 inform the Court.

14 THE COURT: Very good.

15 MR. OGILVIE: Thank you.

16 THE COURT: Thank you.

17 MR. WIRTHLIN: Thank you, Your Honor.

18 (PROCEEDINGS CONCLUDED AT 10:15 A.M.)

19 \* \* \* \* \*

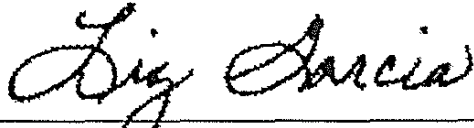
20

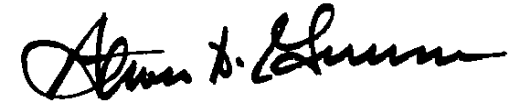
21 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-

22 video recording of this proceeding in the above-entitled case to the best of my ability.

23

24

  
Liz Garcia, Transcriber  
LGM Transcription Service



CLERK OF THE COURT

1 ACOM  
JAMES L. WADHAMS, ESQ.  
2 Nevada Bar No. 1115  
BRENOCH WIRTHLIN, ESQ.  
3 Nevada Bar No. 10282  
FENNEMORE CRAIG, P.C.  
4 300 South Fourth Street, Suite 1400  
Las Vegas, Nevada 89101  
5 Telephone: (702) 692-8000  
Facsimile: (702) 692-8099  
6 [bwirthlin@fclaw.com](mailto:bwirthlin@fclaw.com)  
*Attorneys for Plaintiff Commissioner of Insurance*  
7 *For the State of Nevada*

8  
9 DISTRICT COURT OF NEVADA

10 CLARK COUNTY, NEVADA

11 COMMISSIONER OF INSURANCE FOR  
12 THE STATE OF NEVADA AS RECEIVER  
OF LEWIS AND CLARK LTC RISK  
13 RETENTION GROUP, INC.,

14 Plaintiff,

15 vs.  
16

17 ROBERT CHUR, STEVE FOGG, MARK  
18 GARBER, CAROL HARTER, ROBERT  
HURLBUT, BARBARA LUMPKIN, JEFF  
19 MARSHALL, ERIC STICKELS, UNI-TER  
UNDERWRITING MANAGEMENT CORP.,  
20 UNI-TER CLAIMS SERVICES CORP., and  
U.S. RE CORPORATION;; DOES 1-50,  
21 inclusive; and ROES 51-100, inclusive;

22 Defendants.  
23

Case No.: A-14-711535-C

Dept No.: XXVII

THIRD AMENDED COMPLAINT

[Request for Exemption to be Filed]  
[Damages in Excess of \$50,000]

24 Plaintiff, the Court-appointed receiver ("Plaintiff") of Lewis & Clark LTC Risk Retention  
25 Group, Inc. ("L&C" or the "Company"), files the Third Amended Complaint clarifying the  
26 Exhibits referenced in the Complaint and hereby complains and alleges as follows:

27 ///

28 ///

1 PARTIES, JURISDICTION AND VENUE

2 1. L&C was a Nevada domiciled risk retention group formed in 2004. Between 2004  
3 and February 28, 2013, L&C provided general and professional liability coverage to long term  
4 care facilities and home health providers.

5 2. The Nevada Division of Insurance ("DOI") filed a Receivership Action related to  
6 L&C in November, 2012, commencing case number A-12-672047-B in the Eighth Judicial  
7 District Court of Nevada, in and for the County of Clark ("Receivership Action"). In the  
8 Receivership Action, the court entered an Order of Liquidation ("Liquidation Order") on  
9 February 28, 2013. A copy of the Liquidation Order is attached hereto as **Exhibit 1**. In the  
10 Liquidation Order, Plaintiff was appointed as the Receiver ("Receiver") of L&C. *Id.* The express  
11 powers granted to Receiver in the Order include the power to "[p]rosecute any action which may  
12 exist on behalf of the policyholders, members or shareholders of L&C against any officer of L&C  
13 or any other person[.]" See Liquidation Order, Exhibit 1, at ¶6(g).

14 3. On information and belief, defendant Robert Chur ("Chur") was a director of L&C  
15 at all relevant times including as of the time the Receivership Action was filed.

16 4. On information and belief, Chur resides in Williamsville, New York.

17 5. On information and belief, Chur was also President of ElderWood Senior Care at  
18 relevant times.

19 6. On information and belief, defendant Steve Fogg ("Fogg") was a director of L&C  
20 at all relevant times including as of the time the Receivership Action was filed.

21 7. On information and belief, Fogg resides in Oregon.

22 8. On information and belief, Fogg was also Chief Financial Officer of Marquis  
23 Companies at relevant times.

24 9. On information and belief, defendant Mark Garber ("Garber") was a director of  
25 L&C at all relevant times including as of the time the Receivership Action was filed.

26 10. On information and belief, Garber resides in Oregon.

27 11. Garber was also Chief Financial Officer of Pinnacle Healthcare, Inc. ("Pinnacle")  
28 at relevant times.

1           12.     On information and belief, defendant Carol Harter ("Harter") was a director of  
2 L&C at all relevant times including as of the time the Receivership Action was filed.

3           13.     On information and belief, Harter resides in Las Vegas, Nevada.

4           14.     On information and belief, Harter was also a professor at University of Nevada,  
5 Las Vegas at relevant times.

6           15.     On information and belief, defendant Robert Hurlbut ("Hurlbut") was a director of  
7 L&C at all relevant times including as of the time the Receivership Action was filed.

8           16.     On information and belief, Hurlbut resides in New York.

9           17.     On information and belief, defendant Barbara Lumpkin ("Lumpkin") was a  
10 director of L&C at all relevant times including as of the time the Receivership Action was filed.

11          18.     On information and belief, Lumpkin resides in Florida.

12          19.     On information and belief, Lumpkin was also the Associate Executive Director of  
13 the Florida Nurses Association at relevant times.

14          20.     On information and belief, defendant Jeff Marshall ("Marshall") was the President  
15 and CEO of L&C at all relevant times including as of the time the Receivership Action was filed.

16          21.     On information and belief, Marshall resides in Washington.

17          22.     On information and belief, Marshall was also President and CEO of Eagle  
18 Healthcare, Inc. ("Eagle Healthcare") at relevant times.

19          23.     On information and belief, defendant Eric Stickels ("Stickels") was the Secretary  
20 and Treasurer of L&C at all relevant times including as of the time the Receivership Action was  
21 filed.

22          24.     On information and belief, Stickels resides in New York.

23          25.     On information and belief, Stickels was also Chief Financial Officer of Oneida  
24 Savings Bank ("Oneida") at relevant times.

25          26.     On information and belief, U.S. RE Corporation ("U.S. RE") is a New York  
26 corporation and is an international financial services firm with interests in reinsurance brokerage,  
27 investment banking, and program business, as well as holdings in the insurance industry.

28          27.     On information and belief, defendant Uni-Ter Underwriting Management

1 Corporation ("Uni-Ter UMC" or "Uni-Ter") is a Georgia corporation and is a wholly owned  
2 subsidiary of U.S. RE Corporation.

3 28. On information and belief, Uni-Ter Claims Services Corp. ("Uni-Ter CS") is a  
4 Georgia corporation and is a wholly owned subsidiary of Uni-Ter UMC.

5 29. On information and belief, Defendants DOE INDIVIDUALS 1 through 50 and  
6 ROE COMPANIES 51 through 100 are individuals or business entities currently unknown to  
7 Plaintiff who claim some right, title, interest or lien in the subject matter of this action. When the  
8 names of said DOE INDIVIDUALS and ROE COMPANIES have been ascertained, Plaintiff will  
9 request leave to substitute their true names and capacities and join them in this action.

### 10 GENERAL ALLEGATIONS

#### 11 A. Introduction

12 30. L&C was a Nevada corporation formed in or around 2003. L&C was organized as  
13 a risk retention group to write Professional and General Liability coverage for long-term care  
14 facilities in the Pacific Northwest.

15 31. L&C expanded its area of operation over the years and, at the time of Receivership  
16 Action in 2012, wrote coverage for long term care facilities in 46 states, although New York,  
17 California, Oregon, and Washington accounted for a majority of the premiums.

18 32. The individual defendants include the directors and officers of L&C at the relevant  
19 times who, among other things, were grossly negligent in performing their duties as directors and  
20 officers of L&C which resulted the Receivership Action being filed.

21 33. Defendants Uni-Ter UMC and Uni-Ter CS were retained as a manager of L&C.  
22 Defendant U.S. RE was retained to provide reinsurance to L&C.

23 34. On information and belief, the Defendants who were directors and officers of L&C  
24 ("Board") were aware at the time it retained Uni-Ter and its affiliates that they had only recently  
25 been formed and had limited operating history. Further, the Board understood that the Board  
26 members had not previously organized an insurance company. Thus, on information and belief,  
27 the Board placed undue reliance on Uni-Ter as its manager without properly informing itself of  
28 the information provided by Uni-Ter and its affiliates. Further, on information and belief, the



1 Board continued to rely on information and recommendations from Uni-Ter despite clear  
2 indications that the information was incomplete and inaccurate and the recommendations were ill  
3 advised, but the Board failed to exercise even slight diligence or care in verifying or correcting  
4 the misinformation provided by Uni-Ter, U.S. RE and others, and to take proper corrective action.

5 **B. Acquisitions and Growth of L&C**

6 35. During calendar year 2005, L&C acquired Henry Hudson LTC Risk Retention  
7 Group, Inc. ("Henry Hudson") which wrote exclusively in New York. L&C assumed all  
8 outstanding liabilities of Henry Hudson.

9 36. L&C acquired Sophia Palmer Nurses Risk Retention Group ("Sophia Palmer") in  
10 2009. Sophia Palmer wrote general and professional liability policies to nurses mostly in Florida.  
11 L&C assumed all outstanding liabilities of Sophia Palmer.

12 37. By the time it was placed in receivership, L&C had issued approximately 25,254  
13 shares of common stock. Its directors and officers held approximately 11,720 shares. The largest  
14 shareholders were Pinnacle with approximately 3663 shares and Eagle Healthcare with  
15 approximately 4041 shares.

16 38. L&C was managed by Uni-Ter UMC at all times. Uni-Ter UMC also did other  
17 work including private offering work on behalf of L&C such as sending out the offering  
18 memoranda and offering documents on behalf of the company.

19 **C. Agreements with the Uni-Ter Entities and Brokers**

20 39. The Uni-Ter entities hold themselves out as a leading provider of liability  
21 insurance to the healthcare industry.

22 40. Uni-Ter UMC has created at least five Risk Retention Groups which include L&C,  
23 Ponce de Leon LTC RRG, Inc., and J.M. Woodworth RRG, Inc.

24 41. As a Managing General Underwriter, Uni-Ter's services to L&C included  
25 administration, underwriting, risk management, claims, and regulatory compliance.

26 ///

27 ///

28 ///

1           (1)     **Management Agreements**

2           42.     Immediately upon formation of L&C by Uni-Ter UMC, L&C entered into  
3 management agreements with Uni-Ter UMC. In 2011, Uni-Ter entered into a new management  
4 agreement with Uni-Ter UMC and Uni-Ter CS.

5           a.     2004 Management Agreement

6           43.     L&C and Uni-Ter UMC entered into a Management Agreement dated January 1,  
7 2004 ("2004 Management Agreement") for a period of seven years. A copy of the 2004  
8 Management Agreement is attached hereto as **Exhibit 2**.

9           44.     In the agreement, L&C appointed Uni-Ter UMC as its exclusive underwriting,  
10 administrative, accounting, risk management, and claims manager for the lines of business and  
11 territories set forth in Exhibit A to that agreement.

12          45.     The 2004 Management Agreement states that Uni-Ter UMC would "serve L&C in  
13 a fiduciary capacity for all legal duties." *Id.*

14          46.     Uni-Ter UMC's duties under the 2004 Management Agreement expressly included  
15 the following: (i) Soliciting of risks and class of risks that meet L&C's underwriting and pricing  
16 standards, appointing qualified brokers and agents to sell the insurance, (ii) binding of risks, (iii)  
17 issuance, renewal, and cancellation of policies, (iv) collection of premiums, (v) handling of  
18 claims, (vi) keeping accurate records and having audits done, (vii) maintaining electronic files,  
19 (viii) providing the usual and customary services to insureds, (ix) ensuring compliance with state  
20 and federal regulations, (x) determining and setting appropriate premium rates, (xi) compiling and  
21 providing the needed statistical reports to L&C, (xii) holding all of L&C's assets in investment  
22 custodian accounts as a fiduciary, (xiii) determining and obtaining appropriate reinsurance  
23 authorized by L&C, (xiv) safeguarding and maintaining L&C property, and (xv) accounting to  
24 L&C for certain financial and insurance information on a monthly basis (including operating  
25 statement, balance sheet, policies written for the month, claims incurred for the month, AR  
26 summary, and summary of all claims, reserves, and losses). *Id.*, at Article III.

27          47.     Uni-Ter's duties also specifically included "[t]o arrange for or perform risk  
28 management services for the benefit of the insureds of L&C. Such risk management shall have

1 the primary goal of reducing the frequency of medical incidents that give rise to policy claims.  
2 Specific risk management duties are set forth in Exhibit C.” *Id.* Art. III(R).

3 48. Uni-Ter’s duties also included filing quarterly and annual financial statements with  
4 the Nevada DOI and other states requiring the same. *Id.* Art. III(H)(2).

5 49. The 2004 Management Agreement also included Exhibit B entitled Claims  
6 Management Authority which stated that Uni-Ter UMC “shall handle all aspects of claim  
7 processing . . . for all claims and allocated loss adjustment expenses subject to this Agreement.”  
8 The Exhibit then lists specific claims handling duties of Uni-Ter including monthly reporting of  
9 new claims, open reserves, paid claims, and ending reserve balance for both indemnity and  
10 expense activity. *Id.* at Exhibit B.

11 50. Regarding compensation, Uni-Ter was paid in three components.

12 (i) A management fee of 22% of gross written premiums net of cancellations  
13 and non renewals up to \$5 million, 20% between \$5 million and \$15  
14 million, and 17.5% above \$15 million. Management fees were to be paid  
15 monthly.

16 (ii) Claims handling fees of \$250 per file setup for each claim or investigation,  
17 \$95 per hour for claim adjuster/nurse professional time, and actual travel  
18 expenses.

19 (iii) A profit sharing bonus on a sliding scale as a percent of earned premiums  
20 based on loss ratio for each calendar year. The profit sharing bonus was to  
21 be paid no later than March 1 of the year following the fifth year after the  
22 year at issue.

23 *See id.*

24 51. The 2004 Management Agreement included amendments that modified these  
25 payment terms. *Id.*

26 52. The Second Amendment to the 2004 Management Agreement states that for all  
27 services under the 2004 Management Agreement other than claims handling, the management fee  
28 will be 12% of annual gross written premiums net of cancellations and non-renewals plus the

1 amount of agency commissions (at rates approved by L&C) payable to retail and wholesale  
2 agents appointed by Uni-Ter. *Id.*

3 53. Various amendments raised the hourly rate for claim adjuster/professional time.  
4 *Id.*

5 54. The Fifth Amendment to the 2004 Management Agreement modified the profit  
6 sharing bonus provision to be paid on March 1 of the year following the fourth year after the year  
7 at issue. *Id.*

8 55. On information and belief, in or around 2009 L&C, at Uni-Ter's direction,  
9 accepted multiple multi-site LTC operators ("Multi-site Operators") as policyholders. As noted  
10 above, one of these operators was Sophia Palmer.

11 56. On information and belief, at the time L&C accepted Sophia Palmer, Lumpkin – a  
12 director of L&C – also chaired the board of Sophia Palmer.

13 57. On information and belief, the DOI reprimanded the Board for failing to submit a  
14 Conflict of Interest Statement as the officers and directors of L&C were required to do pursuant  
15 to NAC 694C.

16 58. On information and belief, the Board accepted Uni-Ter's direction to obtain the  
17 Multi-site Operators, including Sophia Palmer, without adequate information. In fact, the Board  
18 failed to even exercise a slight degree of diligence in determining whether the acceptance of the  
19 Multi-site Operators, including Sophia Palmer, was an appropriate decision.

20 59. On information and belief, had the Board exercised even scant care in informing  
21 itself based upon the information available to it regarding the Multi-site Operators, it would have  
22 discovered that in fact the recommendation by Uni-Ter was ill advised.

23 60. On information and belief, L&C's acceptance of the Multi-site Operators  
24 constituted a significant divergence from the established business model of L&C as the Multi-site  
25 Operators were large, multi-facility operators and had historical loss records outside L&C's  
26 typical underwriting range. Further, on information and belief, one of the contracts at issue  
27 contained an unprecedented provision that limited the claims exposure of L&C on an aggregate  
28 level rather than on a claim-specific level.

1           61.     Following L&C's acquisition in 2009 of the Sophia Palmer nurse/nurse  
2 practitioner book of business in Florida, the Seventh Amendment stated that the existing profit  
3 sharing terms were applicable to L&C's long term care facility/home health care book of  
4 business, but that regarding L&C's nurse/nurse practitioner book of business produced by agents,  
5 the profit sharing bonus (called "commissions") were to be paid at a rate of 37.5% of the annual  
6 gross written premiums net of cancellations and non-renewals. For nurse/nurse practitioner  
7 business produced by Uni-Ter UMC, the commission rate was to be 30.0%.

8           62.     The Eighth Amendment to the 2004 Management Agreement stated that  
9 management fees were to be paid to Uni-Ter UMC on a continuing basis as premiums are  
10 collected or adjusted (as opposed to monthly previously). *Id.*

11           63.     On information and belief, Uni-Ter received at least \$1,500,000 in management  
12 fees in 2010.

13                   b.     2011 Management Agreement

14           64.     At the expiration of the 2004 Management Agreement, L&C and Uni-Ter UMC  
15 (and Uni-Ter's subsidiary Uni-Ter CS) entered into a similar Management Agreement on January  
16 1, 2011 ("2011 Management Agreement") for a period of five years. A copy of the 2011  
17 Management Agreement is attached hereto as **Exhibit 3**.

18           65.     The 2011 Management Agreement was in place when the Order of Liquidation  
19 was entered.

20           66.     The 2011 Management Agreement states that Uni-Ter UMC and Uni-Ter CS as  
21 Manager would "serve L&C in a fiduciary capacity for all legal duties." *Id.* It sets forth similar  
22 duties for Uni-Ter as under the 2004 agreement. The management fee and claims handling fees  
23 portion of the compensation are the same as the amended compensation under the 2004  
24 agreement.

25           67.     The 2011 Management Agreements included the following revisions to the 2004  
26 Management Agreement:

- 27                   (i)     The accounting reporting to L&C is to be done on a quarterly basis instead  
28 of monthly. Art. III(H).

- 1 (ii) Exhibit A was revised regarding the territory to include all of the U.S.  
2 except for Hawaii and Alaska and excluding long term care and home  
3 healthcare in Florida.
- 4 (iii) The limitations of Uni-Ter's authority in Article III(Y) are revised to delete  
5 the limitations set forth in items 2, 6, and 9 of the 2004 agreement. Uni-  
6 Ter's new allowed duties (i.e., no longer a limitation) included that it had  
7 full authority to settle claims on L&C's behalf or commit L&C to pay  
8 claims.
- 9 (iv) The profit sharing bonus provision was revised to apply from 2007 forward  
10 with 2006 being the last year under the 2004 Management Agreement. For  
11 2007 onward, the profit sharing bonus was to be 20% of L&C's Profit as  
12 defined to be pre-tax net income as adjusted for the applicable year's loss  
13 ratio, ALAE ratio, and reinsurance payables and receivables through  
14 December 31 of the fourth year following the applicable year.  
15 Id.

16 68. The First Amendment to the 2011 Management Agreement revised the  
17 management fee for calendar year 2011 to be at a rate of 10% instead of 12% and stated that  
18 continuation of the 2% differential for subsequent periods is subject to mutual agreement of the  
19 parties. A handwritten notation on the amendment states that "This was revised on February 7<sup>th</sup>,  
20 2011." Id.

21 69. The Second Amendment is dated November 15, 2011 in conjunction with  
22 additional capital contributions at that time. It states that for so long as any amounts are unpaid  
23 on the surplus debentures of L&C issued in 2011 and 2012, the profit sharing bonus payable to  
24 Uni-Ter UMC shall accrue but not be paid. Id.

25 70. The Third Amendment done on December 31, 2011 states that no profit sharing  
26 bonus would accrue or be paid regarding the 2008 calendar year. Id.

27 71. Despite the changes to Uni-Ter's management responsibilities, and despite the dire  
28 financial circumstances of L&C during 2011, on information and belief Uni-Ter received not less

1 than \$1,000,000.00 in management fees in 2011.

2 72. Milliman, Inc. ("Milliman"), an actuarial firm, provided Rate and Loss Reserve  
3 analysis to Uni-Ter ("Milliman Reports"). Milliman was engaged by Uni-Ter, and not L&C, in  
4 the work that it did. Milliman did premium rate and professional liability and general liability  
5 rate analysis for Uni-Ter. Milliman also did loss reserve analysis for Uni-Ter.

6 (2) U.S. RE Agreement

7 73. In a Broker of Record Letter Agreement between L&C and U.S. RE, L&C  
8 appointed U.S. RE as its exclusive reinsurance intermediary/broker for a period of seven years  
9 and granted U.S. RE full and complete authority to negotiate the placement of reinsurance on all  
10 classes of insurance with unspecified limits of coverage as requested by any underwriter of L&C,  
11 i.e., Uni-Ter ("U.S. RE Agreement"). A copy of the U.S. RE Agreement is attached hereto as  
12 Exhibit 4.

13 74. The U.S. RE Agreement states that U.S. RE will handle all funds collected for  
14 L&C in a fiduciary capacity. Id.

15 75. In each of the eleven (11) ceded reinsurance agreements between L&C and its  
16 reinsurers, U.S. RE is listed as the reinsurance intermediary in each agreement via an  
17 intermediary clause in the reinsurance agreements.

18 76. U.S. RE was not merely hired as some uninvolved third party broker of  
19 reinsurance, although acting as a third party broker of reinsurance was included with U.S. RE's  
20 duties.

21 77. On information and belief, Uni-Ter Underwriting Management Corporation ("Uni-  
22 Ter Underwriting") and Uni-Ter Claims Services Corporation ("Uni-Ter Claims") were retained  
23 as the managers of L&C.

24 78. On information and belief, both Uni-Ter Underwriting and Uni-Ter Claims are  
25 direct or indirect subsidiaries of U.S. RE.

26 79. U.S. RE was itself engaged as L&C's "exclusive reinsurance intermediary/broker"  
27 and as L&C's agent, including being granted "full and complete authority to negotiate the  
28 placement of reinsurance or retrocessions on all classes of insurance with unspecified limits of



1 coverage as specifically requested by any underwriter of [L&C].” *Id.*

2 80. The U.S. RE Agreement further recognizes U.S. RE’s agency with L&C by stating  
3 that U.S. RE “will exercise its best efforts in the discharge of its duties **on behalf of the**  
4 **Company.**” *Id.* (emphasis added).

5 81. The Supreme Court of Nevada has held that “[a]n agency relationship is formed  
6 when one who hires another retains a contractual right to control the other’s manner of  
7 performance.” *Grand Hotel Gift Shop v. Granite State Ins. Co.*, 108 Nev. 811, 815, 839 P.2d  
8 599, 602 (1992) (citation omitted).

9 82. U.S. RE acted as the agent of L&C, as the U.S. RE Agreement expressly states not  
10 only that U.S. RE will act “on behalf of” L&C, but also that L&C has the right to control U.S.  
11 RE’s manner of performance as U.S. RE promises to “comply with written standards established  
12 by [L&C] for the cession or retrocession of all insured risks.” *Id.*

13 83. Further, Nevada law makes clear that “[a]n agent, such as respondent in these  
14 circumstances, owes to the principal the highest duty of fidelity, loyalty and honesty in the  
15 performance of the duties by the agent on behalf of the principal.” *LeMon v. Landers*, 81 Nev.  
16 329, 332, 402 P.2d 648, 649 (1965) (holding that the agent breached her fiduciary obligations)  
17 (emphasis added); *see also Chem. Bank v. Sec. Pac. Nat. Bank*, 20 F.3d 375, 377 (9th Cir. 1994)  
18 (“The very meaning of being an agent is assuming fiduciary duties to one’s principal.”) (*citing*  
19 *Restatement (Second) of Agency* § 1(1)).

20 84. Additionally, as noted above, U.S. RE was engaged not only as L&C’s exclusive  
21 broker, but also as its consultant. Many courts have recognized that insurance brokers are agents  
22 of, and therefore owe fiduciary duties to, their insureds. *See Capitol Indem. Corp. v. Stewart*  
23 *Smith Intermediaries, Inc.*, 229 Ill. App. 3d 119, 124-25, 593 N.E.2d 872, 876 (1992) (“An  
24 agency relationship is a fiduciary one; insurance brokers employed for a single transaction or  
25 series of transactions are agents...”).

26 85. The Nevada Supreme Court has recognized that insurance brokers may assume  
27 additional duties – including through representations by the broker upon which the insured relies  
28 – thereby creating a special relationship between the broker and the insured. *Flaherty v. Kelly*,



1 2013 WL 7155078, at \*2 (Nev. Dec. 18, 2013).

2 86. U.S. RE assumed such duties including “substantial and essential efforts expended  
3 by U.S. RE and its affiliates in the organization and licensing of [L&C]” and serving as a  
4 consultant to U.S. RE. *See* U.S. RE Agreement.

5 87. Further, as recognized in the U.S. RE Agreement, U.S. RE’s agency relationship  
6 with Plaintiff extended to additional actions and bases with U.S. RE, including but not limited to  
7 the “substantial and essential efforts expended by U.S. RE and its affiliates in the organization  
8 and licensing of [L&C]” and to state that U.S. RE will “serve as the exclusive intermediary in  
9 connection with the placement of all of [L&C’s] reinsurance.” *Id.*

10 88. The U.S. RE Agreement further recognizes U.S. RE’s agency with L&C by stating  
11 that U.S. RE “will exercise its best efforts in the discharge of its duties on behalf of the  
12 Company.” *Id.* (emphasis added). The U.S. RE Agreement also states that “[a]ll funds collected  
13 for [L&C]’s account will be handled by U.S. RE in a fiduciary capacity in a bank which is a  
14 qualified United States financial institution.” *Id.*

15 89. Thus, U.S. RE was the agent of Plaintiff in multiple aspects, including but not  
16 limited to, those set forth above.

17 90. Further, U.S. RE did more than merely act as some disinterested third party  
18 reinsurance broker. In fact, U.S. RE was directly involved in the activities of L&C in its capacity  
19 as agent of L&C.

20 91. Moreover, U.S. RE was actively involved in management related activities,  
21 including presenting financial and other pertinent information to L&C’s Board.

22 92. U.S. RE intentionally failed to obtain reinsurance through syndicates as required  
23 under the U.S. RE Agreement. No facts were found that reinsurance failed to pay as required. To  
24 the contrary, the reinsurance policies seemed not to be invoked because deductible amounts were  
25 not reached, especially in the early years of 2004 to 2008.

26 93. Nevertheless, U.S. RE intentionally represented to L&C that it would act in L&C’s  
27 best interests, creating additional duties toward L&C other than merely finding and securing  
28 reinsurance, including but not limited to, fiduciary duties, as set forth herein.

1           94. In violation of such duties, U.S. RE intentionally did not find appropriate  
2 reinsurance because the deductible rates were consistently too high. This is shown by the fact  
3 that reinsurance did not come into play at all in the early years. Indeed, the Board approved  
4 commutation of the 2007 treaty only 10 days into 2008.

5                   (3) Reinsurance Contracts

6           95. U.S. RE, acting as L&C's intermediary broker, procured the following general  
7 reinsurance treaties. Certain terms of such treaties are noted below the treaty name.

8                   (i) April 1, 2004 to December 31, 2004 Treaty (Commuted).

9                   (ii) January 1, 2005-December 31, 2006 Treaty.

- 10                               - Applicable to \$750,000 excess of \$250,000 per claim
- 11                               - Aggregate limit is lesser of \$3,500,000 or 225% of ceded  
premium.
- 12                               - Ceded premium is 25% of gross net written premium  
income (GNWPI)

13                   (iii) January 1, 2007-December 31, 2007 Treaty (Commuted in early 2008)

- 14                               - Applicable to \$750,000 excess of \$250,000 per claim
- 15                               - Deductible is 22% of GNWPI.
- 16                               - Aggregate limit is 300% of ceded premium.
- Ceded premium is 20% of GNWPI.

17                   (iv) July 1, 2005-December 31, 2006 Treaty.

- 18                               - Applicable to \$1,000,000 excess of \$1,000,000 per claim
- 19                               - Aggregate limit is \$3,000,000 or 300% of ceded premium.
- Ceded premium is 100% of gross premiums for policies  
with limits greater than \$1,000,000 per claim.

20                   (v) January 1, 2008-March 31, 2009 Treaty.

- 21                               - Applicable to \$650,000 excess of \$350,000 per claim
- 22                               - Deductible is greater of 13% of GNWPI or \$1,274,000.
- 23                               - Aggregate limit is 300% of ceded premium.
- Ceded premium is 17.08% of GNWPI for all policies  
subject to a minimum of \$1,575,000.

24                   (vi) April 1, 2009-March 31, 2010 Treaty.

- 25                               - Applicable to \$650,000 excess of \$350,000 per claim
- 26                               - Deductible is greater of 11% of GNWPI or \$1,100,000.
- 27                               - Aggregate limit is 300% of ceded premium.
- Ceded premium is 17.93% of GNWPI for all policies  
subject to a minimum of \$1,613,700.

28                   (vii) April 1, 2010-May 31, 2011 Treaty.

- 1 - Applicable to \$650,000 excess of \$350,000 per claim  
2 - Deductible is greater of 11% of GNWPI or \$1,220,000.  
3 - Aggregate limit is 300% of ceded premium.  
4 - Ceded premium is 17.00% of GNWPI for all policies  
subject to a minimum of \$1,890,000.

(viii) December 1, 2009-May 31, 2011 Treaty.

- 5 - L&C cedes 75% of losses in reinsured layer and retains 25%  
6 - Applicable to \$1,000,000 excess of \$1,000,000 per claim  
7 - Aggregate limit is greater of \$3,000,000 or 300% of ceded  
premium.  
8 - Ceded premium is 100% of net excess premiums (gross  
premiums less 20%) for policies with limits greater than  
\$1,000,000 per claim

(ix) June 1, 2011-May 31, 2012 Treaty.

- 10 - Applicable to \$650,000 excess of \$350,000 per claim  
11 - Deductible is greater of 18.5% of GNWPI or \$1,300,000.  
12 - Aggregate limit is 300% of ceded premium.  
13 - Ceded premium is 17.00% of GNWPI for all policies  
subject to a minimum of \$1,190,000.

(x) June 1, 2011-May 31, 2012 Treaty.

- 14 - L&C cedes 75% of losses in reinsured layer and retains 25%  
15 - Applicable to \$1,000,000 excess of \$1,000,000 per claim  
16 - Aggregate limit is \$1,500,000  
17 - Ceded premium is 100% of net excess premiums (gross  
premiums less 20%) for policies with limits greater than  
\$1,000,000 per claim

(xi) June 1, 2012-May 31, 2013 Treaty.

- 18 - Applicable to \$650,000 excess of \$350,00 per claim  
19 - Aggregate limit is 300% of ceded premium.

20 C. Financial Disaster in 2010 and 2011 at Uni-Ter's and U.S. RE's Direction and  
21 the Board's Gross Negligence Despite the Board's Knowledge that Reliance  
22 on the Information and Representations from Uni-Ter and U.S. RE was  
Unwarranted and Dangerous.

23 96. On or around September 8, 2010, the DOI sent a letter to Marshall, President of  
24 L&C and a member of the Board ("September 2010 Letter") advising the Board of the dangerous  
25 financial position of L&C. A copy of the "September 2010 Letter is attached hereto as Exhibit 5.

26 97. In the September 2010 Letter, captioned "Lewis & Clark Deteriorating Financial  
27 Condition", the DOI states in part the following:

28 Dear President Marshall:

1 The [DOI]'s review of the June 30, 2010 financial statement of [L&C]  
2 revealed a deteriorating financial condition which the company's management  
must address. The following are items that must be considered:

- 3 • Increase in reserves has increased liabilities \$3.1 million above  
4 the 12/31/10 pro-forma accounts and has resulted in a liquidity  
ratio ... of 116.0%.
- 5 • Due to underwriting and operating losses, \$1.1 million and  
\$792.7 thousand, respectively, policyholder surplus has  
6 declined by 11.6% from December 31, 2009.
- 7 • Underwriting losses are the result of increasing loss and loss  
administration expense coupled with high other  
8 underwriting/administrative expenses (which exceed 12/31/10  
pro-forma amounts by \$744 thousand), all of which result in a  
combined ratio of 131.1%.
- 9 • Risk Based Capital (RBC) ratio of 210.5% is hardly  
adequate....

10  
11 *Id.*

12 98. The September 2010 Letter ended with an admonition from the DOI that  
13 "[b]ecause of the company's capital decline revealed by the June 30, 2010 financial statement,  
14 management should commence preparing a corrective action plan and an implementation  
15 schedule addressing a means to enhance earnings and surplus, reduce expenses, and improve  
16 liquidity." *Id.*

17 99. On information and belief, despite the DOI's recommendations regarding L&C's  
18 deteriorating financial condition and need for an effective corrective action plan, the Board failed  
19 to exercise even slight diligence in correcting the substantial problems L&C was facing, and the  
20 alarming financial problems of L&C outlined by the DOI in its September 2010 Letter were not  
21 corrected, and in fact were dramatically worsened, by the Board's actions.

22 100. On information and belief, in the first three (3) quarters of 2011, L&C experienced  
23 a net loss of not less than \$3,100,000.

24 101. On information and belief, the principal reason for these losses was that the Multi-  
25 Site Operators had passed on significant losses to L&C in the two policy years from 2009-2011,  
26 as well as increases in claims for other insureds.

27 102. On information and belief, on or about September 1, 2011, Sanford Elsass and  
28 Donna Dalton sent a memorandum to the Board purporting to outline the events causing financial

1 difficulties. Included in that memorandum was a representation that Uni-Ter would hire a  
2 consultant to perform a "complete analysis" of the claims process of Uni-Ter Claims Services  
3 Corporation.

4 103. On information and belief, the consultant hired by Uni-Ter was Praxis Claims  
5 Consulting ("Praxis").

6 104. On information and belief, at this time the Board knew that reliance on  
7 information presented to it by, or at the direction of, Uni-Ter and U.S. RE could not be relied on,  
8 in part because the decision to accept the Multi-Site Operators was financially devastating to  
9 L&C.

10 105. On information and belief, despite this knowledge of the Board regarding the  
11 wholly inadequate and inaccurate information provided by Uni-Ter, the Board's gross negligence  
12 is manifest in the fact that, the Board failed to exercise even a slight degree of care in verifying  
13 whether Praxis was provided accurate information in preparing its reviewing the claims process.

14 106. On information and belief, in fact Uni-Ter did not provide Praxis with accurate  
15 information and, in fact, limited the scope of Praxis's initial engagement to a review of claims-  
16 related processes and of a small sample size of only nine (9) specific claims reserves. Praxis's  
17 review, which was grossly inadequate due to Uni-Ter's failure to provide adequate and accurate  
18 information to Praxis, resulted in a report dated September 15, 2011 ("September 2011 Praxis  
19 Report"). A copy of the September 2011 Praxis Report is attached hereto as **Exhibit 6**.

20 107. On information and belief, because Uni-Ter failed to provide accurate and  
21 complete information to Praxis, the September 2011 Praxis Report was substantially inaccurate  
22 and incomplete.

23 108. On information and belief, the Board later learned that, in fact, Uni-Ter had not  
24 provided Praxis with accurate information and that Uni-Ter had limited the scope of Praxis's  
25 engagement to a review of claims-related processes and of a small sample size of only nine (9)  
26 specific claims reserves. This is information which the Board, through exercise of even slight  
27 diligence or scant care, could have known before the 2011 Praxis Report was issued.

28 109. Further, on information and belief, on or around September 23, 2011, the DOI sent

1 another letter to Marshall regarding the now disastrous financial condition of L&C ("September  
2 2011 Letter"). A copy of the September 2011 Letter is attached hereto as **Exhibit 7**.

3 110. In the September 2011 Letter, the DOI noted several massive financial problems  
4 with L&C which the Board had, on information and belief, taken improper or no action to correct,  
5 including the following:

- 6 • Of particular concern is the Combined ratio which has increased  
7 since prior year-end from 99.4% to 153.9% - a 54.8% increase post-  
8 merger.
- 9 • A major concern is Risk Based Capital ("RBC") -- 208.8%. This  
10 RBC calculation results from year-end 2010 financial statement.  
11 The RBC is now well below that level considering the reserve  
12 (Liability) increases and net loss reducing policyholder surplus by  
13 40.3% for only one-half (Six Months) of a year of operating  
14 activity.
- Net underwriting loss has deteriorated to \$3.1 million
- Net loss = \$1.8 million

*Id.*

15 111. The September 2011 Letter further noted the following regarding the second  
16 quarter of 2011:

17 Since prior year-end, **policyholder surplus has declined by 40.3%**. Company is  
18 experiencing adverse claims Development and is becoming extremely leveraged.  
19 **Total Liabilities have increased by 26.5%** ... Net Loss is \$1.8 million, a result  
20 of \$3.1 million net underwriting loss for six months and \$1.7 million  
21 underwriting loss for just the second quarter. Unassigned Funds have  
22 deteriorated further to a negative (\$1.4 million). Since prior year-to-date, net  
23 premiums earned have improved nominally by 5.8% while net losses incurred has  
24 increased by 117.6% causing a net loss ratio of 114.4% and resulting in a  
25 **153.9% combined ratio**. Company is highly leveraged. Cash and invested assets  
only represent 59.2% of total assets resulting in a 148.7% liquidity ratio  
coupled with gross premiums written representing 571.6% of policyholder surplus  
and net premiums written representing 499.9% of policyholder surplus ...

*Id.* (emphasis added).

26 112. The September 2011 Letter noted that the DOI had sent "a prior letter advis[ing]  
27 the Board of Directors of deteriorating financial condition and admonish[ing] the Board and  
28 management to consider a correction plan." The letter required that "[t]he Board and

1 management must now prepare a short-term (3 month) action plan and based on this action plan  
2 how they forecast their 12/31/2011 statement to appear.” *Id.*

3 113. On information and belief, the Board failed to exercise even scant care in  
4 addressing the September 2011 Letter, and failed to correct the staggering financial problems  
5 L&C was facing.

6 114. Subsequently, in late November 2011, on information and belief, Uni-Ter  
7 conducted what purported to be a full-scale internal review of all claims reserves, and later  
8 engaged Uni-Ter to conduct a full review as well.

9 115. On information and belief, the outcome of the internal review by Uni-Ter, as well  
10 as the negative review by Praxis, showed that Uni-Ter had incorrectly understated the sampled  
11 claims in the September 2011 Praxis Report by a net of not less than \$1,200,000.

12 116. On information and belief, Uni-Ter and/or U.S. RE informed the Board on a  
13 conference call that, in fact, an increase of \$5,000,000.00 to L&C’s claims reserves was  
14 necessary. This significantly increased the net loss of Lewis & Clark on a full 2011 year basis  
15 and further decreased L&C’s capital to an unacceptable level for operational, regulatory, and  
16 rating purposes.

17 117. On information and belief the Board, through its gross negligence, ignored or  
18 improperly responded to the multiple red flags – including communications from the DOI –  
19 regarding L&C’s financial position, Uni-Ter’s management and the representations of Uni-Ter  
20 and U.S. RE’s, and failed to exercise even a slight degree of diligence or care in fulfilling its  
21 obligations, which proximately caused and contributed to the damages suffered by Plaintiff.

22 **D. L&C Board Meeting Minutes**

23 118. On information and belief, the Board met generally once per quarter starting in late  
24 2004 and continuing to September 2012 related to L&C. Minutes of said meetings were kept by  
25 L&C (“Minutes”).

26 119. On information and belief, because Uni-Ter UMC was managing all of the  
27 business aspects of L&C’s business, Mr. Sanford Elsass (“Elsass”), President of Uni-Ter UMC  
28



1 and an officer of U.S. RE at all relevant times, attended all of the L&C Board meetings in person  
2 except for the last two. On information and belief, Elsass and other Uni-Ter employees gave  
3 most of the reports about the company to the Board members.

4 120. On information and belief, many of the approvals and actions of the Board were  
5 done at the recommendation of Mr. Elsass.

6 121. On information and belief, the Board had knowledge concerning Mr. Elsass and  
7 his recommendations that caused reliance on the reports and recommendations of Mr. Elsass and  
8 Uni-Ter UMC to be unwarranted.

9 122. Despite this knowledge, the Board failed to exercise even a slight degree of  
10 diligence or care with respect to accepting the information and recommendations provided by Mr.  
11 Elsass and Uni-Ter UMC and failed to verify whether this information was accurate and whether  
12 the recommendations should be adopted.

13 123. On information and belief, the Minutes also do not mention the monthly reports  
14 that Uni-Ter UMC was supposed to provide to L&C in the 2004 Management Agreement or the  
15 quarterly reports that Uni-Ter UMC was supposed to provide to L&C in the 2011 Management  
16 Agreement. The Minutes do reference annual and quarterly financial results and there are  
17 discussions of the claims and underwriting activities for each quarter, but no mention of the  
18 reports required by the 2004 and 2011 Management Agreements.

19 124. Item 13 in the March 9, 2005 Minutes states that the Board requested that Uni-Ter  
20 provide financial information to the Board monthly. On information and belief, Uni-Ter already  
21 had the obligation to provide the information listed in the 2004 Management Agreement to the  
22 Board monthly.

23 125. Item 10 from the August 12, 2005 Minutes, attached hereto as Exhibit 8, which  
24 state that the Board is unhappy with the work of Uni-Ter. The Minutes state that the Board was  
25 concerned regarding the lack of completion by Uni-Ter regarding marketing plans presented at  
26 the March 2005 meeting, including non-receipt of periodic marketing reports, lack of contract  
27 with state associations and potential new agents, and generally, a lack of production of new  
28 business during 2005.



1           126. On information and belief, despite these clear indications that Uni-Ter was failing  
2 to provide complete and accurate information, the Board remained indifferent to its legal duty to  
3 act on an informed basis by ensuring the information and recommendations provided by Uni-Ter  
4 and Mr. Elsass were complete and accurate.

5           127. One of the resolutions in L&C's first set of Minutes of December 22, 2003,  
6 approves the engagement between L&C and U.S. RE to engage U.S. RE as the exclusive  
7 reinsurance broker and consultant for L&C. The resolution states that confirmation was received  
8 from Elsass as an officer of U.S. RE that U.S. RE would use its best efforts to obtain competitive  
9 rates and terms.

10           128. On information and belief, Uni-Ter undertook the fiduciary duty of determining  
11 and establishing the appropriate loss reserves for the company. Item 3 in the September 14, 2005  
12 Minutes, attached hereto as **Exhibit 9**, states that Elsass reported on establishing the appropriate  
13 loss reserves for the company.

14           129. On information and belief, the Board's Audit Committee ("Audit Committee")  
15 was established at the February 10, 2006 meeting of the Board. On information and belief, the  
16 relevant Minutes contain no discussion of why this was not done previously or why it was needed  
17 at that juncture.

18           130. On information and belief, the Audit Committee generally reviewed and approved  
19 L&C's financial audits. On information and belief, there are no entries stating that the Audit  
20 Committee performed any auditing functions other than review of financial audits.

21           131. The May 30, 2006 Minutes, attached hereto as **Exhibit 10**, state that L&C's D&O  
22 insurance was renewed, but that L&C's E&O insurance was not renewed.

23           132. On information and belief, L&C subsequently obtained E&O insurance.

24           133. Item 3 of the October 20, 2006 Minutes, attached hereto as **Exhibit 11**, states that  
25 the Board directed Donna Dalton of Uni-Ter and L&C's counsel to comment to the Nevada DOI  
26 regarding issues including loss reserves and Risk Retention Act requirements.

1           134. Item 9 of the March 23, 2007 Minutes, attached hereto as **Exhibit 12**, references  
2 the Nevada DOI triennial examination report for 2003 to 2005, but does not state any findings  
3 related to the report or what corrective actions, if any, the Board would take.

4           135. The October 12, 2007 Minutes, attached hereto as **Exhibit 13**, reference an  
5 incurred but not reported ("IBNR") reduction of \$934,000 but do not explain it or why the  
6 reduction occurred. The October 12, 2007 Minutes also state that L&C was beginning to offer  
7 occurrence policies subject to required regulatory filings, but do not discuss the required  
8 regulatory filings.

9           136. The January 10, 2008 Minutes, attached hereto as **Exhibit 14**, state that there will  
10 be commutation of the 2007 reinsurance with Imagine RE, and note the change that Uni-Ter will  
11 begin a retail policy sales agency to improve on the disappointing efforts by the "current agency  
12 network." The entry notes that Uni-Ter will be paid commissions on L&C's retail policy  
13 business at 10% of gross written premiums rather than 15% of gross written premiums. The  
14 Minutes do not say which contract Uni-Ter would provide such services under. The 2004  
15 Management Agreement required solicitation services by Uni-Ter. This same item mentions that  
16 Uni-Ter requested an advancement of half of L&C's 2008 annual budget for Uni-Ter for "this  
17 effort" with such advancement repayable from commissions earned by Uni-Ter.

18           137. Item 13 in the April 24, 2008 Minutes, attached hereto as **Exhibit 15**, references  
19 insolvency gap coverage of \$1 million. Then, item 11 of the December 2, 2009 Minutes, attached  
20 hereto as **Exhibit 16**, notes a renewal of insolvency gap coverage in the amount of \$2 million.

21           138. Item 4 in the December 10, 2008 Minutes, attached hereto as **Exhibit 17**, notes  
22 that, based on a request from the Nevada DOI, the Board ratified clarification amendments to the  
23 Oneida surplus notes.

24           139. Item 6 of the December 2, 2009 Minutes, attached hereto as **Exhibit 17**, notes a  
25 report on the current triennial examination by the Nevada DOI but does not state any more  
26 regarding said examination.

27           140. Item 5 of the May 21, 2010 Minutes, attached hereto as **Exhibit 18**, references the  
28 Board's review of results of the Nevada DOI triennial examination and approval of responses to

1 the DOI. The Minutes do not explain or discuss the responses or any corrective actions that the  
2 Board may take. Those Minutes also approved the 2009 annual audited statements and report  
3 prepared by Johnson Lambert & Co. as well as the 2009 Milliman Report and calculation of  
4 "Profit Sharing bonuses."

5 141. The November 2010 Minutes, attached hereto as **Exhibit 19**, contain discussion of  
6 renewal of L&C's Management Agreement with Uni-Ter subject to noted revisions including a  
7 requirement of clarification of significant claims notice to the Board with settlement authority  
8 remaining with Uni-Ter.

9 142. The May 4-5, 2011 Minutes, attached hereto as **Exhibit 20**, approved the 2010  
10 annual audited statements and report prepared by L&C's auditors, Johnson Lambert & Co.

11 143. The September 21, 2011 Minutes, attached hereto as **Exhibit 21**, contain in Item 7  
12 a statement that the Board reviewed and approved a new underwriting philosophy. The Minutes  
13 do not say what the new underwriting philosophy was. However, a document dated 8/31/11 and  
14 entitled "Long Term Care Underwriting Philosophy & Strategic Direction" was part of the  
15 directors' package for that meeting. The document lists specific requirements related to  
16 consideration of long term care facilities for coverage.

17 144. On October 5, 2011 the Board held a special meeting and approved capital  
18 contributions by shareholders Oneida, Eagle Healthcare, Pinnacle, Marquis, Elderwood, Rohm,  
19 and Uni-Ter in exchange for surplus notes. The action of the Board in lieu of a special meeting,  
20 attached hereto as **Exhibit 22** ("Action"), also noted that depending on the fourth quarter, the  
21 same parties other than Oneida would commit to an additional amount of \$550,000 in the fourth  
22 quarter of 2011 and first quarter of 2012 as the stated proportions (with Uni-Ter having 20/55 or  
23 4/11 responsibility). The Minutes also noted approval of the new underwriting philosophy.

24 145. On information and belief, the minutes of the October 5, 2011 action by the Board  
25 demonstrate that the Board was well aware it was not receiving accurate and complete  
26 information from Uni-Ter as the Board requested "more frequent financial reporting to the Board  
27 as discussed at the last meeting, preferably monthly." (Emphasis added). On information and  
28

1 belief the Board failed to exercise even slight diligence or scant care and failed to ensure that Uni-  
2 Ter did, in fact, provide more complete and accurate reporting of L&C's financial status.

3 146. Even with the bad financial news in early October, 2011, the Board was indifferent  
4 to its legal obligations and did not meet again until December 20, 2011, over two and a half  
5 months later. At that meeting, as reflected in the Minutes attached hereto as **Exhibit 23**, Uni-Ter  
6 reported that claims reserves may have increased by \$5 million from the November 2011 figures,  
7 *i.e., in one month.*

8 147. On information or belief, in or around the latter part of 2011, William Fishlinger  
9 ("Fishlinger") was retained to provide claims review for L&C. Item 3 in the December 28, 2011  
10 Minutes, attached hereto as **Exhibit 24**, states that the Board was advised regarding the schedule  
11 for Fishlinger's claims review commencing in the first full week of January 2012. Item 4 of those  
12 Minutes states that Uni-Ter's pro forma December 31, 2011 financials indicate that L&C is  
13 neither impaired nor insolvent and pending receipt of the Fishlinger review, Uni-Ter should  
14 process the current renewals. The Minutes also note that the Board's claims committee should  
15 have a conference call with Fishlinger about his work and conclusions before the work is done to  
16 finalize his written report.

17 148. On information and belief the Board failed to exercise the slightest degree of  
18 diligence and care regarding this information and took no action whatsoever to verify whether the  
19 information provided by Uni-Ter suggesting that L&C was "neither impaired nor insolvent" was  
20 accurate, despite numerous indications that information provided by Uni-Ter was inaccurate and  
21 incomplete.

22 149. At the January 16, 2012 meeting, the Minutes for which are attached hereto as  
23 **Exhibit 25**, the Board was told that capital and surplus was \$1,979,730 as of December 31, 2011.  
24 Thus, L&C's surplus dropped over \$2.5 million in one year.

25 150. On information and belief, the Minutes do not reflect any discussion of how that  
26 relates to the approximate \$5 million additional loss reserves noted at the December 20, 2011  
27 meeting.

1           151. On information and belief, L&C's Nevada counsel was instructed to contact  
2 Nevada DOI regarding the "current inquiry." The Minutes do not say what the current inquiry  
3 was.

4           152. The January 26, 2012 Minutes state in Item 2 that L&C's Nevada counsel reported  
5 on her conversations with the Nevada DOI. See **Exhibit 26**. The Minutes do not include the  
6 substance of those discussions. Item 3 states that the Board deferred approval of commutation of  
7 reinsurance for years 2005, 2006, 2008, and 2009 pending receipt from Uni-Ter of a report  
8 regarding outstanding claims for such periods. Item 5 states that the Board met in executive  
9 session to discuss issues involving potential additional capital.

10           153. Further, the minutes for the January 26, 2012 meeting stated that "Mr. Elsass  
11 presented a report on current claims activity in California and New York and discussions with the  
12 Corporation's actuaries and auditors." *Id.* On information and belief the Board failed to exercise  
13 the slightest degree of diligence and care regarding this information took no action to verify that  
14 Mr. Elsass's report was accurate, despite clear indications that information provided by Mr.  
15 Elsass was incomplete and inaccurate.

16           154. At the February 2, 2012 meeting, the Minutes for which are attached hereto as  
17 **Exhibit 27**, the Board approved \$480,000 additional capital contributions in exchange for  
18 subordinated surplus notes on the same terms used in the fall of 2011. On information and belief,  
19 Elsass reported to the Board "regarding recent favorable claims activity." The Minutes do not say  
20 what the alleged favorable claims activity was. On information and belief, the Board failed to  
21 exercise the slightest degree of diligence and care regarding this information and did not verify  
22 whether the report by Elsass regarding alleged "favorable claims activity" was accurate or  
23 complete.

24           155. Notwithstanding the dire financial issues, the Board remained indifferent to its  
25 legal obligations and did not meet again until April 30, 2012, almost three (3) months later. At  
26 the April 30, 2012 meeting, the Minutes for which are attached hereto as **Exhibit 28**, Item 1  
27 provides that L&C's submissions to the Nevada DOI were approved, but do not explain what the  
28 submissions were.

1           156. There is no mention in the April 30, 2012 Minutes of the Milliman Report from  
2 April 12, 2012 stating that, as of the end of 2011, the company's loss reserves were \$1.4 million  
3 under what they need to be when using the mid-range number.

4           157. Item 5 of the May 14, 2012 Minutes, attached hereto as **Exhibit 29**, state that a  
5 Nevada DOI examination was scheduled, but do not explain this matter further.

6           158. On information and belief, the Board did not meet for another two and a half (2  
7 ½) months regarding the financial conditions of L&C. The Board met telephonically on June 6,  
8 2012, the Minutes for which are attached hereto as **Exhibit 30**, but the only business noted was  
9 the approval of reinsurance. There is no entry regarding a discussion of the financial status of  
10 L&C.

11           159. In fact, despite the clear indications that Uni-Ter and U.S. RE were providing  
12 inaccurate and/or incomplete information to L&C, the minutes of the June 6, 2012 Board meeting  
13 state that the Board approved the renewal of L&C's reinsurance "[f]ollowing a presentation by  
14 USRE [sic]". *Id.* There is no indication whatsoever regarding any measures taken by the Board  
15 to verify the information provided by Uni-Ter and/or U.S. RE.

16           160. At the July 25, 2012 meeting, the Minutes for which are attached hereto as **Exhibit**  
17 **31**, Uni-Ter and U.S. RE presented a report of second quarter financial results in which a  
18 significant increase in loss reserves was reported. The Board then discussed possible courses of  
19 action. The Board requested that Uni-Ter contact Fishlinger to conduct an independent roll  
20 forward of its last claims reserve review preferably by August 7, 2012. The Board also resolved  
21 that the preliminary second quarter results not be filed until the Fishlinger review is done and that  
22 the results should be approved by the Board before filing. Finally, the Minutes noted that no new  
23 business should be written by L&C and no capital raised until further notice, but that renewals  
24 may be processed until notice otherwise.

25           161. The August 15, 2012 was the last meeting Elsass and Uni-Ter or U.S. RE attended.  
26 At that meeting, the Board discussed the filing with the Nevada DOI of financial information with  
27 notice of further deterioration of L&C's finances.

1           162. At the August 22, 2012 meeting, Minutes for which are attached hereto as **Exhibit**  
2 **32**, L&C's counsel reported on recent discussions with Uni-Ter and U.S. RE. Uni-Ter personnel  
3 were not present at the meeting.

4           163. On information and belief the Board held a telephonic meeting on September 24,  
5 2012, the Minutes for which are attached hereto as **Exhibit 33**. The Board's grossly negligent  
6 failure to inform itself of the basic financial condition of the Company was made clear as the  
7 Board tacitly acknowledged it was not aware whether the Company was financially solvent at that  
8 time, resolving that "a request be made to the Nevada Division [sic] of Insurance that the  
9 Corporation be placed in rehabilitation, in view of the fact that the Corporation is or may be  
10 insolvent." *Id.* (emphasis added).

11           **E. Information Available to the Officers and Directors**

12           164. On information and belief, substantial financial information regarding L&C was  
13 available to the Board of which the Board failed entirely to exercise even a slight degree of care  
14 to properly inform itself and understand.

15           165. On information and belief, among this available information was the Annual  
16 Statement of L&C for the year ending December 31, 2006, attached hereto as **Exhibit 34**, which  
17 was submitted to the Nevada DOI contains L&C's financial statement for 2006. The Notes to  
18 Financial Statements (pages 14-14.3) include the reinsurance in place (note 23) as well as the  
19 change of incurred losses and LAE (note 25). The Quarterly Statement for L&C for the first  
20 quarter of 2007, attached hereto as **Exhibit 35**, has similar notes.

21           166. Sophia Palmer 2007 board Minutes were very similar to L&C board Minutes. On  
22 information and belief, Uni-Ter was the underwriter for Sophia Palmer as well.

23           167. L&C's Internal Unaudited Financial Statements as of December 31, 2007, attached  
24 hereto as **Exhibit 36**, states that unpaid losses and loss expenses were \$578,000 in 2004,  
25 \$1,142,000 in 2005, \$2,636,000 in 2006, and \$3,013,000 in 2007. This is a growth of over 500%  
26 in only four (4) years.

27           168. On information and belief, Uni-Ter's management fees grew from nothing in  
28 2004, to \$120,000 in 2005, to \$126,000 in 2006, to \$760,000 in 2007. Between 2005 and 2007,



1 this is a growth of 633% in three years.

2 169. On information and belief, the information provided to the directors of L&C for  
3 the April 2008 and May 2010 Board meetings included the following financial information for  
4 L&C across the years of 2004 to 2009:

5

6 Policy Year	Written Premium	Earned Premium	Paid Losses	Reserves	Totals Incurred	Loss Ratio
7 2004	\$1,344,358	\$1,344,358	\$223,232	\$---	\$208,232	15.49%
8 2005	\$3,124,474	\$3,124,474	\$745,466	\$80,720	\$782,438	24.23%
9 2006	\$5,821,739	\$5,821,739	\$1,311,965	\$477,775	\$1,751,740	30.64%
2007	\$5,958,904	\$4,184,641	\$1,555,249	\$1,621,520	\$3,111,769	52.38%
2008	\$8,340,000	\$5,203,834	\$1,211,943	\$3,941,000	\$1,687,006	34.77%
2009	\$10,705,229	\$7,792,504	\$1,545,000	\$6,255,488	\$3,947,463	50.66% with Sophia Palmer being 80.96%

10  
11  
12

13 170. On information and belief, the Board wholly failed to exercise even slight  
14 diligence in informing itself of the reasons behind the dangerous financial status of the company  
15 or in taking timely, corrective action.

16 171. Further, L&C's Summary Balance Sheet as of December 31, 2008, attached hereto  
17 as **Exhibit 37**, states that while unpaid losses and loss expenses grew from \$3,013,000 to  
18 \$3,941,000 between 2007 and 2008, Uni-Ter's management fees went from \$760,312 in 2007 to  
19 \$1,372,915 in 2008.

20 172. L&C's Internal Unaudited Financial Statements as of December 31, 2009, attached  
21 hereto as **Exhibit 38**, state that unpaid losses and loss expenses jumped to \$6,255,488 in 2009  
22 from \$3,941,000 in 2008. Uni-Ter's management fees jumped to \$1,717,482 for 2009 from  
23 \$1,372,915 in 2008.

24 173. The 2009 Milliman Report, which supports the corresponding Statement of  
25 Actuarial Opinion attached hereto as **Exhibit 39**, states that the existing risk factors, "coupled  
26 with the variability that is inherent in any estimate of unpaid loss and loss adjustment expense  
27 obligations, could result in material adverse deviation from the carried net reserve amounts." The  
28 Milliman Report concludes that L&C's actual net outstanding losses and loss adjustment expense



1 (“LAE”) exceed L&C’s reserves for unpaid losses (\$5,021,810) and unpaid LAE (\$1,233,678) by  
2 an amount of more than 5% of L&C’s statutory surplus shown on the annual statement, which  
3 was \$4,031,349. The Milliman Report also states that this materiality standard was selected  
4 based on the fact that his opinion was prepared for regulatory review. Further, the corresponding  
5 Statement of Actuarial Opinion provides that it is reliant on “data and related information  
6 prepared by [L&C]” and that “[t]here are a variety of risk factors that expose [L&C’s] reserves to  
7 significant variability.” Id.

8 174. On information and belief, the information provided to the directors of L&C for  
9 the May 2010 Board meeting state that Sophia Palmer merged with L&C as of December 3, 2009,  
10 and that the written premiums were \$8,340,000 for 2008 and \$10,705,000 for 2009.

11 175. On information and belief, in or around October 2010, Elsass, Larry Shatoff at  
12 U.S. RE, Donna Dalton, John Klaus at Uni-Ter, Curtis Sitterson at Stearns Weaver, and Jim  
13 Murphy at the accounting firm Johnson Lambert & Co., through email correspondence, made the  
14 decision to record the twenty-five percent (25%) refund payment, in the amount of \$569,600,  
15 from the commutation of the January 1, 2008 to April 1, 2009 reinsurance treaty.

16 176. On information and belief, Mr. Shatoff stated in said email correspondence that the  
17 April 1, 2004 to December 31, 2004 treaty was commuted, the January 1, 2007 to December 31,  
18 2007 treaty was commuted, and the January 1, 2005 to December 31, 2006 treaty was “swing  
19 rated” and had been adjusted to the minimum premium. Regarding the January 1, 2008 to April  
20 1, 2009 reinsurance treaty, Mr. Shatoff said that it covers all claims reported on occurrence  
21 policies up to April 1, 2012. Mr. Shatoff further stated that L&C was subject to a 13% aggregate  
22 deductible for an amount of \$1,690,673, and that L&C had paid reinsurance premiums of  
23 \$2,278,400, which at a 25% refund rate would result in a refund of \$569,600 if no claims were  
24 paid by the reinsurers. Further, Mr. Shatoff’s communications state that there had been no losses  
25 reported under that treaty. Mr. Shatoff noted that L&C could commute at any time before  
26 January 1, 2013 to obtain the “profit commission” - how he referred to the 25% refund.

27 177. On information and belief, Mr. Shatoff encouraged L&C to commute that treaty to  
28 ensure that seventy-five percent (75%) of premiums paid could be confirmed as received by the

1 reinsurers with confirmation that no claims or losses would be paid by them.

2 178. On information and belief Elsass directed that the refund for the commutation of  
3 the January 1, 2008 to April 1, 2009 reinsurance treaty be recorded at that time in the third quarter  
4 of 2010.

5 179. On information and belief, Mr. Shatoff noted that it would be too soon to record  
6 any "profit commission" on the April 1, 2009 to April 1, 2010 treaty because the premium for  
7 those policies would not be fully earned until April 1, 2011.

8 180. The Milliman Report stated that L&C reserves were \$600,000 - \$628,000 above  
9 the Medium Estimate, but about \$650,000 below the High Estimate. That report also noted that  
10 L&C started to write occurrence policies in the fourth quarter of 2008.

11 181. On information and belief, more than half of the policies written by Sophia Palmer  
12 were occurrence policies.

13 182. The Milliman Report stated that the loss development for occurrence policies is  
14 relatively immature at the current evaluation and that caused uncertainty in the loss estimates.

15 183. Further, the 2010 Milliman Report opined that the existing risk factors "coupled  
16 with the variability that is inherent in any estimate of unpaid loss and loss adjustment expense  
17 obligations, could result in material adverse deviation from the carried net reserve amounts." He  
18 concluded that based on the calculation shown in Exhibit B that shows that L&C's actual net  
19 outstanding losses and LAE exceed L&C's reserves for unpaid losses (\$7,353,289) and unpaid  
20 LAE (\$1,798,188) by an amount of more than five percent (5%) of L&C's statutory surplus  
21 shown on the annual statement, which was \$4,579,710. The 2010 Milliman Report states that this  
22 materiality standard was selected based on the fact that his opinion was prepared for regulatory  
23 review.

24 184. On information and belief, the financial information provided to the Board for the  
25 September 2011 Board Meeting included a report from Brian Stiefel, President of Praxis, which  
26 was the September 2011 Praxis Report. The Praxis Report provides that Uni-Ter has adopted a  
27 new reserve philosophy, is revising its litigation management guidelines to reflect a more  
28 aggressive approach to the litigation process, and that standardizing the claims documentation,

1 evaluation, and reporting process is recommended. The Praxis Report does not evaluate the level  
2 of L&C's loss reserves. See Exhibit 6 hereto.

3 185. On information and belief, the information provided to the directors for the  
4 September 2011 Board meeting also contains a power point presentation from Milliman which  
5 shows that L&C steadily decreased its reinsurance deductible across the years 2008 to 2011,  
6 demonstrating that L&C's reinsurance deductible was set too high, especially in years 2009 and  
7 2010.

8 186. On information and belief, in or around December 19, 2011, Milliman provided a  
9 preliminary draft of certain schedules to its actuarial reports ("2011 Milliman Schedules"). The  
10 Schedules provide that as of November 30, 2011, L&C's Incurred Loss & ALAE for years 2004  
11 through November 2011 was \$17,858,866. That same exhibit states that Paid Loss & ALAE for  
12 those same dates was a total of \$11,208,076. The exhibit states that L&C's Paid Loss & ALAE  
13 was \$2,230,000.00 for 2009 and \$2,440,000.00 for 2010 but only \$198,711.00 for 2011 through  
14 November.

15 187. L&C's Annual Statement for the year ending December 31, 2011 ("2011 Annual  
16 Statement"), attached as Exhibit 40, stated a drastic increase in incurred losses and LAE and a  
17 significant drop in shareholder's surplus. Pursuant to that statement, reserves for losses and LAE  
18 increased from a total of \$9,181,477 at the end of 2010 to \$14,026,020 at the end of 2011, almost  
19 a \$5 million increase. Note 24 to L&C's 2011 Financial Statements (which is presented below)  
20 stated that unpaid losses and LAE increased from \$9,153,000 at the beginning of 2011 to  
21 \$14,843,000 at the end of 2011, a \$5,700,000 increase. Meanwhile, the company's policyholder's  
22 surplus amount decreased from \$4,579,710 at the end of 2010 to \$3,625,317 at the  
23 end of 2011.

24 188. Note 24 to L&C's 2011 Financial Statements stated as follows:

25	Balance-January 1, 2011	\$9,153,000
26	Incurred related to:	
27	Current year	7,418,000
	2010	3,039,000
28	2009	2,284,000

1	2008	747,000
	2007	162,000
2	2006	375,000
	2005	(359,000)
3	2004	(1,000)
	Total Incurred:	13,665,000
4	Paid related to:	
5	Current year	1,878,000
6	2010	3,571,000
	2009	1,545,000
7	2008	222,000
	2007	630,000
8	2006	131,000
	2005	(1,000)
9	2004	(1,000)
	Total Paid:	7,975,000
10	Balance-December 31, 2011	\$ 14,843,000
11	(emphasis added)	

12 *Id.*

13 189. On information and belief, notwithstanding this information, the Board represented  
14 in Note 14 at page 14.2 that “[T]he Company’s management is not aware of any ongoing  
15 litigation which would, individually or collectively, result in judgments for amounts, after  
16 considering the established loss reserves, that would be material to the Company’s financial  
17 condition or results of operations.” *Id.*

18 190. On February 2, 2012, Milliman provided a preliminary draft of certain schedules  
19 to its actuarial reports (“2012 Milliman Schedules”). Exhibit 1 Page 2 states that, as of December  
20 30, 2011, L&C’s Discounted Net Loss & LAE Reserve (after Ceded Loss and LAE Reserve) was  
21 Low Estimate of \$13,019,000, Central Estimate of \$14,973,000, and High Estimate of  
22 \$18,635,000. Exhibit 3 of that document shows that Incurred Loss and ALAE had grown  
23 substantially from 2005 (\$373,816) to 2010 (\$9,068,552) while showing estimated reserves only  
24 growing to \$4,048,241. It also shows that for 2011, Ultimate Loss & ALAE was \$7,620,000 and  
25 Incurred Loss & ALAE was \$5,744,385, but estimate reserves was only \$5,938,479, which is  
26 over \$1.6 million less than the Ultimate Loss & ALAE.

27 191. The 2011 Milliman Report, attached hereto as Exhibit 41, in the section entitled  
28

1 “Risk of Material Adverse Deviation”, provides that “[t]he Company’s carried reserves are within  
2 a reasonable range, however other points within the reasonable range would cause surplus to be  
3 below zero. Therefore I believe that there are significant risks and uncertainties that could result  
4 in material adverse deviation in the loss and loss adjustment expense reserves, possibly by  
5 amounts exceeding surplus.” The report again provides that the current risk factors, “coupled  
6 with the variability that is inherent in any estimate of unpaid loss and loss adjustment expense  
7 obligations, could result in material adverse deviation from the carried net reserve amounts.” The  
8 report concluded that based on the calculation shown in Exhibit B that shows that L&C’s actual  
9 net outstanding losses and LAE exceed L&C’s reserves for unpaid losses (\$11,766,924) and  
10 unpaid LAE (\$2,259,096) by an amount of more than five percent (5%) of L&C’s statutory  
11 surplus shown on the annual statement, which was \$3,625,316. The report states that this  
12 materiality standard was selected based on the fact that his opinion was prepared for regulatory  
13 review.

14 192. Further, in the Notes to Financial Statements for Years Ended December 31, 2011  
15 and 2010 (“2011 Notes”), the management of L&C stated Uni-Ter “believes that its aggregate  
16 provision for losses and loss adjustment expenses is reasonable and adequate to meet the ultimate  
17 net cost of covered losses...”. On information and belief, the Board failed to exercise even the  
18 slightest degree of care with respect to this information it was receiving concerning Uni-Ter’s  
19 opinions and failed to take any action to verify that this information was complete or accurate.

20 193. The 2011 Notes also provide that “[a]t December 31, 2011 and 2010, management  
21 determined that no premium deficiency reserve was required.” On information and belief, the  
22 Board failed to exercise even the slightest degree of care with respect to this information it was  
23 receiving concerning Uni-Ter’s opinions and failed to take any action to verify that this  
24 information was complete or accurate.

25 194. Further, the 2011 Notes state that was a party to various lawsuits “in the normal  
26 course of business” but that “[t]he Company’s management does not believe that any ongoing  
27 litigation would, individually or collectively, result in judgments for amounts, after considering  
28 the established loss reserves and reinsurance, that would be material to the Company’s financial

1 condition or results of operations.” On information and belief, the Board failed to exercise even  
2 the slightest degree of care with respect to this information it was receiving concerning Uni-Ter’s  
3 opinions and failed to take any action to verify that this information was complete or accurate.

4 195. L&C’s “NAIC Property and Casualty Financial Ratio Results for 2011”, attached  
5 hereto as **Exhibit 42**, painted a very bleak picture of the L&C. It has a date stamp of 2/23/2012.  
6 It states that Direct Premiums Written in 2011 totaled \$10,224,774. It states that Net Premiums  
7 Written for 2011 were \$8,997,524 which was a 25% drop from Net Premiums Written in 2010 of  
8 \$11,946,738. It states that Losses and LAE incurred for 2011 totaled \$12,759,779 when Losses  
9 and LAE incurred for 2010 totaled \$8,183,816, about \$4.6 million less. It states that surplus for  
10 2011 was \$3,625,316 when the surplus for 2010 was \$4,579,709, almost a million drop. Finally,  
11 it states that L&C’s estimated current reserve deficiency was -\$752,997.5.

12 196. A spreadsheet entitled “Inforce (sic) Policies as of 2.23.2012” lists such policies.  
13 It states at the bottom that the total premium amount for such in force policies was \$6,825,864.

14 197. A spreadsheet document dated February 2012 and entitled “L&C Loss Ratio  
15 Report” shows a substantial reduction of loss payments for 2011. The document states that the  
16 information is through 02/29/2012, but says that earned premium for 2011 dropped to \$5,209,362  
17 from \$12,798,406 in 2010 and \$11,776,406 in 2009. It also shows that earned premium was only  
18 \$240,573 through February which, extrapolated through December, would be only \$1,443,438.  
19 Meanwhile, total incurred losses for 2011 were only \$1,573,965 even though total incurred losses  
20 were almost \$9.5 million in 2010 and almost \$8 million in 2009.

21 198. On information and belief, the loss ratios shown for 2006 through 2010 were  
22 78.92%, 65.33%, 67.83%, and 73.59%, respectively. The loss ratio chart in the April 2008 Board  
23 meeting directors’ package states that the 2006 loss ratio was only 25.25% and the 2007 loss ratio  
24 was stated to be only 22.41%. The loss ratio for 2011 was only 30.21%. Paid losses in all of  
25 2011 were only \$264,000 even though those were almost \$5 million in 2010, \$5.4 million in  
26 2009, and over \$3.5 million in 2008.

27 199. L&C’s Summary Balance Sheet as of February 29, 2012, attached hereto as  
28 **Exhibit 43**, states that unpaid losses and loss expenses were \$14,026,019 at the end of 2011 and

1 grew to \$14,607,812 as of the end of February 2012. Uni-Ter's management fees for 2011 were  
2 only \$87,617.

3 200. L&C's Comparative Summary Balance Sheet dated through March 2012, attached  
4 as Exhibit 44, shows the growth of L&C's losses and Uni-Ter's fees. Unpaid losses and LAE  
5 was \$3,624,000 as of March 2008, \$4,325,000 as of March 2009, \$7,313,000 as of March 2010,  
6 \$9,953,000 as of March 2011, and \$12,381,985 as of March 2012. Uni-Ter's management fees  
7 were \$728,000 as of March 2008, \$1,329,000 as of March 2009, \$1,607,000 as of March 2010,  
8 \$830,000 as of March 2011, and \$104,000 as of March 2012.

9 201. The 2012 Milliman Report states that L&C reserves of \$16,333,000 were  
10 \$1,367,000 below the Central Estimate of what L&C's loss reserves should be. The report states  
11 that L&C's reserves were over \$7 million below the High Estimate of what L&C's reserves  
12 should be. There is no mention of the report in the Board Minutes. The report states as follows:

13 The ultimate loss and ALAE estimates have increased significantly since  
14 the prior report as of December 31, 2010. *Through report/accident/tail effective*  
15 *year 2010, the selected ultimate loss and ALAE estimates have increased by \$9.2*  
16 *million. Claims-made nursing home paid and incurred losses have been higher*  
*than expected during the past year due to significantly inadequate case reserves*  
*at December 31, 2010 and exceptionally high loss ratios that were generated by*  
*three insureds that were non-renewed during 2011. . . .* (emphasis added)

17 Finally, the report states in Table 3 on page 12 that the continuing Ultimate Loss & ALAE as of  
18 the report at end of 2010 was \$13,863,000 but the Ultimate Loss & ALAE as of the report at the  
19 end of 2011 was \$19,229,000 for a \$5.5 million increase.

20 202. In the D&O policy application submitted by Uni-Ter on behalf of L&C on or  
21 about May 23, 2012, attached as Exhibit 45, Uni-Ter stated in the supplement that "[t]o improve  
22 the financial stability of [L&C], UUMC has reviewed the entire book of business and intends to  
23 only renew accounts that have maintained a favorable historical loss ratio. This may result in a  
24 35-40% reduction in its premium volume." The underwriting philosophy change completed in  
25 late 2011, while stating limitations for loss ratios in soft and hard market facilities, does not state  
26 that the policy would apply to renewals and also does not discuss the loss of such a large  
27 premium amount. This reduction would apply to the \$6,825,864 total premiums of inforce  
28 policies as of February 2012. With no new policies, that would result in total premiums for 2012



1 in the range of \$4,095,518 to \$4,436,800.

2 203. The following chart shows relevant information from L&C's Audited Financial  
3 Statements for the periods indicated:

	2009	2010	2011	March 2012	June 2012
4 Losses and LAE	\$6,255,488 (this was \$3,941,000 for 2008)	\$9,161,477	\$14,026,020	\$12,381,985	\$11,594,038
5 Premiums earned	\$10,864,100 with \$4,149,333 being new for that year.	\$12,514,066	\$11,498,294	\$1,957,716 (compared to \$2,776,612 for March 2011)	\$3,753,489 (compared to \$6,720,334 for June 2011)
6 Ceded reinsurance premiums payable	\$1,969,682	\$2,050,400	\$750,084	\$26,523	\$624,029
7 Amount recoverable from reinsurance		\$2,819,800	\$3,039,002	\$3,039,002 with \$1.553M from AR and \$1.087 from other amounts receivable	\$1,530,415
8 Management fees payable	\$1,717,482	\$1,084,400	\$87,617	\$104,690	\$63,164
9 Total liabilities	\$13,887,255	\$15,625,439	\$21,840,572	\$19,777,205	\$16,397,861
10 Cash and invested assets		\$13,942,322	\$13,514,557	\$13,064,932	\$9,525,379
11 Shareholders' equity, i.e., surplus	\$4,031,351	\$4,579,710	\$3,625,317	\$3,713,503 (versus \$3,760,925 for March 2011)	\$1,675,694 (versus \$2,732,826 for June 2011)

21 204. On information and belief, as of July 31, 2012, L&C's Gross Losses and LAE was  
22 \$14,786,000. As of the end of September 2012, losses and LAE totaled \$13,609,401 and surplus  
23 was negative \$1,490,085. Cash and invested assets had dropped to \$6.6 million.

24 **F. Gross Negligence by the Board**

25 205. On information and belief, beginning in the 3<sup>rd</sup> quarter of 2011, adverse  
26 development on claims incurred during 2009 began to appear in the financial operations of L&C.  
27 As a result, Uni-Ter (captive manager) began to get more involved in claims and reserves. In a  
28



1 unilateral decision, Uni-Ter brought in Praxis Claims Consulting to assist with improving the  
2 reserve setting process. On information and belief, the engagement involved reviewing various  
3 open claims files. The owner of Praxis, Brian Stiefel took a lead role in setting reserves for L&C  
4 with Uni-Ter. As a result of this engagement, a strengthening of reserves was recommended and  
5 booked in the amount of approximately \$2.2 million.

6 206. On information and belief, due to the strengthening entry, and the resulting  
7 downturn in the financial condition of L&C, additional capital of \$2,220,000 was raised in the  
8 form of surplus notes.

9 207. On information and belief, in the October 5, 2011 Action by Unanimous Consent  
10 of the Board of Directors ("Action") surplus note contributions were agreed to be paid by  
11 November 15, 2011:

12	o Oneida Bank	\$750,000
13	o Eagle Healthcare	\$220,000
	o Pinnacle Healthcare	\$220,000
14	o Marquis Companies	\$220,000
	o Elderwood Senior Care	\$220,000
15	o Rohm Services	\$220,000
16	o Uni-ter	\$300,000

17 208. On information and belief, the Action indicated that an additional \$550,000 in  
18 capital could be raised in additional surplus notes, "depending upon the requirements of the  
19 business in the fourth quarter, 2011, as approved by the Board". The following commitments  
20 were funded in the form of Surplus Notes on February 7, 2012:

21	o Eagle Healthcare	\$70,000
22	o Pinnacle Healthcare	\$70,000
	o Marquis Companies	\$70,000
23	o Elderwood Senior Care	\$70,000
	o Rohm Services	\$70,000
24	o Uni-ter	\$200,000

25 209. On information and belief, with the exception of Oneida Bank, where L&C's  
26 investments are held in custody, and Uni-Ter, the captive manager, all other Surplus Note holders  
27 were facilities insured by L&C and whose management is a representative on the Board of  
28

1 Directors of L&C.

2 210. On information and belief, Stickels is the President of Oneida Bank.

3 211. On information and belief, prior to the second commitment coming due in the first  
4 quarter of 2012, the Board determined that they wanted a second review to confirm the  
5 conclusion of the reserve strengthening in late 2011. Fishlinger was hired to conduct an  
6 independent analysis of the same claims reviewed by Praxis.

7 212. On information and belief, using the low end of the ranges of reserves established  
8 by Praxis, Fishlinger concluded a low end of strengthening could be approximately a million  
9 dollars less than determined by Praxis. Although the Board had requested that Fishlinger conduct  
10 its review independently, ultimately it used the work of Praxis in coming to a similar conclusion  
11 on the reserve strengthening needed. Based on these two reviews, the additional capitalization of  
12 \$480,000 was determined to be adequate by the Board.

13 213. On information and belief, at the end of the second quarter of 2012, the Board  
14 assumed that the reserving methodology established under Praxis had continued to be deployed.  
15 The Board determined that a follow up review was necessary. Praxis completed their review in  
16 July of 2012, involving review of the same estimated 150 claims reviewed at year end 2011.  
17 Praxis recommended stepping up of reserves in the cases previously reviewed and indicated that  
18 trouble getting case reserve information from attorneys had been one cause of the continued  
19 adverse development of these claims. Praxis concluded an additional \$2 million in strengthening  
20 was required at July 2012.

21 214. On information and belief, Fishlinger was also brought in for a second review,  
22 which ultimately concluded some differences on the low and high end of the ranges for these  
23 cases, but ultimately recommended similar cumulative reserve strengthening. An additional party  
24 also reviewed the case reserves, the London Based reinsurance broker ("London Broker") for  
25 U.S. RE, the reinsurance broker for L&C. The Board and Uni-Ter thought that they would have a  
26 vested interest in picking accurate reserves because of the reinsurance that the London broker had  
27 placed for L&C with various reinsurers. On information and belief, the London Broker  
28 determined that it would be comfortable in the low end of the ranges for many of the cases.

215. On information and belief Milliman, L&C's opining actuary, booked its estimate of reserves at 6/30 and 12/31 of each year, based on its own analysis. During its June 30, 2012 analysis, Milliman determined that L&C would most likely need to increase premium rates by 12-20% on its current book of business to remain a viable entity. On information and belief this does not include capital needed to raise the current level to minimum requirements. Milliman also estimated that \$6,000,000 - \$6,500,000 million in capital would need to be raised in order to result in \$3.6 million of unimpaired capital.

## CLAIMS

216. The allegations set forth above are incorporated into the claims set forth herein as is fully set forth for each claim.

FIRST CLAIM FOR RELIEF

**(Gross Negligence of the Former Officers and Directors of L&C)**

217. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 216, as though fully set forth herein.

218. Under Nevada law, directors and officers must act on an informed basis and are grossly negligent if they fail to do so.

219. Under Nevada law, “[g]ross negligence is equivalent to the failure to exercise even a slight degree of care. It is materially more want of care than constitutes simple inadvertence. It is an act or omission respecting legal duty of an aggravated character as distinguished from a mere failure to exercise ordinary care. It is very great negligence, or the absence of slight diligence, or the want of even scant care.” *Hart v. Kline*, 61 Nev. 96, 116 P.2d 672, 674 (1941). Further, gross negligence “amounts to indifference to present legal duty, and to utter forgetfulness of legal obligations so far as other persons may be affected.” *Id.*

220. Here the Board was grossly negligent in numerous ways, including but not limited to its utter failure to properly inform itself of status of L&C and its complete failure to properly take timely corrective action.

221. As set forth above, on numerous occasions, even after clear and unmistakable indications that the information provided to the Board by Uni-Ter, U.S. RE, Mr. Elsass, Ms.

1 Dalton, and others was, at best, unreliable and incomplete, the Board failed to exercise even slight  
2 diligence in informing itself of the truth of the financial status of L&C.

3 222. Further, as of the end of 2011, there was more than ample information that, in  
4 combination, clearly showed that L&C's financial condition was in dangerous peril.

5 223. This information available in late 2011 included rapid and drastic increase in loss  
6 reserves, reports of inadequate reserves requiring repeated capital infusions in late 2011 and early  
7 2012, high loss ratios, drastically decreasing realized premiums, absence of any adjustment of  
8 premium rates, implementation of a new underwriting philosophy that would result in a 35-40%  
9 drop in premiums, and a drastically decreasing company surplus.

10 224. These reports included the following summarized facts:

- 11 • In September 2005, Elsass reported on appropriate loss reserves.
- 12 • L&C had substantial growth of premiums and reserves between 2004 and 2009.  
13 By 2009, written premium was \$10.7 million and reserves were \$6.2 million. Uni-  
14 Ter's management fees also increased rapidly to \$1.4 million in 2008 and \$1.7  
15 million in 2009.
- 16 • Losses and LAE grew to \$9.1 million in 2010 and \$14 million in 2011.
- 17 • Loss ratios were generally in the 30% range and below until 2009 when the  
18 addition of the Sophia Palmer work caused a loss ratio over 50% (because of  
19 Sophia Palmer claims having a loss ratio over 80%).
- 20 • A new underwriting philosophy was discussed at the September 2011 meeting.  
21 Although it does not appear that the Board questioned how this would affect  
22 premiums earned, Uni-Ter expected this new philosophy would only renew  
23 accounts that had a favorable historical loss ratio and that that could result in a 35-  
24 40% reduction in premium volume.
- 25 • In the 3<sup>rd</sup> quarter 2011, adverse development on claims incurred in 2009 showed  
26 up on L&C's financial results. Uni-Ter brought in Praxis to improve the reserve  
27 setting process. Uni-Ter brought in Praxis to analyze and recommend reserves.  
28 Praxis recommended reserve strengthening of \$2.2 million.
- Capital contributions totaling \$2.22 million were approved by the Board at the  
October 5, 2011 meeting. That same meeting said that an additional \$550,000 in  
capital could be raised in the 4<sup>th</sup> quarter 2011 and 1<sup>st</sup> quarter 2012.
- Financial information shows L&C was not paying losses in 2011. 12/19/11 draft  
report from Milliman shows \$2.23 million paid losses and ALAE in 2009, \$2.44  
million in 2010, but only \$199,000 in 2011.
- On 12/20/2011, Uni-Ter reported claims reserves increased \$5 million from the  
November 2011 figures.
- Uni-Ter's pro forma 12/31/11 financials show that L&C was neither impaired nor  
insolvent, but the 2011 Annual Statement shows losses and ALAE increased from  
\$9.1 million at the beginning of 2011 to \$14.8 million at the end of the year.

- At January 16, 2012 meeting, surplus is only \$1,979,730, down from \$4,579,000 at end of 2010.
- At February 2, 2012 meeting, Board approved \$480,000 additional capital contributions even though Elsass reported recent favorable claims activity. Prior to this, the Board had determined that they wanted a second opinion from Fishlinger to confirm the need for reserve strengthening made by Praxis.
- A 2/23/12 report showed that L&C's net written premiums for 2011 dropped 25% (from \$12 to \$9 million). It confirmed that losses and LAE for 2011 were \$12.7 million when only \$8.1 million for 2010. It also said that L&C's current reserves were deficient by just over \$750,000.
- A 2/23/12 report on in force policies states that total premiums for those policies would be \$6.8 million for 2012.
- A 2/29/12 loss ratio report shows that earned premium for 2011 dropped to \$5,209,362 from \$12,798,406 in 2010 and \$11,776,406 in 2009 and states that earned premium for 2012 through February 2012 was only \$240,000 which, annualized, would be only about \$1.4 million. It also shows that loss ratios for 2006 through 2010 were all above 65% and as high as 79%.
- April 12, 2012 Milliman report says that L&C's loss reserves are \$1.4 million under the central estimate. That same reports says that ultimate loss and ALAE have increased by \$9.2 million from the end of 2010. Table 3 of that report (page 12) states that Ultimate Loss & ALAE increased \$5.5 million from \$13.8 million at the end of 2010 to \$19.2 million the end of 2011.

225. Under Nevada law, the business judgment rule does not protect the gross negligence of uninformed directors and officers. *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 640, 137 P.3d 1171, 1184 (2006).

226. The Board and officers did not adequately review all of the information to which they had access, and was grossly negligent in failing to do so. Further, the Board failed to exercise a slight degree of care regarding the incomplete and inaccurate information provided to it by Uni-Ter and/or U.S. RE, and remained uninformed despite their knowledge that they could not rely on the representations and recommendations of Uni-Ter and U.S. RE, as set forth above.

227. As set forth above, the Board was made well aware of the extremely dangerous and deteriorating financial position of L&C at least as early as September 2010 by the DOI in its September 2010 Letter.

228. Further, the Board was again made aware of the dire financial position it had allowed L&C to reach due to its failure to exercise a slight degree of care in informing itself of

1 the position of L&C and take effective corrective action, as set forth in the DOI's September 2011  
2 Letter.

3 229. To the extent the Board did review any information, the Board was grossly  
4 negligent in taking ineffective actions or in not taking immediate effective corrective action by at  
5 least late 2011 (e.g., raising premium rates).

6 230. The Board was in a position to see this information and knew that it had an  
7 obligation to do so. Further, it knew that the information provided by Uni-Ter, U.S. RE and  
8 others was incomplete and inaccurate. Indeed, the Board had the contractual right to receive the  
9 information (including on a monthly basis between 2004 and 2010). It also knew at least on  
10 several occasions that it was not receiving sufficient information from Uni-Ter, but failed to  
11 exercise even slight diligence in properly informing itself. On several occasions between 2005  
12 and 2011, the Board asked Uni-Ter to provide more and better financial and other information:

- 13 • March 2005 Minutes request for financial information monthly.
- 14 • April 2005 Minutes note nonreceipt of periodic marketing reports.
- 15 • At the October 2011 special meeting approving \$2.2 million of additional capital  
16 the Board requested more frequent financial reports by Uni-Ter, preferably  
monthly.

17 231. The facts show an absence of the slightest degree of diligence of the Board and  
18 company officers to ascertain and assess the available information so that decisions could be  
19 made and based on such information, as set forth above.

20 232. The Board failed to exercise even the slightest degree of care or diligence to  
21 become properly informed and was wholly indifferent to its legal obligations in relying on  
22 information and recommendations of Uni-Ter, U.S. RE and others, as set forth herein, despite the  
23 Board's knowledge and reason to know that the information and recommendations provided were  
24 grossly inaccurate and incomplete.

25 233. As a proximate result, Plaintiff has been damaged in an amount in excess of  
26 \$10,000, the exact amount to be proven at trial in this matter.

27 234. Plaintiff has retained the undersigned law firm to represent the Receiver in this  
28 matter, and is obligated to pay it a reasonable attorney's fee and costs, which it is entitled to

1 recover herein.

2 WHEREFORE, Plaintiff prays for relief as set forth herein.

3 **SECOND CLAIM FOR RELIEF**

4 **(Deepening of the Insolvency of L&C Caused by the Former Directors and Officers)**

5 235. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through  
6 234, as though fully set forth herein.

7 236. The Board's inaction severely prolonged the insurance actions of L&C that led to  
8 its initial insolvency and that then also increased its insolvency.

9 237. Had the Board taken action by late 2011, the substantial losses experienced by  
10 L&C starting in late 2011 would not have occurred or, alternatively, would have been greatly  
11 limited.

12 238. Because L&C had a surplus as of the end of 2011, according to its financial  
13 statements, then all of the insolvency of L&C was arguably attributable to the directors' and  
14 officers' failure to promptly identify and address the financial problems.

15 239. As a proximate result, Plaintiff has been damaged in an amount in excess of  
16 \$10,000, the exact amount to be proven at trial in this matter.

17 240. Plaintiff has retained the undersigned law firm to represent the Receiver in this  
18 matter, and is obligated to pay it a reasonable attorney's fee and costs, which it is entitled to  
19 recover herein.

20 WHEREFORE, Plaintiff prays for relief as set forth herein.

21 **THIRD CLAIM FOR RELIEF**

22 **(Negligent Misrepresentation by Uni-Ter UMC)**

23 241. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through  
24 240, as though fully set forth herein.

25 242. Uni-Ter UMC, through its employees, negligently misrepresented the specific  
26 financial conditions of L&C including the level of losses and LAE.

27 243. Uni-Ter had created L&C and grown it rapidly for its own financial benefit, as  
28 well as that of U.S. RE, who benefitted from the placement of reinsurance and from management



1 fees earned by its subsidiary. Uni-Ter had intimate familiarity with the financial information of  
2 L&C.

3 244. However, instead of presenting all relevant financial information to the Board,  
4 Uni-Ter appears to have selectively provided information such that the Board was not informed  
5 of the actual financial condition of L&C. Even after a number of reports showed substantial  
6 growth of L&C's losses in late 2011, Mr. Elsass even represented to the Board in early 2012 that  
7 claims losses were not as bad as previously reported in late December.

8 245. Uni-Ter and Milliman told the Board that the large losses that started appearing in  
9 the 3<sup>rd</sup> quarter of 2010 were primarily because of three insureds who had been non-renewed in  
10 2011, thus giving the impression that this would resolve the large losses issue. These  
11 representations are representative of how the Board was kept in the dark regarding the actual  
12 financial condition of L&C.

13 246. L&C justifiably relied on the information presented to it by Uni-Ter, as set forth  
14 herein.

15 247. As a proximate result, Plaintiff has suffered damages in excess of \$10,000, the  
16 exact amount to be proven at trial herein.

17 248. Plaintiff has retained the undersigned law firm to represent her in this matter, and  
18 is obligated to pay it a reasonable attorney's fee and costs, which it is entitled to recover herein.

19 WHEREFORE, Plaintiff prays for relief as set forth herein.

20 **FOURTH CLAIM FOR RELIEF**

21 **(Breach of Fiduciary Duty by Uni-Ter UMC and Uni-Ter CS)**

22 249. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through  
23 248, as though fully set forth herein.

24 250. Uni-Ter owed a fiduciary duty to L&C as set forth above.

25 251. Uni-Ter breached its fiduciary duty to L&C by recommending to the Board that  
26 the 2007 treaty be commuted too soon and by failing to gain Board approval to commute the 2008  
27 and 2009 treaty such that that treaty was commuted without authorization to do so from the  
28 Board.



252. Approval of commutation of the 2007 treaty was done at the January 10, 2008 board meeting.

253. Commutation benefitted U.S. RE, the parent of Uni-Ter, because the syndicate insurers get to keep 75% of the premiums paid without any requirement to pay any claims. U.S. RE also appears to have done an unapproved commutation for the 2008-2009 treaty at the direction of Uni-Ter.

254. October 2010 emails between U.S. RE and Uni-Ter discuss booking the commutation amount, but the February 2, 2012 Minutes state that the Board deferred approval of commutation of certain treaties including the 2008 and 2009 treaties. See Exhibit 26.

255. As a proximate result, Plaintiff has been damaged in an amount in excess of \$10,000, the exact amount to be proven at trial herein.

256. Plaintiff has retained the undersigned law firm to represent her in this matter, and is obligated to pay it a reasonable attorney's fee and costs, which it is entitled to recover herein.

WHEREFORE, Plaintiff prays for relief as set forth herein.

### FIFTH CLAIM FOR RELIEF

**(Breach of Fiduciary Duty Against U.S. RE)**

257. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 256, as though fully set forth herein.

258. L&C engaged U.S. RE as its agent and exclusive broker to find and secure appropriate reinsurance. The U.S. RE Agreement appointed U.S. RE as L&C's exclusive reinsurance intermediary/broker and granted U.S. RE full and complete authority to negotiate the placement of reinsurance on all classes of insurance with unspecified limits of coverage as requested by the underwriter of L&C (i.e., Uni-Ter).

259. U.S. RE was itself engaged as L&C's "exclusive reinsurance intermediary/broker" and as L&C's agent, including being granted "full and complete authority to negotiate the placement of reinsurance or retrocessions on all classes of insurance with unspecified limits of coverage as specifically requested by any underwriter of [L&C]." See Exhibit 4, the U.S. RE Agreement.

1           260. The U.S. RE Agreement further recognizes U.S. RE's agency with L&C by stating  
2 that U.S. RE "will exercise its best efforts in the discharge of its duties **on behalf of the**  
3 **Company.**" *Id.* (emphasis added).

4           261. The Supreme Court of Nevada has held that "[a]n agency relationship is formed  
5 when one who hires another retains a contractual right to control the other's manner of  
6 performance." *Grand Hotel Gift Shop v. Granite State Ins. Co.*, 108 Nev. 811, 815, 839 P.2d  
7 599, 602 (1992) (citation omitted).

8           262. U.S. RE acted as the agent of L&C, as the U.S. RE Agreement expressly states not  
9 only that U.S. RE will act "on behalf of" L&C, but also that L&C has the right to control U.S.  
10 RE's manner of performance as U.S. RE promises to "comply with written standards established  
11 by [L&C] for the cession or retrocession of all insured risks." *See Exhibit 4.*

12           263. Further, Nevada law makes clear that "[a]n agent, such as respondent in these  
13 circumstances, owes to the principal the highest duty of fidelity, loyalty and honesty in the  
14 performance of the duties by the agent on behalf of the principal." *LeMon v. Landers*, 81 Nev.  
15 329, 332, 402 P.2d 648, 649 (1965) (holding that the agent breached her fiduciary obligations)  
16 (emphasis added); *see also Chem. Bank v. Sec. Pac. Nat. Bank*, 20 F.3d 375, 377 (9th Cir. 1994)  
17 ("The very meaning of being an agent is assuming fiduciary duties to one's principal.") (*citing*  
18 *Restatement (Second) of Agency* § 1(1)).

19           264. Thus, as the agent of L&C, U.S. RE owed L&C fiduciary duties under Nevada  
20 law, as set forth herein

21           265. U.S. RE breached this fiduciary duty through intentional acts including, but not  
22 limited to, by not obtaining reinsurance through syndicates as listed in the fact section above. No  
23 facts were found that reinsurance failed to pay as required. To the contrary, the reinsurance  
24 policies seemed not to be invoked because deductible amounts were not reached, especially in the  
25 early years of 2004 to 2008.

26           266. Nevertheless, U.S. RE intentionally represented to L&C that it would act in L&C's  
27 best interests, creating additional duties toward L&C other than merely finding and securing  
28 reinsurance, including but not limited to, fiduciary duties, as set forth herein.

267. In violation of such duties, U.S. RE intentionally failed to find appropriate reinsurance because the deductible rates were consistently too high. This is shown by the fact that reinsurance did not come into play at all in the early years. Indeed, the Board approved commutation of the 2007 treaty only 10 days into 2008.

268. As a proximate result, Plaintiff has been damaged in an amount in excess of \$10,000, the exact amount to be proven at trial in this matter.

269. Plaintiff has retained the undersigned law firm to represent her in this matter, and is obligated to pay it a reasonable attorney's fee and costs, which it is entitled to recover herein.

WHEREFORE, Plaintiff prays for relief and judgment as follows:

A. For actual damages sustained by Plaintiff in an amount in excess of \$10,000 in an amount to be more specifically established at trial in accordance with proof;

B. For reasonable attorney's fees pursuant to statute or as special damages, or as provided in the agreement between the parties;

C. For pre-judgment and post-judgment interest; and

D. For such other and further relief at law or in equity as the Court may deem just and proper.

DATED this 5th day of August, 2016.

FENNEMORE CRAIG, P.C.

By: /s/ Brenoch Wirthlin

JAMES L. WADHAMS, ESQ.

Nevada Bar No. 1115

BRENOCH WIRTHLIN, ESQ.

Nevada Bar No. 10282

300 South Fourth Street, Suite 1400

Las Vegas, Nevada 89101

Telephone: (702) 692-8000

Facsimile: (702) 692-8099

bwirthlin@fclaw.com

*Attorneys for Plaintiff Commissioner of  
Insurance For the State of Nevada*


## CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of Fennemore Craig, P.C., and that on the 5th day of August, 2016, service of **THIRD AMENDED COMPLAINT** was made on the following counsel of record and/or parties by electronic transmission to all parties appearing on the electronic service list in Odyssey E-File & Serve (Wiznet) as follows:

		Select All	Select None		
Attorney General's Office					
Name	Email			Select	
Joanna Grigoriev	jgrigoriev@ag.nv.gov	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	
Marilyn Millam	mmillam@ag.nv.gov	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	
Nevada Attorney General	wiznetfilings@ag.nv.gov	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	
Fennemore Craig, P.C.					
Name	Email			Select	
Adrina Harris	aharris@fclaw.com	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	
Brenoch Wirthlin	bwirthli@fclaw.com	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	
Cheryl Landis	clandis@fclaw.com	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	
Kevin Hejmanowski	khejmanowski@fclaw.com	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	
Lipson Neilson Cole Seltzer & Garin					
Name	Email			Select	
Angela T. Nakamura Ochoa	aochoa@lipsonneilson.com	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	
Joseph P. Garin, Esq.	jgarin@lipsonneilson.com	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	
Lipson, Neilson, Cole, Seltzer & Garin, P.C.					
Name	Email			Select	
Renee Rittenhouse	rrittenhouse@lipsonneilson.com	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	
Susana Nutt	snutt@lipsonneilson.com	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	
McDonald Carano Wilson LLP					
Name	Email			Select	
Cara Mia Gerard	cgerard@mcdonaldcarano.com	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	
George F. Ogilvie III	gogilvie@mcdonaldcarano.com	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	
James W. Bradshaw	jbradshaw@mcdonaldcarano.com	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	
Jeff Riesenmy	jriesenmy@mcdonaldcarano.com	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	
Kathy Barrett	kbarrett@mcdonaldcarano.com	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	
Nancy Hoy	nhoy@mcdonaldcarano.com	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	
Nevada Division of Insurance					
Name	Email			Select	
Terri Verbrugghen	verbrug@doi.nv.gov	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	

/s/  
An Employee of Fennemore Craig, P.C.

# EXHIBIT 1

  
CLERK OF THE COURT

1 ORDER  
2 CATHERINE CORTEZ MASTO  
3 Attorney General  
4 JOANNA H. OROGORETZ  
5 Senior Deputy Attorney General  
6 Nevada Bar No. 5949  
7 555 East Washington Ave., Suite 1900  
8 Las Vegas, NV 89101  
9 (702) 488-3101  
10 Email: joro@ag.state.nv.us  
11 Attorneys for the Plaintiff

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100  
101  
102  
103  
104  
105  
106  
107  
108  
109  
110  
111  
112  
113  
114  
115  
116  
117  
118  
119  
120  
121  
122  
123  
124  
125  
126  
127  
128  
129  
130  
131  
132  
133  
134  
135  
136  
137  
138  
139  
140  
141  
142  
143  
144  
145  
146  
147  
148  
149  
150  
151  
152  
153  
154  
155  
156  
157  
158  
159  
160  
161  
162  
163  
164  
165  
166  
167  
168  
169  
170  
171  
172  
173  
174  
175  
176  
177  
178  
179  
180  
181  
182  
183  
184  
185  
186  
187  
188  
189  
190  
191  
192  
193  
194  
195  
196  
197  
198  
199  
200  
201  
202  
203  
204  
205  
206  
207  
208  
209  
210  
211  
212  
213  
214  
215  
216  
217  
218  
219  
220  
221  
222  
223  
224  
225  
226  
227  
228  
229  
230  
231  
232  
233  
234  
235  
236  
237  
238  
239  
240  
241  
242  
243  
244  
245  
246  
247  
248  
249  
250  
251  
252  
253  
254  
255  
256  
257  
258  
259  
260  
261  
262  
263  
264  
265  
266  
267  
268  
269  
270  
271  
272  
273  
274  
275  
276  
277  
278  
279  
280  
281  
282  
283  
284  
285  
286  
287  
288  
289  
290  
291  
292  
293  
294  
295  
296  
297  
298  
299  
300  
301  
302  
303  
304  
305  
306  
307  
308  
309  
310  
311  
312  
313  
314  
315  
316  
317  
318  
319  
320  
321  
322  
323  
324  
325  
326  
327  
328  
329  
330  
331  
332  
333  
334  
335  
336  
337  
338  
339  
340  
341  
342  
343  
344  
345  
346  
347  
348  
349  
350  
351  
352  
353  
354  
355  
356  
357  
358  
359  
360  
361  
362  
363  
364  
365  
366  
367  
368  
369  
370  
371  
372  
373  
374  
375  
376  
377  
378  
379  
380  
381  
382  
383  
384  
385  
386  
387  
388  
389  
390  
391  
392  
393  
394  
395  
396  
397  
398  
399  
400  
401  
402  
403  
404  
405  
406  
407  
408  
409  
410  
411  
412  
413  
414  
415  
416  
417  
418  
419  
420  
421  
422  
423  
424  
425  
426  
427  
428  
429  
430  
431  
432  
433  
434  
435  
436  
437  
438  
439  
440  
441  
442  
443  
444  
445  
446  
447  
448  
449  
450  
451  
452  
453  
454  
455  
456  
457  
458  
459  
460  
461  
462  
463  
464  
465  
466  
467  
468  
469  
470  
471  
472  
473  
474  
475  
476  
477  
478  
479  
480  
481  
482  
483  
484  
485  
486  
487  
488  
489  
490  
491  
492  
493  
494  
495  
496  
497  
498  
499  
500  
501  
502  
503  
504  
505  
506  
507  
508  
509  
510  
511  
512  
513  
514  
515  
516  
517  
518  
519  
520  
521  
522  
523  
524  
525  
526  
527  
528  
529  
530  
531  
532  
533  
534  
535  
536  
537  
538  
539  
540  
541  
542  
543  
544  
545  
546  
547  
548  
549  
550  
551  
552  
553  
554  
555  
556  
557  
558  
559  
560  
561  
562  
563  
564  
565  
566  
567  
568  
569  
570  
571  
572  
573  
574  
575  
576  
577  
578  
579  
580  
581  
582  
583  
584  
585  
586  
587  
588  
589  
590  
591  
592  
593  
594  
595  
596  
597  
598  
599  
600  
601  
602  
603  
604  
605  
606  
607  
608  
609  
610  
611  
612  
613  
614  
615  
616  
617  
618  
619  
620  
621  
622  
623  
624  
625  
626  
627  
628  
629  
630  
631  
632  
633  
634  
635  
636  
637  
638  
639  
640  
641  
642  
643  
644  
645  
646  
647  
648  
649  
650  
651  
652  
653  
654  
655  
656  
657  
658  
659  
660  
661  
662  
663  
664  
665  
666  
667  
668  
669  
670  
671  
672  
673  
674  
675  
676  
677  
678  
679  
680  
681  
682  
683  
684  
685  
686  
687  
688  
689  
690  
691  
692  
693  
694  
695  
696  
697  
698  
699  
700  
701  
702  
703  
704  
705  
706  
707  
708  
709  
710  
711  
712  
713  
714  
715  
716  
717  
718  
719  
720  
721  
722  
723  
724  
725  
726  
727  
728  
729  
730  
731  
732  
733  
734  
735  
736  
737  
738  
739  
740  
741  
742  
743  
744  
745  
746  
747  
748  
749  
750  
751  
752  
753  
754  
755  
756  
757  
758  
759  
760  
761  
762  
763  
764  
765  
766  
767  
768  
769  
770  
771  
772  
773  
774  
775  
776  
777  
778  
779  
780  
781  
782  
783  
784  
785  
786  
787  
788  
789  
790  
791  
792  
793  
794  
795  
796  
797  
798  
799  
800  
801  
802  
803  
804  
805  
806  
807  
808  
809  
810  
811  
812  
813  
814  
815  
816  
817  
818  
819  
820  
821  
822  
823  
824  
825  
826  
827  
828  
829  
830  
831  
832  
833  
834  
835  
836  
837  
838  
839  
840  
841  
842  
843  
844  
845  
846  
847  
848  
849  
850  
851  
852  
853  
854  
855  
856  
857  
858  
859  
860  
861  
862  
863  
864  
865  
866  
867  
868  
869  
870  
871  
872  
873  
874  
875  
876  
877  
878  
879  
880  
881  
882  
883  
884  
885  
886  
887  
888  
889  
890  
891  
892  
893  
894  
895  
896  
897  
898  
899  
900  
901  
902  
903  
904  
905  
906  
907  
908  
909  
910  
911  
912  
913  
914  
915  
916  
917  
918  
919  
920  
921  
922  
923  
924  
925  
926  
927  
928  
929  
930  
931  
932  
933  
934  
935  
936  
937  
938  
939  
940  
941  
942  
943  
944  
945  
946  
947  
948  
949  
950  
951  
952  
953  
954  
955  
956  
957  
958  
959  
960  
961  
962  
963  
964  
965  
966  
967  
968  
969  
970  
971  
972  
973  
974  
975  
976  
977  
978  
979  
980  
981  
982  
983  
984  
985  
986  
987  
988  
989  
990  
991  
992  
993  
994  
995  
996  
997  
998  
999  
1000

STATE OF NEVADA, ex rel.  
COMMISSIONER OF INSURANCE, in his  
OFFICIAL CAPACITY AS STATUTORY  
RECEIVER FOR DELINQUENT DOMESTIC  
INSURER,  
Plaintiff,

Case No. A-12-672047-8  
Dept. XI

Hearing Date: March 1, 2013  
(Chambers)

vs.

LEWIS & CLARK LTC RISK RETENTION  
GROUP INC., a Nevada Domestic Capital  
Insurance Company,

Defendant,

UNLTER Underwriting Management  
Corp. and UNLTER Claims  
Services Corp.,

Intervenor.

(PROPOSED) ORDER OF LIQUIDATION

This matter came before the Court on the 28th day of February, 2013  
on the Motion for an Order of Liquidation ("Motion") by the Commissioner of Insurance  
for the State of Nevada, ex. rel. in his official capacity as Receiver ("Receiver") of Lewis  
and Clark LTC Retention Group, Inc. ("L&C"). The Court having reviewed the points and  
authorities submitted by counsel and exhibits in support thereof, and heard arguments  
of counsel,

1  
2 IT IS HEREBY ORDERED that:

3 1. The Commissioner of Insurance, Scott J. Kipper in his official capacity as  
4 Statutory Receiver for delinquent domestic insurance companies under Chapter 686B of  
5 the Nevada Revised Statutes ("NRS"), having previously been appointed Receiver, is  
6 hereby directed to liquidate the business of L&C pursuant to NRS 686B.220(2).

7 2. Any insurance policies issued by L&C are cancelled as of the entry of this  
8 Order of Liquidation.

9 3. The Receiver is hereby vested by operation of law with title to and shall  
10 take and secure possession of all assets and real and personal property of L&C of  
11 every kind whatsoever and wherever located, whether in the possession of L&C or its  
12 officers, directors, employees, consultants, attorneys, agents, managers, parents,  
13 subsidiaries, affiliated corporations, or those acting in concert with any of these persons,  
14 and any other persons, including, but not limited to, all property, offices maintained or  
15 utilized by L&C, books, papers, contracts, deposits, stocks, securities, rights of action,  
16 accounts, documents, data records, papers, evidences of debt, bonds, debentures,  
17 mortgages, furniture, fixtures, office supplies, safe deposit boxes, legal/litigation files,  
18 and all books and records of L&C, wherever located, and administer them under the  
19 general supervision of the Court.

20 4. The Receiver is hereby substituted in the place of L&C in any contract or  
21 policy of insurance or reinsurance in which L&C is the insured with another insurance  
22 company.

23 5. The Receiver is directed to collect and liquidate the assets of L&C,  
24 including but not limited to, funds held by L&C's officers, directors, managers,  
25 reinsurers, reinsurance intermediaries, reinsurance pools, solicitors, service  
26 representatives, administrators, adjusters or others, under agency contracts or  
27 otherwise, which are due and unpaid to L&C, including due and unremitted premiums,  
28 commissions, unearned commissions, reinsurance recoveries and "funds held" by  
reinsurers or any others that properly belonging to L&C.



1           6.     The Receiver is authorized to take such action as he considers necessary  
2     or appropriate to liquidate L&C, including all of the powers granted under Chapter 600A  
3     of NRS and the following:

4           a.     Appoint one or more special deputy receivers to act for him, and  
5     determine the deputies' reasonable compensation, subject to court approval upon the  
6     filing thereafter of the quarterly reports pursuant to NRS 600A.290(7), or as frequently  
7     as the Court determines. Special deputies have all the powers of the Receiver and  
8     shall serve at the pleasure of the Receiver.

9           b.     Without prior notice to or prior approval by the Court, employ  
10    personnel and agents, actuaries, accountants, appraisers, administrators, adjusters,  
11    consultants, attorneys and such other personnel as he may consider necessary to  
12    assist in the liquidation of L&C;

13           c.     Without prior notice to or prior approval by the Court, fix the  
14    reasonable compensation of employees and agents, actuaries, accountants, appraisers,  
15    administrators, adjusters, consultants, attorneys, and other personnel, subject to  
16    approval by the Court, which approval shall be obtained by the Court's approval of the  
17    Receiver's reports filed pursuant to NRS 600A.290(7).

18           d.     Without prior notice to or prior approval by the Court, pay  
19    reasonable compensation to persons appointed and employed from the funds or assets  
20    of L&C, as well as any other administrative expenses of taking possession of  
21    conserving, collecting, conducting, liquidating, disposing of or otherwise dealing with the  
22    business and property of L&C, subject to approval by the Court, which approval shall be  
23    obtained by the Court's approval of the Receiver's reports filed pursuant to NRS  
24    600A.290(7);

25           e.     Collect all debts and monies due and claims belonging to L&C  
26    wherever located which, in the judgment of the Receiver, are economically feasible to  
27    collect;

28



1 f. Continue to prosecute and to commence in the name of L&C or in  
2 his own name any and all suits and other legal proceedings, in this state or elsewhere,  
3 and to abandon the prosecution of claims he considers unprofitable to pursue further;

4 g. Prosecute any action which may exist on behalf of the  
5 policyholders, members, or shareholders of L&C against any officer of L&C or any other  
6 person;

7 h. Remove any or all records and property of L&C to the offices of the  
8 Receiver, the Special Deputy Receiver or to such other place as may be convenient for  
9 the purposes of efficient and orderly administration of the liquidation;

10 i. Deposit in one or more banks in this state such sums as are  
11 required for meeting current administration expenses;

12 j. At the discretion of the Receiver, invest all sums not currently  
13 needed, unless the Court orders otherwise;

14 k. File any necessary documents for recording in any records office of  
15 any county of this state or elsewhere where property of L&C is located;

16 l. Acquire, hypothecate, encumber, lease, improve, sell, transfer,  
17 abandon or otherwise dispose of or deal with any property of L&C at its market value or  
18 upon such terms and conditions as are fair and reasonable. The Receiver may  
19 execute, acknowledge and deliver any and all deeds, assignments, releases and other  
20 instrument necessary or proper to effectuate any sale of property or other transaction in  
21 connection with the liquidation;

22 m. Borrow money on the security of L&C's assets or without security,  
23 and to execute and deliver all documents necessary to the transaction for the purpose  
24 of facilitating the liquidation;

25 n. Exercise and enforce all the rights, remedies and powers of any  
26 policyholder, including any power to avoid any transfer, lien or preference that may be  
27 given by the general law and that is not included under chapter 696B of NRS.

28

1           c.     Exercise and enforce all the rights, remedies and powers of any  
2 policyholder, shareholder, or L&C, including any power to avoid any transfer, lien or  
3 preference that may be given by the general law or under NRS 695B.410;

4           p.     Apply for and/or receive any tax refunds, credits, tax loss carry-  
5 forwards or other tax benefit that would be available to L&C but for the Order of  
6 Liquidation.

7           q.     The enumeration of the above-described powers and authority of  
8 the Receiver shall not be construed as a limitation upon him, nor shall it exclude in any  
9 manner the right to do such other acts not herein specifically enumerated, or otherwise  
10 provided for, as may be necessary or appropriate for the accomplishment of or in aid of  
11 the purpose of liquidation.

12         7.     The Receiver is hereby granted and given all powers and authority under  
13 the Nevada Revised Statutes authorizing the appointment of Insurance Receivers, and  
14 particularly be and thereby is, granted and given all powers and authority in chapter  
15 695B of NRS including, without limitation, those enumerated herein.

16         8.     The Receiver is directed as of the date of entry of the Order of Liquidation  
17 to discontinue the defense of suits and other legal proceedings in this state and  
18 elsewhere, in which L&C or L&C's insureds are parties, or L&C is a named party or  
19 behalf of an insured, including those suits and legal proceedings undertaken prior to or  
20 after December 26, 2012.

21         9.     The Receiver shall give or cause to be given notice of the entry of this  
22 order as follows:

23           a.     By first class mail to all policyholders as of the date of entry of this  
24 order, and to all persons known or reasonably expected to have claims under policies  
25 issued by L&C at their last known address, where available, but if insufficient  
26 information for notification by mail is available, notice by publication in a newspaper of  
27 general circulation shall be sufficient.

28           b.     By first class mail to all trade creditors and reinsurers of L&C, as to  
the date of entry of this order, as indicated by the records of L&C;