



PREPARED BY  
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Nonpartisan Staff of the Nevada State Legislature

**BILL SUMMARY**  
71st REGULAR SESSION  
OF THE NEVADA STATE LEGISLATURE

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**SENATE BILL 577**  
**(Enrolled)**

**Topic**

Senate Bill 577 relates to statutory liability of corporate stockholders, directors, and officers, and increases fees for filing certain documents with the Secretary of State.

**Summary**

Senate Bill 577 provides that no stockholder, director, or officer of a corporation is individually liable for a debt or liability of the corporation unless he acts as an alter ego of the corporation. The bill further specifies that a stockholder, director, or officer acts as an alter ego if: (1) the corporation is influenced by the stockholder, director, or officer; (2) the corporation and the stockholder, director, or officer are inseparable; and (3) adherence to the corporate fiction of a separate entity would sanction fraud or promote a manifest injustice. A court, as a matter of law, must determine the question of whether the stockholder, director, or officer acts as the alter ego of a corporation.

Senate Bill 577 also provides that directors and officers are not individually liable to the corporation or its stockholders for damages resulting from an act or failure to act unless it is proven that their actions or failure to act constituted a breach of fiduciary duties and the breach involved intentional misconduct, fraud, or a knowing violation of the law.

Senate Bill 577 also increases fees for certain documents filed with the Secretary of State by corporations, foreign corporations, limited liability companies, partnerships, limited partnerships, and business trusts. The changes in fees include an increase from \$85 to \$165 for filing the initial list of officers, directors, managers, managing members, managing partners, and general partners. When this list is filed initially and annually, the bill requires that the business entity provide a declaration under penalty of perjury that it has complied with the provisions of Nevada's business tax laws.

Other fee increases include filings of certificates and documents concerning: reinstatement, amendments to certain documents, dissolution, change of location, notice of withdrawal from Nevada by a foreign corporation, original articles of organization for limited liability companies, or registration of certain business entities. Additional fee changes include an increase, from \$10 to \$20, for certifying copies of certain documents, and an increase, from \$15 to \$30, for executing a certificate of corporate existence.

Senate Bill 577 authorizes the Office of the Secretary of State to access \$300,000 in Fiscal Year 2001-2002 and \$250,000 in Fiscal Year 2002-2003 from the Account for Special Services. These funds may be accessed without approval from the Interim Finance Committee, and may be used for additional personnel, equipment, supplies, office space, and other related costs. The measure also authorizes the Office of the Secretary of State to retain the first \$50 from each expedited fee for services provided within two hours. For other special and expedited services, including services provided in 2 to 24 hours, the fee is divided equally between the Secretary of State's Office and the State General Fund.

#### **Effective Date**

Most of the provisions of this measure are effective on August 1, 2001, to allow the Secretary of State's Office time to adequately inform its customers of these changes. The provisions allowing the Secretary of State's Office to access funds from the Account for Special Services and dividing the fees for expedited services between the State General Fund and the Secretary of State's Office are effective on July 1, 2001.

**MINUTES OF THE  
SENATE COMMITTEE ON JUDICIARY**

**Seventy-First Session  
May 22, 2001**

The Senate Committee on Judiciary was called to order by Chairman Mark A. James, at 8:00 a.m., on Tuesday, May 22, 2001, in Room 2149 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Mark A. James, Chairman  
Senator Jon C. Porter, Vice Chairman  
Senator Mike McGinness  
Senator Maurice Washington  
Senator Dina Titus  
Senator Valerie Wiener  
Senator Terry Care

**STAFF MEMBERS PRESENT:**

Bradley A. Wilkinson, Committee Counsel  
Allison Combs, Committee Policy Analyst  
Carolyn Allfree, Committee Secretary

**OTHERS PRESENT:**

Michael J. Bonner, Concerned Citizen  
Craig Tompkins, Concerned Citizen  
John P. Fowler, Chairman, Executive Committee, Business Law Section, State Bar of Nevada  
Dean Heller, Secretary of State

Chairman James stated Senate Bill (S.B.) 571 would not be heard, but he would be presenting a proposal for modifications of provisions in Chapter 78 of *Nevada Revised Statutes* (NRS) and other corporate entity-formation and annual license fee statutes. He then turned the chairmanship of the committee over to Senator Jon C. Porter, Vice Chairman.

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**SENATE BILL 571:** Revises provisions governing business tax. (BDR 32-1548)

Vice Chairman Porter opened the hearing on Bill Draft Request (BDR) 7-1547.

**BILL DRAFT REQUEST 7-1547:** Limits common-law and statutory liability of corporate stockholders, directors and officers and increases fees for filing certain documents with secretary of state. (Later introduced as Senate Bill 577.)

Senator Mark A. James, Clark County Senatorial District No. 8, stated BDR 7-1547 is a measure that will take Nevada in a new and positive direction as a state that is business-friendly. He surmised Nevada will be the number one state in the country for a business to incorporate and operate in, or to have as its corporate domicile. He said every year over the past 10 years, the senate judiciary committee has processed a major piece of legislation modifying, amending, and updating the corporate laws of the State of Nevada. The measures have been the work of the Business Law Section of the State Bar of Nevada, chaired by John P. Fowler, he stated. Those changes in Nevada's laws, he asserted, have kept them up to date with Delaware's laws, all the most recent IRS (Internal Revenue Service) revenue rulings, tax court decisions, United States Supreme Court decisions concerning taxation, and other issues important to corporations in deciding where they want to do business and where they want to have their corporate domicile and be registered to do business.

Senator James said, in some ways Nevada's business laws are better than Delaware's, but they are substantially similar and allow Nevada courts to look to the long history of Delaware jurisprudence to decide disputes that arise under Nevada laws. In recent years, new entities have been created for Nevada businesses, including the limited liability company (LLC), business trusts, and business court, he said. All of these things have been done, he said, and filing fees have not been changed in the past 10 years. He made the following remarks:

We all know that we have . . . an under-funded budget in the state. Our budget is under-funded, by the projected budget, by \$121.5 million . . . If you look at the numbers more carefully . . . the numbers are closer to \$130 million. In the face of this, I have



been working with . . . Senator O'Donnell [William R. O'Donnell, Clark County Senatorial District No. 5] and Senator Amodei [Mark Amodei, Capital Senatorial District] on coming up with an alternative to simply cutting a budget in a year when it would be extremely deleterious to our education system . . . to do so. So, we bring this measure forward to change the fee structure for the filing of corporations and for the maintenance of corporations in Nevada . . .

Let me tell you how we arrived at this. You cannot constitutionally tax a corporation just because it is domiciled in Nevada and it is resident out-of-state; it is a violation of the commerce clause. You cannot tax or level a fee upon assets or income that are not located within the state; to do so is discriminatory and in violation of the federal constitution. What you have to do is come up with a fee structure that is fair to all corporations who choose to domicile in Nevada and that is based upon some principles that make it fair in terms of the ability of corporations to pay and the benefit they receive from utilizing our corporate form and chartering themselves in Nevada or qualifying to do business in Nevada. [BDR 7-1547], on page 2, creates that structure. For corporations qualifying to do business in Nevada or chartered in Nevada, the minimal fee . . . would be \$150 . . . plus 0.35 percent of its net worth in Nevada in excess of \$40,000.

I have given you a couple of financial breakdowns which will aid you in understanding how this fee will impact business in Nevada and business outside Nevada that utilizes our state (Exhibit C and Exhibit D) . . . An important characteristic of this is about 87 percent of the corporations now registered in Nevada would pay the minimum fee . . . an increase of \$65 . . . When I originally proposed this measure, I proposed there be a \$500 fee across-the-board for all corporations . . . We heard a lot of feedback that if you charge \$500, that is going to be an increase from \$85 . . . and that is too much for a small business to handle . . . People said, "If you do that, we will just go to Wyoming." . . . I never knew Wyoming was such a popular place . . . so I decided to study

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Wyoming and found out that in July of 2000, a new fee structure went into effect in Wyoming. Wyoming places an annual, they call it a license fee, on all corporations, domestic and foreign, having the right to do business . . . in Wyoming; that license fee is at 0.00020 percent, but it is on total assets "situated" in Wyoming, with a maximum license fee of \$50,000 per year.

What we have presented to the committee is something different, not a license fee based upon total assets, but a license fee based on actual net worth in Nevada, total wealth in Nevada. So, you can see you would not be paying the higher fees if you had a low net worth. So, in that sense, this is based upon the ability to pay. I was very privileged to receive from Carole Vilardo [Lobbyist, Nevada Taxpayers Association] a flyer from her organization on taxation principles, which this fee meets all of.

Senator James said those working on this proposal wanted to know what substantial, additional feature might be offered to make Nevada attractive and ensure corporations will want to come here. He said they received feedback from attorneys in Nevada who said Nevada ought to offer some liability protection to directors of corporations. Section 5, subsection 7, of the bill does that, he said, in providing "a director or officer of a corporation is not individually liable for any damages as a result of any act or failure to act in his capacity as a director or officer unless it is proven by clear and convincing evidence that, (a) his act or failure to act constituted a breach of his fiduciary duties as a director or officer; and (b) his breach of those duties involved intentional misconduct, fraud or a knowing violation of law." Someone cannot sue a director and seek his personal assets as a result of questioning, after the fact, the business judgment involved in his decision, Senator James said, and he emphasized this does not take away a remedy against the corporation.

According to Senator James, an additional provision proposed in BDR 7-1547, in section 2, is the codification of the principle in existing Nevada law that one cannot pierce the corporate veil and seek to get at the personal assets of a person who is an incorporator or a shareholder of a corporation. Recourse is available, he said, only if it is shown the corporate form is being utilized to perpetrate a fraud and there is a commingling and a unity of interest of ownership and control of the corporation between the entity and the stockholder, director, or officer, and that they are inseparable from each other.

Senator James offered an analysis of the business franchise fee that would be paid by various entities under this bill (Exhibit D). The analysis was prepared by Ted A. Zuend, Deputy Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau, from documents on file of public companies either chartered in Nevada or authorized to do business in Nevada. It is testimony to the bill's inherent fairness, he said, because it is a graduated fee based upon ability to pay and upon the wealth of the company. Senator James described the distribution of the franchise fee burden (Exhibit E). He pointed out the maximum fees are going to be paid not only by companies chartering to do business in Nevada to take advantage of Nevada's favorable tax structure which has no income tax and no corporate income tax, but also by those businesses coming here to take advantage of Nevada's booming economy:

Senator James stated:

Look at the national name brands coming to Nevada to take advantage of our booming economy . . . These companies all either charter here with a subsidiary or with their national company, or they register with the secretary of state to do business here. And, all of these people pay \$85 per year to have the benefit of Nevada's corporate laws . . . Under this proposal, based upon the assets they locate in Nevada, the business they do in Nevada, they will pay a graduated fee . . . It is important to understand, I think, for businesses to take advantage of Nevada's lack of a corporate income tax [and] lack of a personal income tax, the income has to be generated in Nevada. The assets, therefore, need to be located in Nevada. And, under those circumstances . . . a fair net worth-based filing fee would apply.

Senator James read from Carole Vilardo's article in the April 2001 issue of "Tax Topics" (a publication of the Nevada Taxpayers Association) concerning taxation principles: "Long range planning should be an integral part of the state's revenue structure and should include forecasting trends in population growth and the corresponding growth in governmental services. The Legislature should adopt a statement of tax policy which encompasses the following principles: Non-Competitive: Revenue sources should not be competitive

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between the state and local governments." Senator James said some of the proposals made this session would compete with local government over limited revenue sources. They really are not new revenue sources, he said, they are merely a redirection of revenue sources.

Continuing with Ms. Vilardo's article, Senator James read, "Economic: Revenue sources should reflect the existing state economic structure and consider possible future economic needs. The impact on individuals and businesses should be considered. A systematic, periodic review should be conducted to consider current business practices, loopholes and other impacts such as ease of compliance." He said:

We have a state that is generating great wealth, tremendous growth, tremendous growth in wealth and new businesses, and yet we have, after a decade of this unprecedented growth, a state budget that is under-funded, an education system that is under-funded, and a state of affairs at our state level where our employees have not received a raise in so long that many of them defect, not to private [business], but to local government, where they get a one-third increase in the amount of money they make for doing the same, exact job. So I think this . . . would take advantage of the existing economic structure of Nevada, would do no damage, no violence to the existing tax structure of the state or business-friendly climate of the state, but it would bring us back to reality in terms of allowing the great wealth that has been generated in our state to benefit our government and those who benefit from our government, such as our children in school.

Senator James resumed reading from Ms. Vilardo's article: "Simplicity: Taxes should be simple to understand and easily complied with. Results will be improved voluntary compliance and reduced administrative costs." He said the fees provided for in BDR 7-1547 are "extremely simple" to comply with and will utilize the same form that is currently filed with the secretary of state's office, with a couple of lines added for business assets and net worth, pursuant to section 6, subsection 1, paragraph (e) through paragraph (g).

Again, from Ms. Vilardo's article, Senator James read, "Stability: Taxes should be stable and predictable." He said Nevada currently has fluctuating revenue sources that depend upon a number of factors and BDR 7-1547 provides for a

much more stable and predictable revenue source. Other principles outlined in Ms. Vilardo's article, he stated, are: taxes should be compatible with other government taxes for ease of compliance; they should be broad-based, with as few exemptions as possible and not favor one taxpayer group over another; they should be equitable, taking the impact on economic growth of the state into consideration; and, collections should be fairly and uniformly enforced. Bill Draft Request 7-1547 meets all these criteria, Senator James said.

Senator James said he thinks this tax can be collected as a fee by the secretary of state, and the secretary of state will be asking for an auditor position to keep track of the fees as they come in, and for additional funds to handle the increased responsibilities of the office. He said it is fully appropriate to use some of those revenues to honor that request.

Senator Titus commended Senator James for his work on this bill, and said there is no one who wants more for schools than she does. She pointed out this proposal is a major change in Nevada's tax policy, and noted this Legislature has never undertaken something this major by going around the Governor. She said when something like this is done, both parties, both Houses, and the executive are needed, and "time is running out."

Senator Titus asked Senator James whether he can tell her where the Governor stands on BDR 7-1547, and Senator James said he cannot speak for the Governor, but he is hopeful. "The portent other members of the Legislature or the Governor will not embrace this is not enough to stop me from proposing it," he said. He said the way this developed was that no one was going to do anything. "We were going to cut the budget and we were going to go home," he said. He said he had some support for his original proposal for the \$500 across-the-board fee, but there was much opposition. So, he went to work doing the constitutional research and research on all other 49 states, he said, and combining the results of his research with the Carole Vilardo's "Principles of Tax Policy," he came up with this proposal.

Senator Washington asked whether the protection placed around corporate officers and stockholders will be inducement enough for corporations to come into Nevada, if the filing fees are raised. Senator James answered it is an added incentive. He explained there are two separate issues. One is the protection for a director, he said, so a director is not held liable and his or her personal assets cannot be attached. Directors are the ones who decide where

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to incorporate, he said, and this will be a major incentive. Second is the protection regarding the corporate veil, which is a codification of existing case law defining the criteria for when the corporate veil can be pierced to get at the assets of the person who incorporated.

Senator James continued:

With respect to the fees . . . the places to incorporate . . . are Delaware, Nevada, Texas, and Wyoming. In terms of looking for a domicile, where you are not necessarily going to do business, [where] you are going to charter your company . . . if you go to Delaware, your annual filing fee could be as high as \$150,000 . . . The fee in Wyoming is \$50,000, based upon your assets in Wyoming, so, Wyoming offers nothing that Nevada does not offer.

Senator Washington noted it has been said this fee increase is driven by the need to fund education. However, he said it is his understanding about \$450 million in new money has been appropriated for education. As legislators and policy-makers, they have to be able to answer their constituents, he said. He indicated there are two questions that must be answered: (1) Where is the money going? and, (2) Has everything possible been done to streamline state government and prioritize services the state should render to counties that may not be able to provide those services, while allowing those counties able to provide the services to do so? Senator James answered by describing conditions in the Clark County School District, which is starting \$34 million "in the hole."

Senator James said:

I do not think anybody can make a reasonable case that the education system of this state is over-funded. I do not think anybody can make a reasonable case it is adequately funded. The need is clearly and demonstrably there . . . With respect to state government and whether it is adequately funded, I commend our Governor, because over the last 2 years . . . we went through the first legislative session [and were] very fortunate. We had revenues coming in from existing tax revenues, had surplus in the

budget we could spend on things we wanted to spend it on . . . But, over the last interim, in a time when it looked like [there was] plenty of money, the Governor took the leadership to conduct a fundamental review of state government . . . that was to demonstrate and to find places where government could be cut. This Governor, who is a former CEO [Chief Executive Officer] of major corporations . . . has made government as streamlined as possible, [and] has presented us [with] a very austere budget for this session . . .

We do not have too much money; there is not a lot of fluff in the budget to . . . make up this \$130 million . . . shortfall, based upon the projections of the economic review. So, I think we are at the perfect place to say, "We have presented a very austere state budget . . . We have people that have not had a raise in a number of years, people who are making a lot less than they do in the private sector or in local government, and we have teachers who have not had a salary increase and they are some of the lowest-paid teachers . . . in the country."

Senator Care stated he applauds Senator James's efforts and "you would have to be absolutely blind to not believe there is crisis in funding for public education in Clark County." He asked Senator James whether he has an opinion about the appropriateness of looking at other tax revenues during the interim or in the next legislative session, or whether this fixes everything. Senator James said he is not saying this proposal is a fix for everything, and the Governor has made public statements regarding the need to look at the long-term funding of the state.

Senator James said:

But . . . you have the secretary of state's office, you have people who are paying an \$85-a-year fee . . . a fee that has not been increased in a decade. Most of those companies, if they think about it, probably wonder why they are paying such a low fee. We have a place where we can fairly generate additional revenue, that is all I am saying . . . It does not target any industries . . . Everyone has been saying, "Let's make gaming pay." Well, this makes gaming pay; it makes everybody pay.

Senator Porter said he concurs with what Senator James has said and can appreciate the challenges before education today. Many small business owners are the ones they are trying to help through this legislation by improving education and services to the community. But small businesses think the cards are stacked against them because big businesses are represented by high-paid lobbyists; small business is counting on the legislators to look after their interests, and sometimes when the government thinks it is trying to help them, it really is not.

Senator Porter described the experience of a delicatessen owner whose costs and fees for running her business and providing benefits for her employees are increasing, and who is concerned about the graduated fee schedule proposed in BDR 7-1547, which she read about in the newspaper. Senator Porter said if a business owns a couple of cars and a small building and some inventory, that business may be subject to a fairly high fee. Referring to Exhibit C, he pointed out the \$150 franchise fee for a \$25,000 business is "0.06" percent of the net worth, and to be fair in spreading out the fees, the franchise fee for a business with a net worth of \$51,200,000 should be \$300,000, rather than the \$50,000 indicated. He asked Senator James how he came up with the fees and whether he talked to some of the small businesses to find out who had \$100,000 in assets. Senator James said he looked at other states and at the distribution of estimated net worth of corporations in Nevada to see where the bulk would fall. He said he strongly considered the impact on small business, and 87 percent of the corporations in Nevada will pay the minimum fee. They will not get into the higher fee range unless their net worth goes up; this is a net worth test, not an assets test, he said, and liabilities offset assets.

Senator Porter said he does not think the minimum fee can be categorized as simply an increase of \$65, because it would not be unusual for a small business to have an inventory in vehicles and parts and equipment of \$100,000 or \$200,000, and that would be an increase in the fee from \$85 to \$710, according to the chart (Exhibit C). Senator James acknowledged that would be correct for a net worth of \$200,000, and Senator Porter said he believes the small business is going to be hit the hardest. "When a big corporation goes bankrupt, there is usually a nest egg, but when a small business goes bankrupt, it is just in debt," he said. He said he is very concerned the proposal being presented is going to create a major hardship for those ma-and-pa businesses.



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Senator James said that is something that can be explored, but this is designed to minimize the impact on the small businessperson.

Senator Porter stressed that he thinks something is being missed regarding the small businessperson. Senator James noted he has not heard anybody saying Nevada is not going to do something major to change the tax structure and the tax burden. "It is not a question of if; it is a question of when. What we are talking about now is crisis in the funding of the state budget, a fee that has not been increased in 10 years, and an equitable way in which to increase that fee and distribute the burdens fairly among those people who have the ability to pay," he said. He said he welcomes suggestions, but the endeavor here is to ensure the people who have the ability to pay an increased fee are paying it and the wealthiest are paying the largest fee.

Senator Washington said there are issues concerning projects such as the Henderson State College with \$150 million to be voted on and contended with. "Is that on the table as well now; are we going to take a look at that and say maybe we cannot afford it at this time?" he asked. Senator James said he thinks there is a "mini-fundamental" review taking place in light of the potential for necessary cuts, and the level of funding that can be given to Henderson State College in this budget is a matter still to be considered. He said he would not like to see the project die, but he hopes the level of funding would be considered along with other pressing needs in the state.

Senator Washington pointed out state workers are making the same appeal for a raise as teachers, and legislators need to balance the needs of state workers, teachers, and other considerations. He said he is trying to take a look at the "big picture." Senator James said he did not know what to say, except state workers are slated to receive a long-awaited and well-deserved raise.

Senator James, addressing Senator Porter's concerns, said those people who conduct business as sole proprietors and do not take advantage of the limited liability offered, or other benefits of incorporation, do not experience any fee increase under BDR 7-1547. Sole proprietors who report a substantial net worth on their federal income tax are the only ones who will be impacted by a modest increase in fees, he said.

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Senator James resumed chairmanship of the committee and invited other witnesses to speak.

Michael J. Bonner, Concerned Citizen, Attorney, stated Senator James had asked him to look into a provision to include in BDR 7-1547 to make Nevada a more attractive place in which to domicile a business entity, and he suggested a provision for liability limitation. He said:

When we look to enhance the attractiveness of Nevada as a place in which to incorporate, we have to recognize . . . businesses outside of the state are going to consider and be counseled on a place in which to incorporate. Typically, they are going to be told, "either the state in which you do business, or Delaware." The vast majority of business entities, as they . . . become public, seasoned companies, are going to Delaware. When we look at our Nevada corporate business statutes, we have to recognize that, due to a variety of factors, if it is Delaware versus home state versus Nevada, if it is a tie . . . if the corporate laws of those jurisdictions are equally favorable . . . typically, they are going to select Delaware. That is just the way it is; that is a part of the business practice in which we operate . . .

The reason for that [is] Delaware has a long history of developing corporate law. It has a court that is recognized as the leading court for jurisdiction in this country; it has a seasoned bar . . . The companies that come to us that are being counseled by investment bankers are often just arbitrarily recommended to incorporate in Delaware. So, when you look at Nevada as a choice, frankly, we have to be better than Delaware. We do not want to do things that will encourage less desirable businesses, because that is not in our best interests. But, what we want to do is give boards of directors and corporate officers, and investment bankers and those who counsel them, an opportunity to say, in Nevada there is this element that may not be present in those other jurisdictions.

Mr. Bonner continued:

In the bill draft before you are a couple of things that have been added with that in mind . . . Boards of directors, in addition to just running the corporation, have to consider a couple of items in selecting a corporate domicile. Those things include the layers of protection that are available to them, the predictability of legal standards with which they will be faced . . . and they are given a variety of considerations to look at. We know that virtually every state now has a form of director . . . liability protection . . . Most states have indemnification, and we know the marketplace allows directors and corporations to purchase director and officer liability insurance . . .

Directors who come on the boards of publicly-traded companies typically are very successful businesspeople in their own right. They have, typically, large assets; they usually have been extremely successful and are being asked to go on a board of directors because of their expertise, their business acumen, [and] because of the things they can truly bring to a corporation's board to enhance the activity of the board in the best interests of the stockholders. As Senator James said earlier, should they have to do that at the risk of their personal assets being placed on the line.

Mr. Bonner stated, in looking at those issues, a corporation wants predictability, and if Nevada can enhance the liability protection for them and strike the proper balance to not protect those who have participated in a criminal activity or fraud, the State will go a long way to making Nevada an attractive place in which to incorporate. He explained, when he reviewed the bill draft, he looked at a couple of other corporate statutes to see what is out there. As an example, he said Maryland has some attractive features in its corporation statutes. He pointed out the states of Florida, Indiana, Maine, Ohio, and Wisconsin have so-called self-executing statutes, meaning as a matter of statutory law, liability protection is available. Mr. Bonner explained this contrasts with NRS 78.037, which allows a corporation to opt in or place a charter provision in its articles of incorporation with the liability limitation. He noted Ohio has a clear and convincing evidence standard in its statutes.

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Mr. Bonner opined Nevada already has a liability immunity statute "equal to, if not better than, Delaware's." He declared it is better than Delaware's because, not only does it cover the liability of directors, but also of executive officers.

Mr. Bonner proposed a new subsection 7 be included in section 5 of the bill. He said it introduces a clear and convincing evidence standard. He added it makes deletions of certain provisions of NRS 78.037, basically for "housekeeping" reasons, and because the provisions will become moot by this statute. He stated, "It makes it an automatic statute, as opposed to an opt-in statute." Mr. Bonner suggested the proposal actually benefits the small "mom-and-pop" operation and is less advantageous to a large corporation.

Mr. Bonner related, in 1987 the Nevada Legislature adopted NRS 78.037, which allows corporations to place in charter a provision of immunizing directors and officers from personal liability. He stated he has probably seen thousands of corporations since 1987, and he can think of only one instance in which a corporation charter did not have that provision because it was, essentially, a small business that apparently did not have the funds to seek legal counsel. He said they formed it based on some office supply form, and missed the director and officer protection.

Mr. Bonner said:

There is also language that has been added to NRS 78.138 that merely clarifies what we clearly believe is existing law . . . Further, there are essentially mirroring changes suggested to [NRS] 78.300 . . . Presently there is a question as to whether there is a different culpability standard in [NRS] 78.300; this will make the culpability standard the same. [NRS] 78.300 also has a change in the statute of limitations, reducing that to 2 years from 3 [years]. Nevada is presently one of only thirteen states that has a longer than 2-year statute of limitations on the payment of dividends; therefore, we are actually in the minority.

Mr. Bonner noted section 1 of the bill draft request has proposed language which will codify existing Nevada case law on the so-called "alter ego doctrine," or "piercing the corporate veil." He surmised it offered great advantages that can benefit Nevada as a corporate domicile. Essentially, he said, in looking at the doctrine of piercing the corporate veil, traditionally case law is consulted.

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He opined the ability of Nevada to provide objective and predictable standards for corporations to evaluate the risk under the alter ego doctrine makes this provision very attractive to corporations considering a domicile in Nevada. He explained it essentially codifies existing case authority, with modifications, and imposes a clear and convincing evidence standard, which "raises the bar" on the evidence necessary for a fraud finding.

Mr. Bonner concluded:

In short, as a counsel who often is asked by corporations and their boards, "Why Nevada versus Delaware" . . . we think the work this body has done for many years has taken us a great way toward making Nevada a more attractive domicile, [and] we have to make it an objectively determinable more beneficial place in which to incorporate.

Senator Washington asked why the statute of limitations was changed from 3 years to 2 years, and how the new language in section 11 will work. Mr. Bonner replied NRS 78.300 deals with the payment by a corporation of distributions or dividends that violate Nevada statute. If a board of directors authorizes a dividend in violation of that statute, there can be personal liability on the part of the directors, he said. The changes provided for in section 11 would eliminate the confusion that exists regarding the proper standard for liability, he said. Concerning the statute of limitations change, he said it would bring Nevada in line with the majority of jurisdictions.

Senator Care expressed concern the enhanced protection for officers and directors may come at the expense of a third party. He asked Mr. Bonner what other acts an officer or director could currently be liable for in Nevada for which that officer or director would not be held liable if this bill should become law.

Mr. Bonner answered,

Nevada Revised Statutes 78.037, which is the law we have today, essentially has the immunities from personal liability that the new proposal will have. The distinction between the law today and the proposal is that this will be self-executing, meaning a corporation

will not have to adopt an amendment to its articles of incorporation; and, it imposes a higher evidentiary standard, the clear and convincing evidence standard versus a preponderance of the evidence standard. But, I believe that the actual language in the proposal does not increase the actual immunity of liability. We have essentially taken what was in NRS 78.037, moved it into the new section, [with] two significant changes: (1) the clear and convincing evidence standard, and (2) making it an automatic statutory provision as opposed to a charter opt-in provision . . . If a corporation had that provision in its articles of incorporation, there would not be a difference . . . What would be different is that, if a lawsuit were brought, there would be a higher proof standard that a plaintiff would need to bring to establish liability, and the establishment of that liability would be dependent on proving intentional misconduct or fraud.

Senator Care said his question actually had to do, not with section 4, but with section 2, subsection 1, paragraph (b), which says, "A court of competent jurisdiction finds by clear and convincing evidence . . . ." He asked, "By 'court of competent jurisdiction,' does that become a matter of fact or a matter of law? Is this something for a jury to determine, or is there some sort of pretrial procedure through which the court has to determine . . . whether, in fact, these elements can be established?" Mr. Bonner replied the reference to a court of competent jurisdiction means a finding, as in any litigation, as to whether the jurisdiction of a given court is proper. He said, "As to the rest of the language in the statute . . . the intent is to say that once you get past the jurisdictional element, the burden of proof to establish the piercing of the corporate veil would be a clear and convincing evidence standard."

Senator Wiener commented clear and convincing evidence is a high standard, and she asked how many states have that standard. Mr. Bonner said he had not surveyed every single state, but from the information prepared for him, Ohio has the clear and convincing evidence standard. He added, Delaware does not, so Nevada would be one of the few states, "maybe only one of a couple, that would have a clear and convincing evidence standard on this particular issue."

Senator Care asked whether the statute of limitations becomes 2 years for all causes of action on the date the bill becomes effective, even for causes of

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action committed somewhere between the 2- and 3-year period. "Is somebody out of luck?" he asked, and Mr. Bonner replied he did not know the answer. Senator James said they would get an answer.

Senator Washington asked whether clear and convincing evidence is the standard of proof the court must find for liability of a corporation pursuant to section 2, subsection 2, and Mr. Bonner replied it is.

Senator James, responding to Senator Care's earlier question concerning the effective date of the bill with regard to the 2-year statute of limitations, stated the intention is for BDR 7-1547 to be prospective. "You cannot have the standard applicable to pending proceedings . . . We should have the legal department redraft this," he said. Bradley A. Wilkinson, Committee Counsel, pointed out that the question is addressed in section 65, and it is not addressed in the way Senator James said he would like it to be. Senator James said he would like it to be changed so that the bill's provisions apply only to cases filed on or after the effective date.

Craig Tompkins, Concerned Citizen, stated he is CEO and President of Craig Corporation, and Vice Chairman, Citadel Holding Corporation and Reading Entertainment. He said Craig Corporation is a New York Stock Exchange company, but most of its operations are conducted through other companies, some of which are also publicly traded companies, and his companies have recently gone through the process of choosing a new corporate venue.

Mr. Tompkins said a couple of years ago his companies undertook a study to determine whether it made sense to continue to keep all the companies in Delaware. He noted there were concerns regarding staying in Delaware for a couple of reasons, one being it had gotten quite expensive to be a Delaware corporation. He said:

We had "maxed out" on two of the companies, which is \$150,000 apiece, and we were coming close . . . to maxing out in the third. So, we were currently at \$350,000 a year and we were looking at being at \$450,000 a year. The second thing was that it did not seem to us that Delaware had kept up with what was going on in

other parts of the country and the world in terms of trying to balance the needs of corporate directors trying to make decisions in an uncertain world . . . So, we were also looking for a state which could afford a balancing of those concerns.

Mr. Tompkins related the corporations ultimately selected Nevada. He said the group liked Nevada because of the very low fees required. Although the committee is considering, here today, an increase in those fees, he said, the fees being discussed are still quite modest compared with the Delaware standard. He stated, "We like the fact that under Nevada law, directors are not automatically subject to lawsuits in Nevada . . . "

Mr. Tompkins continued:

We like the provisions of the Nevada code, which afford greater protection in terms of using a willful misconduct standard, and we think it is a good idea to allow that across the board and also to allow the clear and convincing evidence standard. Let me talk briefly as to why that is.

In addition to sitting on the boards of our 3 companies, I am also a director of G & L Realty [Corporation], a . . . real estate investment trust; and I am on the board of directors of Fidelity Federal Bank . . . As a lawyer with Gibson, Dunn & Crutcher . . . I had a lot of experience in advising boards of directors involved in both day-to-day and ordinary transactions. Your average director . . . typically attends a meeting every month or so. The compensation varies from company to company; oftentimes it is around . . . \$25,000 a year for your average company . . . For most of us, it is not like we are involved everyday in the day-to-day operation of the company . . . Unfortunately, over the last several years, we have become, increasingly, targets of plaintiffs' lawsuits. Yes, it is true that it is only infrequently that liability comes home to roost; most of these cases end up being settled . . .

But . . . you get sued; you get named personally in a complaint . . . What this [bill] does is help even the playing field. It means that when a plaintiff's counsel is thinking about whether or not to sue the directors, that plaintiff's counsel needs to take into account



what it is that he is going to have to establish, what it is he is going to have to prove . . . When you use a willful misconduct kind of statute or a fraud kind of standard, then the person really has to plead what it is you did wrong. Right now, in Delaware, they do not plead what you did wrong; they just plead that something might go wrong . . . It costs us money to defend these lawsuits, it can adversely affect your credit, [and] it can affect your perception. Another thing it does is, because the amount of damages alleged are so large, and because directors are only human, when your counsel says, "I can settle this case for \$600,000," of which \$547,000 goes to the lawyers, your attitude is [to settle] . . . It does not relieve the company from liability; it does not interfere with any equitable relief . . . But, should [a director] be liable for \$10 million, \$20 million, \$30 million because of an honest mistake?

Mr. Tompkins said piercing the corporate veil is a very uncertain area. What has been suggested for Nevada is to take the case law, he said, so people looking at Nevada do not have to read a lot of cases to try to ascertain whether the law is current. They will be able to look right at the statute, he asserted. And, he noted, the statute would address much uncertainty. Mr. Tompkins pointed out companies most vulnerable are the small companies. He explained the courts typically looked at case law to determine whether a person followed all the corporate formalities, such as whether the right minutes were kept; whether there was a separate board of directors; and whether there were always separate bank accounts.

Mr. Tompkins stated he has a chief financial officer whose job is to make sure those things get done. He reiterated it is the small business owners who have incorporated specifically to protect their individual assets who are the most vulnerable to having the corporate limitations on liability set aside because they did not follow the proper formalities.

Chairman James interjected, "So, the notion is that a small business owner decides to incorporate and forgets to keep his annual meeting minutes up-to-date, he is not as careful as he should be and there may be some commingling of assets or commingling of the books . . . These kinds of things

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occur, and those are not, alone, under this statute, a predicate for disregarding the corporate veil and the limited liability protection. He has to be, in addition, under this language, utilizing the corporation to perpetrate some kind of fraud."

Chairman James commented he did not suppose piercing the corporate veil comes up very often as an issue for large corporations. Mr. Tompkins responded that with subsidiaries there is a significant amount of uncertainty, but if this statute is passed, there will be a greater level of certainty for corporations.

Senator Care asked Mr. Tompkins to describe the kinds of corporate acts for which an officer or director should not be named as a defendant in a lawsuit. He said he would not want to give his constituents the impression because a business is willing to pay more money to incorporate in Nevada, it will get to "walk, scot-free."

Mr. Tompkins replied:

Most of the problems occur not in terms of the corporation acting as a corporation, because directors typically are not directly liable for the acts of the corporation. For instance, if a corporation sells a defective product, it is the corporation that is sued; it is not the director. If a corporation pollutes a river, it is the corporation that is sued; it is not the director. Where director liability really comes in is in terms of mergers, acquisitions, issuances of stock . . . They are shareholder derivative suits that we are concerned about. So, I do not see that this has much, if any, effect at all in terms of whether a director would be liable to a consumer group or to a member of the public. What I see it doing is making it less likely that, in an extraordinary corporate transaction, the director will be caught up in the litigation, unless the plaintiff's lawyer actually has some evidence or some probable cause to believe that director has actually acted wrongfully.

Senator Care said, "I think the public needed to hear that."

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Chairman James asked John Fowler to expound on the status of the Nevada laws in relation to Delaware laws, and the work done in prior sessions.

John P. Fowler, Chairman, Executive Committee, Business Law Section, State Bar of Nevada, explained the history of the Business Law Section's involvement with corporate statutes:

In 1990, a firm I was then with was hired by Secretary of State Frankie Sue Del Papa to revise Nevada's corporate law. That study of Nevada corporate law, about a 350-page book, contained specific statutory suggestions for changes to Nevada corporate law . . . [in order to] try to become a competitor with Delaware and other states in ease of corporate convenience . . . Following that study, in 1991 a bill was written that was worked on by members of the then business law committee of the state bar, and worked over considerably by the Legislature itself, and it became a bill which started us on the road to improving Nevada's corporate laws for the entire country to use . . . Every session since, since 1993 and forward, the business law section has created a bill to improve Nevada's corporate and limited liability company statutes . . . It is an accomplishment that, I think, has taken us quite far . . . That and . . . the fact that we have retained a situation where there is not corporate or personal income tax, and the fact that the secretary of state's office has worked mightily to keep up and to be a customer-friendly office, as opposed to the archetypal governmental bureaucracy.

We now have a substantial national presence in the corporate law world that brings real benefits to the state [and] it makes it easier for those doing business in the state to use our own state laws. It makes it easier for investment bankers . . . and those companies with assets that they can move to the state, to move them here and use our corporate statutes . . .

In the 1999 Session, Senate Concurrent Resolution (S.C.R.) 19 [of the Seventieth Session] was passed, which created a special subcommittee that studied ways to improve corporate governance . . . and [establish] a business court.

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**SENATE CONCURRENT RESOLUTION NO. 19 OF THE SEVENTIETH SESSION:**

Directs Legislative Commission to conduct interim study of methods to encourage corporations and other business entities to organize and conduct business in this state. (BDR 534)

Mr. Fowler stated the S.C.R. 19 of the Seventieth Session committee work resulted in a number of bills, among them S.B. 51 and actions by the Nevada Supreme Court to create a business court in both Clark County and Washoe County.

**SENATE BILL NO. 51:** Makes various changes pertaining to business associations. (BDR 7-255)

Mr. Fowler continued:

It has been a long history and a long effort, and it has to be continued; it is not something that can stop, because the corporate world does not stop. New processes, new kinds of ways of doing transactions come about and require a change in corporate and limited liability company statutes . . . I believe . . . the bill . . . shows a further movement in this direction, to make Nevada a friendly place for a corporation to put its charter and to do business.

Chairman James noted, in S.C.R. 19, John H. O. La Gatta, Lobbyist, Catamount Quantum LLC, had proposed the creation of a different kind of fee structure, "and that was the only part we did not do, and is what is contained here. It is not exactly his proposal, but it is a permutation of it, and that is how this is a whole package [and] how John envisioned the outcome of it."

Chairman James asked Dean Heller, Secretary of State, to discuss issues related to his office, fee adjustments included in BDR 7-1547, and the role of resident agents. Mr. Heller stated his office has been a significant source of revenue for the state, and the studies and efforts made over the last 10 years have worked. He said the secretary of state's office has grown 10 to 15 percent per year, from approximately 5,000 corporate annual filings 10 years ago to approximately 50,000 today. He noted the average individual on the staff earned about \$100,000 in revenue 10 years ago, and today each individual is earning about \$350,000 in revenue for the state.

Mr. Heller said among the biggest clients in the secretary of state's office are the resident agents. He stated:

[They] do a tremendous service for the state of Nevada. They work very hard in advertising the corporate services we provide . . . It was to everybody's benefit to bring them into the office . . . We probably had a half dozen or eight resident agents in the office, and they probably represented somewhere between 50,000 and 60,000 corporations here . . . and you asked them to give us an alternative . . . and they did discuss some of the filing fees with the office that had not been raised for 10 years and what we could do to raise some of these fees and still remain competitive . . . So, the filing fees and the changes, most of them came through their recommendations. A couple of them were reduced. It took some effort on our part, and one of the fees we did reduce was the annual fee . . . I anticipate our growth will continue. I think we will see a shift in the quality and the quantity of the kind of business we do . . . but, overall, I think this proposal takes us forward.

Chairman James said one of the things the resident agents pointed out is often people start a company and need an entity within which to create the start-up business, which may have a minimal, or even negative, net worth. That is the reasoning behind the fee schedule proposed in BDR 7-1547, he said. "So, people who are start-up companies or small businesses, or people who just want to get their entity going, are going to pay the minimum filing fee of \$150, which they [the resident agents] represented was something they could aggressively market," he said.

Mr. Heller added,

As you struggle with the policy issue here, of course we struggle with the administrative end of this . . . You have requested, and we are preparing, [information regarding] what the fiscal impact will be on our office . . . I think it will be a minimal increase. You are looking at our office, under this proposal, going from \$22 million a year in revenue to somewhat over \$60 million, or

\$130 [million] for the biennium. I think we can move forward with a minimal increase of six to eight additional employees in the office in order to handle this increase and the change in structure and the way we process some of this paperwork.

Chairman James said it is closer to \$85 million or \$87 million from the secretary of state's office, because what the Legislative Counsel Bureau (LCB) did in its projections was run just the corporations under Chapter 78 of NRS, which would generate \$52 million. He said that does not include 40,000 other kinds of entities that would be on the same schedule. He stated, "[The] LCB did that to leave it at a conservative projection; then the \$52 [million] plus the \$13 [million] from the additional fees, that is \$65 million. It is a very conservative number . . . It accounts for absolutely no growth."

Senator Washington said he is concerned about start-up businesses of single women and minorities, and asked whether this proposal would become a hindrance or disincentive for them. Mr. Heller said the proposed fees were kept as low as possible, with these people in mind. This is not a new tax or a new fee; it is an increase in the filing fee for the annual list of officers, he said. He said a lot of proposals have been on the table, including a business tax proposal, all of which were rejected so people desiring to establish businesses in Nevada would not be faced with all sorts of fees. Mr. Heller pointed out, generally, liabilities are higher than assets for start-up companies, and this proposal is based on net worth.

Senator Porter echoed Senator Washington's concerns, saying he wanted to make sure Nevada is a place where not only the rich can get incorporated. "A lot of these smaller companies do not have major liabilities," he said, adding, "They really kind of 'pay as you go,' because they cannot afford the debt."

Senator Care asked whether financial records submitted to the secretary of state's office could be kept confidential. Chairman James responded the office can have the information remain confidential.

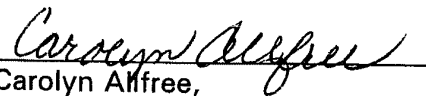
Senator McGinness asked whether the secretary of state's office has some sort of due process in place for determining net worth pursuant to section 31, subsection 4, of BDR 7-1547. Mr. Heller said his office is currently ministerial and accepts documents filed and signed under penalty of perjury, and would

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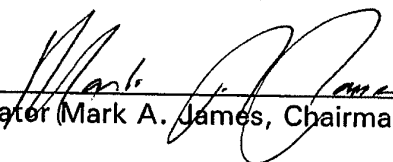
have to put the language of the bill into place administratively. Chairman James stated whatever process the secretary of state's office puts into place would certainly comply with applicable procedural requirements, due process, and the rights of taxpayers.

There being no further business, the meeting was adjourned at 11:05 a.m.

RESPECTFULLY SUBMITTED:

  
Carolyn Allfree,  
Committee Secretary

APPROVED BY:

  
Senator Mark A. James, Chairman

DATE: 9-30-01

## Franchise Fee Examples

If the Net Worth Attributable to Nevada is:	The Annual Franchise Fee is:	
\$25,000	\$150	About 87% of corporations registered in Nevada will pay minimum fee.
\$40,000	\$150	
\$50,000	\$185	
\$100,000	\$360	
\$200,000	\$710	
\$400,000	\$1,410	
\$800,000	\$2,810	
\$1,600,000	\$5,610	
\$3,200,000	\$11,210	
\$6,400,000	\$22,410	
\$12,800,000	\$44,810	
\$25,600,000	\$50,000	
\$51,200,000	\$50,000	
		Less than 500 corporations registered in Nevada will pay maximum fee.

**3471**

EXHIBIT C Senate Committee on Judiciary

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APP00656



Examples of Companies Allocated Net Worth Subject to Business Franchise Fee

Store/Company	Number of Stores:		Total <sup>1</sup>	Total Net Worth <sup>2</sup> (Millions \$'s)	Net Worth:		Estimated Business Franchise Fee
	In Nevada <sup>1</sup>	Number of Stores:			Allocated in Nevada <sup>3</sup> (Millions \$'s)		
Walmart	20	3,118		\$31,343.0	\$201.0		\$50,000
Albertsons	86	2,512		\$5,694.0	\$194.9		\$50,000
Home Depot	11	1,029		\$15,004.0	\$160.4		\$50,000
Gottschalks	3	96		\$407.2	\$12.7		\$44,550
Target Corporation <sup>4</sup>	18	1,307		\$6,519.0	\$89.8		\$50,000
Lithia	5	56		\$181.8	\$16.2		\$50,000
Good Guys	4	79		\$90.5	\$4.6		\$16,051
Bed, Bath & Beyond	1	247		\$559.0	\$2.3		\$7,932
Hertz <sup>5</sup>							
Nevada First Bank				\$1,674.0	\$11.1		\$38,883
First National Bank of Nevada Holding Company					\$15.4		\$50,000
Wells Fargo <sup>6</sup>					\$14.5		\$50,000
Wells Fargo Bank Nevada National Association <sup>7</sup>				\$26.5	\$0.7		\$2,330
Park Place Entertainment <sup>8</sup>					\$725.5		\$50,000
Stations Casino, Inc.				\$3,740.0	\$428.7		\$50,000
					\$288.9		\$50,000

Number of stores obtained from information provided in annual 10-K filings with the Securities and Exchange Commission.

Net worth amounts taken from financial statements of annual 10-K filings with the Securities and Exchange Commission.

Total Net Worth allocated to Nevada based on the percentage of the total number of stores located in Nevada.

Target Corporation includes Target, Mervyn's, and Marshall Fields Stores

Number of store information not available from annual 10-K report. Nevada's population as a percent of U.S. population was used to allocate total Net Worth.

Information on Wells Fargo from National Information Center (Federal Reserve Board).

Net worth was allocated using total assets of Nevada banks as percent of total assets of Wells Fargo & Company

Information from National Information Center (Federal Reserve Board). Represents Net Worth of Wells Fargo branch banks in Nevada.

Net Worth Allocated to Nevada based on square footage of Nevada casinos as percentage of total square footage at all properties.

Information obtained from annual 10-K filings with the Securities and Exchange Commission.

3472

**The distribution of the franchise fee burden, based on assets in Nevada, is expected to be as follows:**

- **50 percent of the additional franchise fees are to be paid by the largest 4/10ths of one percent of Nevada's businesses registered with the Secretary of State.**
- **75 percent of the additional franchise fees are to be paid by the largest 2.5 percent of Nevada's businesses registered with the Secretary of State.**
- **85 percent of the additional franchise fees are to be paid by the largest 10 percent of Nevada's businesses registered with the Secretary of State.**

**3473**

### Franchise Fee Estimate by Asset Size

<u>Size of Total Assets</u> <u>(000's)</u>	Estimated Nevada Assets	Estimated Nevada Net Worth	Estimated Nevada Corporation s	Estimated Nevada Net Worth Per Corporation	Estimated New Tax Revenue
Total	231,207,565	79,471,096	131,882	602,591	52,040,532
Zero Assets	0	0	8,613	0	559,821
\$1 to \$25	514,803	-122,731	68,062	-1,803	4,424,029
\$25 to \$62.5	846,974	115,718	20,851	5,550	1,355,283
\$62.5 to \$125	1,134,658	293,508	12,785	22,958	830,997
\$125 to \$250	1,537,241	445,884	8,741	51,009	904,994
\$250 to \$1,250	4,933,120	1,386,988	9,370	148,017	4,151,674
\$1,250 to \$2,500	2,594,361	789,555	1,494	528,535	2,651,402
\$2,500 to \$6,250	3,436,599	1,043,192	889	1,172,890	3,584,466
\$6,250 to \$12,500	3,146,380	1,146,042	357	3,214,235	3,984,405
\$12,500 to \$25,000	4,346,571	1,654,514	244	6,787,038	5,772,461
\$25,000 to \$62,500	8,833,573	3,868,709	224	17,275,342	11,197,200
\$62,500 & Over	199,881,285	68,849,717	252	272,698,067	12,623,800

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APP00659

**MINUTES OF THE  
SENATE COMMITTEE ON JUDICIARY**

**Seventy-First Session  
May 24, 2001**

The Senate Committee on Judiciary was called to order by Chairman Mark A. James, at 8:56 a.m., on Thursday, May 24, 2001, in Room 2149 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Mark A. James, Chairman  
Senator Jon C. Porter, Vice Chairman  
Senator Mike McGinness  
Senator Maurice Washington  
Senator Dina Titus  
Senator Valerie Wiener  
Senator Terry Care

**STAFF MEMBERS PRESENT:**

Bradley A. Wilkinson, Committee Counsel  
Allison Combs, Committee Policy Analyst  
Barbara Moss, Committee Secretary

Chairman James opened the hearing by thanking everyone who had been patient while following the process over the past few days, and he apologized for canceling yesterday's meeting. He said a number of individuals in the Legislature had been working over the past several weeks to address issues regarding the state budget and the critical needs in the education system.

The Senator indicated various plans and proposals had been offered to do the right thing in terms of the budget and the education system, while at the same time to do something innovative, consistent, and in the spirit of Nevada's commitment to remaining a state that is business-friendly, encourages new businesses, and will keep the economy vital and growing. Senator James pointed out that was the spirit and intent of the plans offered in the committee by himself and others in support of those issues in the past few days.

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May 24, 2001  
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Senator James said there had been discussions with the Governor, which had been very positive. The Senator was pleased to inform everyone those discussions were reaching a happy conclusion. Senator James declared he would defer to the Governor to make an announcement. He remarked members of the committee, as well as other colleagues in the Senate and Assembly, were a large part in reaching the conclusion.

Continuing, Senator James indicated Bill Draft Request (BDR) 7-1547 (Exhibit C) presented on May 22, 2001, was currently being redrafted and would be introduced on the Senate Floor today. He said he would explain what the bill would be, and what part it would play in the Governor's overall plan to address budget issues and critical needs in education.

**BILL DRAFT REQUEST 7-1547:** Limits common-law and statutory liability of corporate stockholders, directors and officers and increases fees for filing certain documents with secretary of state. (Later introduced as Senate Bill 577.)

Senator James explained the proposal to create a new graduated annual list would be removed from the bill. He indicated the bill contained a number of corporate filing fees for mergers and acquisitions, reinstatements of charters, amendments of charters, and certificates, expediting fees for those who have business transactions that are proceeding at a fast pace and need things accomplished in the Secretary of State's office immediately. The Senator noted all of these items in the prior BDR were being increased. He said that together, over the biennium, these fees would raise, at a conservative estimate from the Legislative Counsel Bureau (LCB), \$30 million. With the processing of this legislation, Senator James indicated the \$30 million would become an integral part of the Governor's plan to address budget and education issues.

Although he did not wish to preview the Governor's plan too extensively, Senator James pointed out the \$30 million that would emanate from this bill, should it be processed by the Senate and Assembly, would go directly to classrooms and students, and would save all vital programs. It would go to textbooks, technology, music programs and sports programs. The Senator emphasized there would be no elimination of music programs, sports programs, or any other extra-curricular activities that were associated with schools in Clark County, or elsewhere, if the legislation was passed and embraced the plan that would be presented by the Governor.

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In addition, Senator James said this money would be a great part of doing the right thing for hardworking teachers, ensuring they receive the richly deserved salary increase they have earned over the past years. He expressed hope the Nevada educational system would become one of the best, rather than one of the most struggling, in the country.

Further, Senator James indicated his intention was to allow the bill drafters to complete the bill-drafting process, introduce the bill on the Senate Floor, refer it back to the Senate Committee on Judiciary as the committee of jurisdiction, hold a hearing on it tomorrow morning, and propose that it be processed in the Senate immediately.

Senator Porter said he would like to applaud the Governor and Senator James for their efforts on behalf of all the members of the business and education community, as well as the members of the Senate Committee on Judiciary and the Legislature. He pointed out that Senator James summarized the bill quite well. The Senator stated that, conceptually, the program appeared very friendly to the state of Nevada, and was all inclusive. He said it appeared to do exactly as Senator James mentioned, and placed desperately needed dollars in classrooms and programs—from music to sports—and also to those hardworking teachers.

Further, Senator Porter expressed a grave concern shared by Senator James and other members of the committee, which was the impact on small businesses. He pointed out this has been a very fluid process and all angles have been perused in order to do all the right things for all the right reasons. Senator Porter expressed appreciation for the hard work of Senator James and staff on a win-win effort on behalf of the state of Nevada.

In conclusion, Senator James said the bill would be introduced on the Senate Floor today, and he anticipated other ideas being brought forward as the hearing process unfolded. He expounded this was a great start and would meet many of the state's challenges.

Senator Titus indicated she is glad a solution to the problem had been found. She said the approach was one that needed to be studied and she was optimistic about it. The Senator indicated several weeks ago Senator Schneider introduced a bill calling for funding of education that would at least meet the

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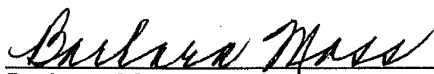
national average. She noted there was no funding mechanism in the bill, but it was a move to at least address why it has not been done, and seek sources of revenue to make it possible. Senator Titus said the Democrats followed it up with a letter to the majority leader requesting full-blown hearings to look at all the different kinds of things. To Senator James she stated, "We are very pleased there was a response from the Governor and the majority leader, and we are very happy to work with you. We commend you for all you have done and look forward to making this happen."

Senator James thanked Senator Titus for her positive comments. In addition, he thanked the number of people in Las Vegas who were concerned about education, including Moms, Dads, teachers, and the Parent and Teacher Association (PTA) members, who had gathered during the last couple of days. He expressed thanks for their support to the committee in pursuing these matters and expressed regret they were unable to testify. Senator James noted today the committee's time was being utilized to make this announcement. Tomorrow there would be a hearing after the bill was introduced and received a number, and then everyone would have an opportunity to review it and provide their comments. He said at that time everyone would be able to review and digest what, in his opinion, was a "tremendous" plan that would be presented by the Governor and on his schedule at the appropriate time tomorrow.

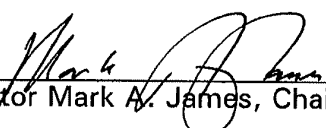
Senate Committee on Judiciary  
May 24, 2001  
Page 5

There being no further business to come before the committee, Senator James  
adjourned the hearing at 9:32 a.m.

RESPECTFULLY SUBMITTED:

  
Barbara Moss,  
Committee Secretary

APPROVED BY:

  
Senator Mark A. James, Chairman

DATE: 9-4-01



2/3s Vote Required - §§ 3, 8, 9, 13, 14, 15, 16, 17, 18, 19, 23, 24, 25, 28, 29, 30, 31, 32, 33, 34, 35, 37, 38, 39, 40, 42, 43, 44, 45, 47, 48, 49, 50, 51, 53, 54, 55, 56, 58, 59, 60, 61, 62

SUMMARY—Limits common-law and statutory liability of corporate stockholders, directors and officers and increases fees for filing certain documents with secretary of state.  
(BDR 7-1547)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State: No.

AN ACT relating to business associations; limiting the common-law and statutory liability of the stockholders, directors and officers of a corporation; increasing the fees for filing certain documents with the secretary of state; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1     **Section 1.** Chapter 78 of NRS is hereby amended by adding thereto the provisions set forth  
2     as sections 2 and 3 of this act.
- 3     **Sec. 2. 1.** *Except as otherwise provided by specific statute, no stockholder, director or*  
4     *officer of a corporation formed under the laws of this state is individually liable for a debt or*  
5     *liability of the corporation, without regard to whether a court determines that the stockholder,*



1 *director or officer should be considered the alter ego of the corporation or that the corporate*  
2 *fiction of a separate entity should be disregarded for any other reason, unless:*

3 *(a) Otherwise provided in an agreement to which the stockholder, director or officer is a*  
4 *party; or*

5 *(b) A court of competent jurisdiction finds by clear and convincing evidence that:*

6 *(1) The corporation is influenced and governed by the stockholder, director or officer;*

7 *(2) There is such unity of interest and ownership that the corporation and the*  
8 *stockholder, director or officer are inseparable from each other; and*

9 *(3) Adherence to the corporate fiction of a separate entity would sanction fraud.*

10 *2. For a court to make a finding in satisfaction of subparagraph (3) of paragraph (b) of*  
11 *subsection 1, the court must find that the stockholder, director or officer has committed fraud*  
12 *in connection with the debt or liability of the corporation.*

13 *Sec. 3. 1. Except as otherwise provided in this section, the fee for filing the initial or*  
14 *annual list required to be paid pursuant to NRS 78.150 must be determined as follows:*

15 *If the amount of the net worth of the corporation in Nevada is:*

16 *Not more than \$40,000..... \$150*

17 *More than \$40,000..... \$150, plus an amount equal*  
18 *to 0.35 percent of its net*  
19 *worth in Nevada in excess of*  
20 *\$40,000*

21 *2. The maximum fee that may be charged pursuant to this section is \$50,000 per year.*



1       3. To determine the net worth of a corporation in Nevada for the purposes of this section,  
2       the dollar amount of the assets of the corporation that are situated in or allocated to this state  
3       must be divided by the dollar amount of the total assets of the corporation, and the result of  
4       that calculation must be multiplied by the dollar amount of the total net worth of the  
5       corporation.

6       4. If the secretary of state determines that the amount of any fee paid pursuant to  
7       subsection 1 is not based on the true net worth of the corporation in Nevada, he may compute  
8       and determine the amount required to be paid upon the basis of:

9       (a) The information required to be filed pursuant to NRS 78.150; and

10       (b) Any other information obtained by the secretary of state from any source.

11       5. In addition to any other penalty provided by law, any corporation that fails to pay the  
12       fee provided for in this section is liable for the payment of a penalty equal to treble the  
13       difference between the amount paid and the amount that was required to be paid by this  
14       section.

15       Sec. 4. NRS 78.037 is hereby amended to read as follows:

16       78.037 The articles of incorporation may also contain ~~the~~

17       ~~1. A provision eliminating or limiting the personal liability of a director or officer to the~~  
18       ~~corporation or its stockholders for damages for breach of fiduciary duty as a director or officer,~~  
19       ~~but such a provision must not eliminate or limit the liability of a director or officer for:~~

20       ~~(a) Acts or omissions which involve intentional misconduct, fraud or a knowing violation of~~  
21       ~~law; or~~



1 ~~—(b) The payment of distributions in violation of NRS 78.300.~~

2 ~~—2. Any~~ any provision, not contrary to the laws of this state ~~[, for]~~ :

3 1. *For* the management of the business and for the conduct of the affairs of the corporation  
4 ~~[, and any provision creating,]~~ ;

5 2. *Creating*, defining, limiting or regulating the powers of the corporation or the rights,  
6 powers or duties of the directors, ~~[and]~~ *the officers or* the stockholders, or any class of the  
7 stockholders, or the holders of bonds or other obligations of the corporation ~~[, or governing]~~ ; *or*

8 3. *Governing* the distribution or division of the profits of the corporation.

9 Sec. 5. NRS 78.138 is hereby amended to read as follows:

10 78.138 1. Directors and officers shall exercise their powers in good faith and with a view  
11 to the interests of the corporation.

12 2. In performing their respective duties, directors and officers are entitled to rely on  
13 information, opinions, reports, books of account or statements, including financial statements  
14 and other financial data, that are prepared or presented by:

15 (a) One or more directors, officers or employees of the corporation reasonably believed to be  
16 reliable and competent in the matters prepared or presented;

17 (b) Counsel, public accountants, *financial advisers, valuation advisers, investment bankers*  
18 or other persons as to matters reasonably believed to be within the preparer's or presenter's  
19 professional or expert competence; or



1 (c) A committee on which the director or officer relying thereon does not serve, established  
2 in accordance with NRS 78.125, as to matters within the committee's designated authority and  
3 matters on which the committee is reasonably believed to merit confidence,  
SH but a director or officer is not entitled to rely on such information, opinions, reports, books of  
5 account or statements if he has knowledge concerning the matter in question that would cause  
6 reliance thereon to be unwarranted.

7 3. Directors and officers, in deciding upon matters of business, are presumed to act in good  
8 faith, on an informed basis and with a view to the interests of the corporation.

9 4. Directors and officers, in exercising their respective powers with a view to the interests of  
10 the corporation, may consider:

11 (a) The interests of the corporation's employees, suppliers, creditors and customers;

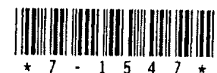
12 (b) The economy of the state and nation;

13 (c) The interests of the community and of society; and

14 (d) The long-term as well as short-term interests of the corporation and its stockholders,  
15 including the possibility that these interests may be best served by the continued independence of  
16 the corporation.

17 5. Directors and officers are not required to consider the effect of a proposed corporate  
18 action upon any particular group having an interest in the corporation as a dominant factor.

19 6. The provisions of subsections 4 and 5 do not create or authorize any causes of action  
20 against the corporation or its directors or officers.



1       7. *Except as otherwise provided in NRS 35.230, 90.660, 91.250, 452.200, 452.270, 668.045*  
2 *and 694A.030, a director or officer is not individually liable for any damages as a result of any*  
3 *act or failure to act in his capacity as a director or officer unless it is proven by clear and*  
4 *convincing evidence that:*

5       (a) *His act or failure to act constituted a breach of his fiduciary duties as a director or*  
6 *officer; and*

7       (b) *His breach of those duties involved intentional misconduct, fraud or a knowing*  
8 *violation of law.*

9       Sec. 6. NRS 78.150 is hereby amended to read as follows:

10       78.150 1. A corporation organized under the laws of this state shall, on or before the first  
11 day of the second month after the filing of its articles of incorporation with the secretary of state,  
12 file with the secretary of state a list, on a form furnished by him, containing:

13       (a) The name of the corporation;

14       (b) The file number of the corporation, if known;

15       (c) The names and titles of the president, secretary, treasurer and of all the directors of the  
16 corporation;

17       (d) The mailing or street address, either residence or business, of each officer and director  
18 listed, following the name of the officer or director; ~~and~~

19       (e) *The total assets of the corporation as reported on its federal income tax return for the*  
20 *preceding calendar year;*



1     (f) *The amount of its assets reported pursuant to paragraph (e) that are situated in or*  
2     *allocated to this state;*

3     (g) *The total net worth of the corporation as reported on its federal income tax return for*  
4     *the preceding calendar year; and*

5     (h) The signature of an officer of the corporation certifying that the list is true, complete and  
6     accurate.

7     2. The corporation shall annually thereafter, on or before the last day of the month in which  
8     the anniversary date of incorporation occurs in each year, file with the secretary of state, on a  
9     form furnished by him, an amended list containing all of the information required in subsection  
10    1.

11    3. *Each list required by subsection 1 or 2 must be accompanied by an affidavit that the*  
12    *corporation has complied with the provisions of chapter 364A of NRS.*

13    4. Upon filing ~~[a list of officers and directors,]~~ *the list required by subsection 1 or 2*, the  
14    corporation shall pay to the secretary of state ~~[a fee of \$85.~~  
15    ~~—4.]~~ *the fee prescribed by section 3 of this act.*

16    5. The secretary of state shall, 60 days before the last day for filing the annual list required  
17    by subsection 2, cause to be mailed to each corporation which is required to comply with the  
18    provisions of NRS 78.150 to 78.185, inclusive, *and section 3 of this act* and which has not  
19    become delinquent, a notice of the fee due pursuant to subsection ~~[3]~~ 4 and a reminder to file a  
20    list ~~[of officers and directors.]~~ *required by subsection 2.* Failure of any corporation to receive a  
21    notice or form does not excuse it from the penalty imposed by law.



1     ~~{5-}~~ 6. If the list to be filed pursuant to the provisions of subsection 1 or 2 is defective in  
2 any respect or the fee required by subsection ~~{3 or 7}~~ 4 or 8 is not paid, the secretary of state may  
3 return the list for correction or payment.

4     ~~{6-}~~ 7. An annual list for a corporation not in default which is received by the secretary of  
5 state more than 60 days before its due date shall be deemed an amended list for the previous year  
6 and does not satisfy the requirements of subsection 2 for the year to which the due date is  
7 applicable.

8     ~~{7-}~~ 8. If the corporation is an association as defined in NRS 116.110315, the secretary of  
9 state shall not accept the filing required by this section unless it is accompanied by evidence of  
10 the payment of the fee required to be paid pursuant to NRS 116.31155 that is provided to the  
11 association pursuant to subsection 4 of that section.

12     Sec. 7. NRS 78.155 is hereby amended to read as follows:

13     78.155 If a corporation has filed the initial or annual list ~~{of officers and directors and~~  
14 ~~designation of resident agent}~~ in compliance with NRS 78.150 and has paid the appropriate fee  
15 for the filing, the canceled check received by the corporation constitutes a certificate authorizing  
16 it to transact its business within this state until the last day of the month in which the anniversary  
17 of its incorporation occurs in the next succeeding calendar year. If the corporation desires a  
18 formal certificate upon its payment of the initial or annual fee, its payment must be accompanied  
19 by a self-addressed, stamped envelope.

20     Sec. 8. NRS 78.170 is hereby amended to read as follows:





1     78.170   1. Each corporation required to make a filing and pay the fee prescribed in NRS  
2     78.150 to 78.185, inclusive, *and section 3 of this act* which refuses or neglects to do so within  
3     the time provided shall be deemed in default.

4     2. For default there must be added to the amount of the fee a penalty of ~~[\$15.]~~ \$50. The fee  
5     and penalty must be collected as provided in this chapter.

6     **Sec. 9.** NRS 78.180 is hereby amended to read as follows:

7     78.180   1. Except as otherwise provided in subsections 3 and 4, the secretary of state shall  
8     reinstate a corporation which has forfeited its right to transact business under the provisions of  
9     this chapter and restore to the corporation its right to carry on business in this state, and to  
10    exercise its corporate privileges and immunities, if it:

11    (a) Files with the secretary of state the list required by NRS 78.150; and

12    (b) Pays to the secretary of state:

13       (1) The annual filing fee and penalty set forth in NRS ~~78.150 and~~ 78.170 *and section 3*  
14    *of this act* for each year or portion thereof during which its charter was revoked; and

15       (2) A fee of ~~[\$50]~~ \$200 for reinstatement.

16    2. When the secretary of state reinstates the corporation, he shall:

17    (a) Immediately issue and deliver to the corporation a certificate of reinstatement authorizing  
18    it to transact business as if the filing fee had been paid when due; and

19    (b) Upon demand, issue to the corporation one or more certified copies of the certificate of  
20    reinstatement.



1       3. The secretary of state shall not order a reinstatement unless all delinquent fees and  
2 penalties have been paid, and the revocation of the charter occurred only by reason of failure to  
3 pay the fees and penalties.

4       4. If a corporate charter has been revoked pursuant to the provisions of this chapter and has  
5 remained revoked for a period of 5 consecutive years, the charter must not be reinstated.

6       **Sec. 10.** NRS 78.215 is hereby amended to read as follows:

7       78.215 1. A corporation may issue and dispose of its authorized shares for such  
8 consideration as may be prescribed in the articles of incorporation or, if no consideration is so  
9 prescribed, then for such consideration as may be fixed by the board of directors.

10      2. ~~If a consideration is prescribed for shares without par value, that consideration must not~~  
11 ~~be used to determine the fees required for filing articles of incorporation pursuant to NRS~~  
12 ~~78.760.~~

13      ~~—3—~~ Unless the articles of incorporation provide otherwise, shares may be issued pro rata and  
14 without consideration to the corporation's stockholders or to the stockholders of one or more  
15 classes or series. An issuance of shares under this subsection is a share dividend.

16      ~~[4.]~~ 3. Shares of one class or series may not be issued as a share dividend in respect of  
17 shares of another class or series unless:

18      (a) The articles of incorporation so authorize;

19      (b) A majority of the votes entitled to be cast by the class or series to be issued approve the  
20 issue; or

21      (c) There are no outstanding shares of the class or series to be issued.



1     ~~[5.]~~ 4. If the board of directors does not fix the record date for determining stockholders  
2 entitled to a share dividend, it is the date the board of directors authorizes the share dividend.

3     Sec. 11. NRS 78.300 is hereby amended to read as follows:

4     78.300 1. The directors of a corporation shall not make distributions to stockholders  
5 except as provided by this chapter.

6     2. ~~[In]~~ *Except as otherwise provided in subsection 3 and NRS 78.138, in* case of any  
7 ~~[willful or grossly negligent]~~ violation of the provisions of this section, the directors under whose  
8 administration the violation occurred ~~[except those who caused their dissent to be entered upon~~  
9 ~~the minutes of the meeting of the directors at the time, or who not then being present caused their~~  
10 ~~dissent to be entered on learning of such action,]~~ are jointly and severally liable, at any time  
11 within ~~[3]~~ 2 years after each violation, to the corporation, and, in the event of its dissolution or  
12 insolvency, to its creditors at the time of the violation, or any of them, to the lesser of the full  
13 amount of the distribution made or of any loss sustained by the corporation by reason of the  
14 distribution to stockholders.

15     3. *The liability imposed pursuant to subsection 2 does not apply to a director who caused*  
16 *his dissent to be entered upon the minutes of the meeting of the directors at the time the action*  
17 *was taken or who was not present at the meeting and caused his dissent to be entered on*  
18 *learning of the action.*

19     Sec. 12. NRS 78.7502 is hereby amended to read as follows:

20     78.7502 1. A corporation may indemnify any person who was or is a party or is threatened  
21 to be made a party to any threatened, pending or completed action, suit or proceeding, whether



1 civil, criminal, administrative or investigative, except an action by or in the right of the  
2 corporation, by reason of the fact that he is or was a director, officer, employee or agent of the  
3 corporation, or is or was serving at the request of the corporation as a director, officer, employee  
4 or agent of another corporation, partnership, joint venture, trust or other enterprise, against  
5 expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and  
6 reasonably incurred by him in connection with the action, suit or proceeding if he ~~acted~~ :

7 (a) *Is not liable pursuant to NRS 78.138; or*

8 (b) *Acted* in good faith and in a manner which he reasonably believed to be in or not opposed  
9 to the best interests of the corporation, and, with respect to any criminal action or proceeding,  
10 had no reasonable cause to believe his conduct was unlawful.

11 H The termination of any action, suit or proceeding by judgment, order, settlement, conviction or  
12 upon a plea of nolo contendere or its equivalent, does not, of itself, create a presumption that the  
13 person *is liable pursuant to NRS 78.138 or* did not act in good faith and in a manner which he  
14 reasonably believed to be in or not opposed to the best interests of the corporation, ~~and~~ *or* that,  
15 with respect to any criminal action or proceeding, he had reasonable cause to believe that his  
16 conduct was unlawful.

17 2. A corporation may indemnify any person who was or is a party or is threatened to be  
18 made a party to any threatened, pending or completed action or suit by or in the right of the  
19 corporation to procure a judgment in its favor by reason of the fact that he is or was a director,  
20 officer, employee or agent of the corporation, or is or was serving at the request of the  
21 corporation as a director, officer, employee or agent of another corporation, partnership, joint



1 venture, trust or other enterprise against expenses, including amounts paid in settlement and  
2 attorneys' fees actually and reasonably incurred by him in connection with the defense or  
3 settlement of the action or suit if he ~~acted~~ :

4 (a) *Is not liable pursuant to NRS 78.138; or*

5 (b) *Acted* in good faith and in a manner which he reasonably believed to be in or not opposed  
6 to the best interests of the corporation.

7H Indemnification may not be made for any claim, issue or matter as to which such a person has  
8 been adjudged by a court of competent jurisdiction, after exhaustion of all appeals therefrom, to  
9 be liable to the corporation or for amounts paid in settlement to the corporation, unless and only  
10 to the extent that the court in which the action or suit was brought or other court of competent  
11 jurisdiction determines upon application that in view of all the circumstances of the case, the  
12 person is fairly and reasonably entitled to indemnity for such expenses as the court deems proper.

13 3. To the extent that a director, officer, employee or agent of a corporation has been  
14 successful on the merits or otherwise in defense of any action, suit or proceeding referred to in  
15 subsections 1 and 2, or in defense of any claim, issue or matter therein, the corporation shall  
16 indemnify him against expenses, including attorneys' fees, actually and reasonably incurred by  
17 him in connection with the defense.

18 Sec. 13. NRS 78.760 is hereby amended to read as follows:

19 78.760 ~~[1.]~~ The fee for filing articles of incorporation is ~~prescribed in the following~~  
20 schedule:



- 1 If the amount represented by the total number of shares provided for in the articles  
2 or agreement is:
- 3 \$25,000 or less ..... \$125  
4 Over \$25,000 and not over \$75,000 ..... 175  
5 Over \$75,000 and not over \$200,000 ..... 225  
6 Over \$200,000 and not over \$500,000 ..... 325  
7 Over \$500,000 and not over \$1,000,000 ..... 425  
8 Over \$1,000,000:
- 9 — For the first \$1,000,000 ..... 425  
10 — For each additional \$500,000 or fraction thereof ..... 225
- 11 ~~2. The maximum fee which may be charged under this section is \$25,000 for:~~  
12 ~~— (a) The original filing of articles of incorporation.~~  
13 ~~— (b) A subsequent filing of any instrument which authorizes an increase in stock.~~  
14 ~~3. For the purposes of computing the filing fees according to the schedule in subsection 1,~~  
15 ~~the amount represented by the total number of shares provided for in the articles of incorporation~~  
16 ~~is:~~  
17 ~~— (a) The aggregate par value of the shares, if only shares with a par value are therein provided~~  
18 ~~for;~~  
19 ~~— (b) The product of the number of shares multiplied by \$1, regardless of any lesser amount~~  
20 ~~prescribed as the value or consideration for which shares may be issued and disposed of, if only~~  
21 ~~shares without par value are therein provided for; or~~



1 ~~— (c) The aggregate par value of the shares with a par value plus the product of the number of~~  
2 ~~shares without par value multiplied by \$1, regardless of any lesser amount prescribed as the~~  
3 ~~value or consideration for which the shares without par value may be issued and disposed of, if~~  
4 ~~shares with and without par value are therein provided for.~~

5 ~~For the purposes of this subsection, shares with no prescribed par value shall be deemed shares~~  
6 ~~without par value.~~

7 ~~— 4. The secretary of state shall calculate filing fees pursuant to this section with respect to~~  
8 ~~shares with a par value of less than one tenth of a cent as if the par value were one tenth of a~~  
9 ~~cent.] \$175.~~

10 **Sec. 14.** NRS 78.765 is hereby amended to read as follows:

11 78.765 ~~{1.}~~ The fee for filing a ~~{certificate changing the number of authorized shares~~  
12 ~~pursuant to NRS 78.209 or a}~~ certificate of amendment to articles of incorporation ~~{that increases~~  
13 ~~the corporation's authorized stock}~~ or a certificate of correction ~~{that increases the corporation's~~  
14 ~~authorized stock is the difference between the fee computed at the rates specified in NRS 78.760~~  
15 ~~upon the total authorized stock of the corporation, including the proposed increase, and the fee~~  
16 ~~computed at the rates specified in NRS 78.760 upon the total authorized capital, excluding the~~  
17 ~~proposed increase. In no case may the amount be less than \$75.~~

18 ~~— 2. The fee for filing a certificate of amendment to articles of incorporation that does not~~  
19 ~~increase the corporation's authorized stock or a certificate of correction that does not increase the~~  
20 ~~corporation's authorized stock is \$75.~~



1 ~~3. The fee for filing a certificate or an amended certificate pursuant to NRS 78.1955 is \$75.]~~  
2 ~~is \$125.~~

3 Sec. 15. NRS 78.767 is hereby amended to read as follows:

4 78.767 ~~{1-}~~ The fee for filing a certificate of restated articles of incorporation ~~{that does~~  
5 ~~not increase the corporation's authorized stock is \$75.~~

6 ~~2. The fee for filing a certificate of restated articles of incorporation that increases the~~  
7 ~~corporation's authorized stock is the difference between the fee computed pursuant to NRS~~  
8 ~~78.760 based upon the total authorized stock of the corporation, including the proposed increase,~~  
9 ~~and the fee computed pursuant to NRS 78.760 based upon the total authorized stock of the~~  
10 ~~corporation, excluding the proposed increase. In no case may the amount be less than \$75.] is~~  
11 ~~\$125.~~

12 Sec. 16. NRS 78.780 is hereby amended to read as follows:

13 78.780 1. The fee for filing a certificate of extension of corporate existence of any  
14 corporation is ~~{an amount equal to one fourth of the fee computed at the rates specified in NRS~~  
15 ~~78.760 for filing articles of incorporation.}~~ \$175.

16 2. The fee for filing a certificate of dissolution whether it occurs before or after payment of  
17 capital and beginning of business is ~~[\$30.]~~ \$60.

18 Sec. 17. NRS 78.785 is hereby amended to read as follows:

19 78.785 1. The fee for filing a certificate of change of location of a corporation's registered  
20 office and resident agent, or a new designation of resident agent, is ~~[\$15.]~~ \$30.

21 2. The fee for certifying articles of incorporation where a copy is provided is ~~[\$10.]~~ \$20.





- 1        3. The fee for certifying a copy of an amendment to articles of incorporation, or to a copy of  
2 the articles as amended, where a copy is furnished, is ~~[\$10.]~~ **\$20.**
- 3        4. The fee for certifying an authorized printed copy of the general corporation law as  
4 compiled by the secretary of state is ~~[\$10.]~~ **\$20.**
- 5        5. The fee for reserving a corporate name is \$20.
- 6        6. The fee for executing a certificate of corporate existence which does not list the previous  
7 documents relating to the corporation, or a certificate of change in a corporate name, is ~~[\$15.]~~  
8 **\$30.**
- 9        7. The fee for executing a certificate of corporate existence which lists the previous  
10 documents relating to the corporation is ~~[\$20.]~~ **\$40.**
- 11       8. The fee for executing, certifying or filing any certificate or document not provided for in  
12 NRS 78.760 to 78.785, inclusive, is ~~[\$20.]~~ **\$40.**
- 13       9. The fee for copies made at the office of the secretary of state is \$1 per page.
- 14       10. The ~~{fee}~~ **fees** for filing articles of incorporation, ~~{articles of merger, or}~~ certificates of  
15 amendment ~~{increasing the basic surplus}~~ **to articles of incorporation and articles of merger** of a  
16 mutual or reciprocal insurer ~~{must be computed pursuant to}~~ **are the fees prescribed by NRS**  
17 **78.760, 78.765 and [78.770, on the basis of the amount of basic surplus of the insurer.] 92A.210,**  
18 **respectively.**
- 19       11. The fee for examining and provisionally approving any document at any time before the  
20 document is presented for filing is \$100.



1        **Sec. 18.** Chapter 80 of NRS is hereby amended by adding thereto a new section to read as  
2 follows:

3        *1. Except as otherwise provided in this section, the fee for filing the initial or annual list*  
4 *required to be paid pursuant to NRS 80.110 must be determined as follows:*

5        *If the amount of the net worth of the foreign corporation in Nevada is:*

6        *Not more than \$40,000..... \$150*

7        *More than \$40,000..... \$150, plus an amount equal*  
8 *to 0.35 percent of its net*  
9 *worth in Nevada in excess of*  
10 *\$40,000*

11        *2. The maximum fee that may be charged pursuant to this section is \$50,000 per year.*

12        *3. To determine the net worth of a foreign corporation in Nevada for the purposes of this*  
13 *section, the dollar amount of the assets of the foreign corporation that are situated in or*  
14 *allocated to this state must be divided by the dollar amount of the total assets of the*  
15 *corporation, and the result of that calculation must be multiplied by the dollar amount of the*  
16 *total net worth of the corporation.*

17        *4. If the secretary of state determines that the amount of any fee paid pursuant to*  
18 *subsection 1 is not based on the true net worth of the foreign corporation in Nevada, he may*  
19 *compute and determine the amount required to be paid upon the basis of:*

20        *(a) The information required to be filed pursuant to NRS 80.110; and*

21        *(b) Any other information obtained by the secretary of state from any source.*



1       5. *In addition to any other penalty provided by law, any foreign corporation that fails to*  
2 *pay the fee provided for in this section is liable for the payment of a penalty equal to treble the*  
3 *difference between the amount paid and the amount that was required to be paid by this*  
4 *section.*

5       Sec. 19. NRS 80.050 is hereby amended to read as follows:

6       80.050 1. Except as otherwise provided in subsection ~~{3,}~~ 2, foreign corporations shall pay  
7 the same fees to the secretary of state as are required to be paid by corporations organized  
8 pursuant to the laws of this state. ~~[, but the amount of fees to be charged must not exceed:~~

9 ~~—(a) The sum of \$25,000 for filing documents for initial qualification; or~~

10 ~~—(b) The sum of \$25,000 for each subsequent filing of a certificate increasing authorized~~  
11 ~~capital stock.~~

12 ~~—2. If the corporate documents required to be filed set forth only the total number of shares of~~  
13 ~~stock the corporation is authorized to issue without reference to value, the authorized shares shall~~  
14 ~~be deemed to be without par value and the filing fee must be computed pursuant to paragraph (b)~~  
15 ~~of subsection 3 of NRS 78.760.~~

16 ~~—3,}~~ 2. Foreign corporations which are nonprofit corporations and do not have or issue shares  
17 of stock shall pay the same fees to the secretary of state as are required to be paid by nonprofit  
18 corporations organized pursuant to the laws of this state.

19 ~~{4,}~~ 3. The fee for filing a notice of withdrawal from the State of Nevada by a foreign  
20 corporation is ~~[\$30,]~~ \$60.

21       Sec. 20. NRS 80.110 is hereby amended to read as follows:



1        80.110 1. Each foreign corporation doing business in this state shall, on or before the first  
2        day of the second month after the filing of its certificate of corporate existence with the secretary  
3        of state, and annually thereafter on or before the last day of the month in which the anniversary  
4        date of its qualification to do business in this state occurs in each year, file with the secretary of  
5        state ~~[ ] a list~~, on a form furnished by him, ~~[a list of]~~ *that contains:*

6        (a) *The names of* its president, secretary and treasurer or their equivalent, and all of its  
7        directors ~~[and a]~~ ;

8        (b) A designation of its resident agent in this state ~~[signed by]~~ ;

9        (c) *The total assets of the foreign corporation as reported on its federal income tax return*  
10       *for the preceding calendar year;*

11       (d) *The amount of its assets reported pursuant to paragraph (c) that are situated in or*  
12       *allocated to this state;*

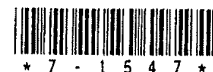
13       (e) *The total net worth of the foreign corporation as reported on its federal income tax*  
14       *return for the preceding calendar year; and*

15       ~~.....(f) The signature of an officer of the corporation.~~

16       *Each list filed pursuant to this subsection must be accompanied by an affidavit that the*  
17       *foreign corporation has complied with the provisions of chapter 364A of NRS.*

18       2. Upon filing the list , ~~[and designation,]~~ the corporation shall pay to the secretary of state  
19       ~~[a fee of \$85.]~~ *the fee prescribed by section 18 of this act.*

20       3. The secretary of state shall, 60 days before the last day for filing the annual list required  
21       by subsection 1, cause to be mailed to each corporation required to comply with the provisions of



1 NRS 80.110 to 80.170, inclusive, *and section 18 of this act* which has not become delinquent,  
2 the blank forms to be completed and filed with him. Failure of any corporation to receive the  
3 forms does not excuse it from the penalty imposed by the provisions of NRS 80.110 to 80.170,  
4 inclusive ~~[ ]~~, *and section 18 of this act*.

5 4. An annual list for a corporation not in default which is received by the secretary of state  
6 more than 60 days before its due date shall be deemed an amended list for the previous year and  
7 does not satisfy the requirements of subsection 1 for the year to which the due date is applicable.

8 **Sec. 21.** NRS 80.120 is hereby amended to read as follows:

9 80.120 If a corporation has filed the initial or annual list ~~[of officers and directors and~~  
10 ~~designation of resident agent]~~ in compliance with NRS 80.110 and has paid the appropriate fee  
11 for the filing, the canceled check received by the corporation constitutes a certificate authorizing  
12 it to transact its business within this state until the last day of the month in which the anniversary  
13 of its qualification to transact business occurs in the next succeeding calendar year. If the  
14 corporation desires a formal certificate upon its payment of the initial or annual fee, its payment  
15 must be accompanied by a self-addressed, stamped envelope.

16 **Sec. 22.** NRS 80.150 is hereby amended to read as follows:

17 80.150 1. Any corporation required to make a filing and pay the fee prescribed in NRS  
18 80.110 to 80.170, inclusive, *and section 18 of this act* which refuses or neglects to do so within  
19 the time provided, is in default.

20 2. For default there must be added to the amount of the fee a penalty of ~~[\$15.]~~ \$50, and  
21 unless the filing is made and the fee and penalty are paid on or before the first day of the ninth



1 month following the month in which filing was required, the defaulting corporation by reason of  
2 its default forfeits its right to transact any business within this state. The fee and penalty must be  
3 collected as provided in this chapter.

4 **Sec. 23.** NRS 80.170 is hereby amended to read as follows:

5 80.170 1. Except as otherwise provided in subsections 3 and 4, the secretary of state shall  
6 reinstate a corporation which has forfeited or which forfeits its right to transact business under  
7 the provisions of this chapter and restore to the corporation its right to transact business in this  
8 state, and to exercise its corporate privileges and immunities if it:

9 (a) Files with the secretary of state a list ~~[of officers and directors]~~ as provided in NRS  
10 80.110 and 80.140; and

11 (b) Pays to the secretary of state:

12 (1) The annual filing fee and penalty set forth in NRS ~~[80.110 and]~~ 80.150 *and section 18*  
13 *of this act* for each year or portion thereof that its right to transact business was forfeited; and

14 (2) A fee of ~~[\$50]~~ \$200 for reinstatement.

15 2. If payment is made and the secretary of state reinstates the corporation to its former rights  
16 , he shall:

17 (a) Immediately issue and deliver to the corporation so reinstated a certificate of  
18 reinstatement authorizing it to transact business in the same manner as if the filing fee had been  
19 paid when due; and

20 (b) Upon demand, issue to the corporation one or more certified copies of the certificate of  
21 reinstatement.



1       3. The secretary of state shall not order a reinstatement unless all delinquent fees and  
2 penalties have been paid, and the revocation of the right to transact business occurred only by  
3 reason of failure to pay the fees and penalties.

4       4. If the right of a corporation to transact business in this state has been forfeited pursuant to  
5 the provisions of NRS 80.160 and has remained forfeited for a period of 5 consecutive years, the  
6 right is not subject to reinstatement.

7       **Sec. 24.** NRS 81.060 is hereby amended to read as follows:

8       81.060 1. The articles of incorporation must be:

9       (a) Subscribed by three or more of the original members, a majority of whom must be  
10 residents of this state.

11       (b) Filed, together with a certificate of acceptance of appointment executed by the resident  
12 agent of the corporation, in the office of the secretary of state in all respects in the same manner  
13 as other articles of incorporation are filed.

14       2. If a corporation formed under NRS 81.010 to 81.160, inclusive, is authorized to issue  
15 stock, there must be paid to the secretary of state for filing the articles of incorporation ~~the fee~~  
16 ~~applicable to the amount of authorized stock of the corporation which the secretary of state is~~  
17 ~~required by law to collect upon the filing of articles of incorporation which authorize the~~  
18 ~~issuance of stock.] a fee of \$175.~~

19       3. The secretary of state shall issue to the corporation over the great seal of the state a  
20 certificate that a copy of the articles containing the required statements of facts has been filed in  
21 his office.







1     4. *If the secretary of state determines that the amount of any fee paid pursuant to*  
2     *subsection 1 is not based on the true net worth of the limited-liability company in Nevada, he*  
3     *may compute and determine the amount required to be paid upon the basis of:*

4         (a) *The information required to be filed pursuant to NRS 86.263; and*

5         (b) *Any other information obtained by the secretary of state from any source.*

6     5. *In addition to any other penalty provided by law, any limited-liability company that*  
7     *fails to pay the fee provided for in this section is liable for the payment of a penalty equal to*  
8     *treble the difference between the amount paid and the amount that was required to be paid by*  
9     *this section.*

10    Sec. 26. NRS 86.263 is hereby amended to read as follows:

11    86.263 1. A limited-liability company shall, on or before the ~~[last]~~ first day of the second  
12    month ~~[in which the anniversary date of its formation occurs,]~~ *after the filing of its articles of*  
13    *organization with the secretary of state*, file with the secretary of state, on a form furnished by  
14    him, a list ~~[containing:]~~ *that contains:*

15         (a) The name of the limited-liability company;

16         (b) The file number of the limited-liability company, if known;

17         (c) The names and titles of all of its managers or, if there is no manager, all of its managing  
18    members;

19         (d) The mailing or street address, either residence or business, of each manager or managing  
20    member listed, following the name of the manager or managing member; ~~[and]~~



1 (e) *The total assets of the limited-liability company as reported on its federal income tax*  
2 *return for the preceding calendar year;*

3 (f) *The amount of its assets reported pursuant to paragraph (e) that are situated in or*  
4 *allocated to this state;*

5 (g) *The total net worth of the limited-liability company as reported on its federal income*  
6 *tax return for the preceding calendar year; and*

7 (h) The signature of a manager or managing member of the limited-liability company  
8 certifying that the list is true, complete and accurate.

9 2. The limited-liability company shall annually thereafter, on or before the last day of the  
10 month in which the anniversary date of *its* organization occurs, file with the secretary of state, on  
11 a form furnished by him, an amended list containing all of the information required in subsection

12 1. ~~[If the limited liability company has had no changes in its managers or, if there is no manager,~~  
13 ~~its managing members, since its previous list was filed, no amended list need be filed if a~~  
14 ~~manager or managing member of the limited liability company certifies to the secretary of state~~  
15 ~~as a true and accurate statement that no changes in the managers or managing members have~~  
16 ~~occurred.]~~

17 3. *Each list required by subsection 1 or 2 must be accompanied by an affidavit that the*  
18 *limited-liability company has complied with the provisions of chapter 364A of NRS.*

19 4. Upon filing the list ~~[of managers or managing members, or certifying that no changes~~  
20 ~~have occurred,]~~ *required by subsection 1 or 2,* the limited-liability company shall pay to the  
21 secretary of state ~~[a fee of \$85.~~



1 ~~—4.] the fee prescribed by section 25 of this act.~~

2 5. The secretary of state shall, 60 days before the last day for filing the list required by  
3 subsection ~~[1.]~~ 2, cause to be mailed to each limited-liability company required to comply with  
4 the provisions of this section, which has not become delinquent, a notice of the fee due under  
5 subsection ~~[3.]~~ 4 and a reminder to file a list ~~[of managers or managing members or a certification~~  
6 ~~of no change.]~~ **required by subsection 2.** Failure of any company to receive a notice or form does  
7 not excuse it from the penalty imposed by law.

8 ~~[5.]~~ 6. If the list to be filed pursuant to the provisions of subsection 1 or 2 is defective or the  
9 fee required by subsection ~~[3.]~~ 4 is not paid, the secretary of state may return the list for  
10 correction or payment.

11 ~~[6.]~~ 7. An annual list for a limited-liability company not in default received by the secretary  
12 of state more than 60 days before its due date shall be deemed an amended list for the previous  
13 year.

14 **Sec. 27.** NRS 86.266 is hereby amended to read as follows:

15 86.266 If a limited-liability company has filed the *initial or* annual list ~~[of managers or~~  
16 ~~members and designation of a resident agent]~~ in compliance with NRS 86.263 and has paid the  
17 appropriate fee for the filing, the canceled check received by the limited-liability company  
18 constitutes a certificate authorizing it to transact its business within this state until the last day of  
19 the month in which the anniversary of its formation occurs in the next succeeding calendar year.  
20 If the company desires a formal certificate upon its payment of the annual fee, its payment must  
21 be accompanied by a self-addressed, stamped envelope.



1       **Sec. 28.** NRS 86.272 is hereby amended to read as follows:

2       86.272 1. Each limited-liability company required to make a filing *as required by NRS*  
3 *86.263* and pay the fee prescribed in ~~[NRS 86.263]~~ *section 25 of this act* which refuses or  
4 neglects to do so within the time provided is in default.

5       2. For default there must be added to the amount of the fee a penalty of ~~[\$15.]~~ \$50. The fee  
6 and penalty must be collected as provided in this chapter.

7       **Sec. 29.** NRS 86.276 is hereby amended to read as follows:

8       86.276 1. Except as otherwise provided in subsections 3 and 4, the secretary of state shall  
9 reinstate any limited-liability company which has forfeited its right to transact business under the  
10 provisions of this chapter and restore to the company its right to carry on business in this state,  
11 and to exercise its privileges and immunities, if it:

12       (a) Files with the secretary of state the list required by NRS 86.263; and

13       (b) Pays to the secretary of state:

14       (1) The annual filing fee and penalty set forth in NRS ~~[86.263 and]~~ 86.272 *and section 25*  
15 *of this act* for each year or portion thereof during which its charter has been revoked; and

16       (2) A fee of ~~[\$50]~~ \$200 for reinstatement.

17       2. When the secretary of state reinstates the limited-liability company, he shall:

18       (a) Immediately issue and deliver to the company a certificate of reinstatement authorizing it  
19 to transact business as if the filing fee had been paid when due; and

20       (b) Upon demand, issue to the company one or more certified copies of the certificate of  
21 reinstatement.



1        3. The secretary of state shall not order a reinstatement unless all delinquent fees and  
2 penalties have been paid, and the revocation of the charter occurred only by reason of failure to  
3 pay the fees and penalties.

4        4. If a company's charter has been revoked pursuant to the provisions of this chapter and  
5 has remained revoked for a period of 5 consecutive years, the charter must not be reinstated.

6        **Sec. 30.** NRS 86.561 is hereby amended to read as follows:

7        86.561 1. The secretary of state shall charge and collect for:

8        (a) Filing the original articles of organization, or for registration of a foreign company,  
9 ~~[\$125;]~~ \$175;

10       (b) Amending or restating the articles of organization, or amending the registration of a  
11 foreign company, ~~[\$75;]~~ \$125;

12       (c) Filing the articles of dissolution of a domestic or foreign company, ~~[\$30;]~~ \$60;

13       (d) Filing a statement of change of address of a records or registered office, or change of the  
14 resident agent, ~~[\$15;]~~ \$30;

15       (e) Certifying articles of organization or an amendment to the articles, in both cases where a  
16 copy is provided, ~~[\$10;]~~ \$20;

17       (f) Certifying an authorized printed copy of this chapter, ~~[\$10;]~~ \$20;

18       (g) Reserving a name for a limited-liability company, \$20;

19       (h) Executing, filing or certifying any other document, ~~[\$20;]~~ \$40; and

20       (i) Copies made at the office of the secretary of state, \$1 per page.



1        2. The secretary of state shall charge and collect at the time of any service of process on him  
2 as agent for service of process of a limited-liability company, \$10 which may be recovered as  
3 taxable costs by the party to the action causing the service to be made if the party prevails in the  
4 action.

5        3. Except as otherwise provided in this section, the fees set forth in NRS 78.785 apply to  
6 this chapter.

7        **Sec. 31.** Chapter 87 of NRS is hereby amended by adding thereto a new section to read as  
8 follows:

9        1. *Except as otherwise provided in this section, the fee for filing the initial or annual list*  
10 *required to be paid pursuant to NRS 87.510 must be determined as follows:*

11        *If the amount of the net worth of the registered limited-liability partnership in Nevada is:*

12        *Not more than \$40,000..... \$150*

13        *More than \$40,000..... \$150, plus an amount equal*  
14 *to 0.35 percent of its net*  
15 *worth in Nevada in excess of*  
16 *\$40,000*

17        2. *The maximum fee that may be charged pursuant to this section is \$50,000 per year.*

18        3. *To determine the net worth of a registered limited-liability partnership in Nevada for*  
19 *the purposes of this section, the dollar amount of the assets of the partnership that are situated*  
20 *in or allocated to this state must be divided by the dollar amount of the total assets of the*



1 *partnership, and the result of that calculation must be multiplied by the dollar amount of the*  
2 *total net worth of the partnership.*

3 *4. If the secretary of state determines that the amount of any fee paid pursuant to*  
4 *subsection 1 is not based on the true net worth of the registered limited-liability partnership in*  
5 *Nevada, he may compute and determine the amount required to be paid upon the basis of:*

6 *(a) The information required to be filed pursuant to NRS 87.510; and*

7 *(b) Any other information obtained by the secretary of state from any source.*

8 *5. In addition to any other penalty provided by law, any registered limited-liability*  
9 *partnership that fails to pay the fee provided for in this section is liable for the payment of a*  
10 *penalty equal to treble the difference between the amount paid and the amount that was*  
11 *required to be paid by this section.*

12 **Sec. 32.** NRS 87.440 is hereby amended to read as follows:

13 **87.440** 1. To become a registered limited-liability partnership, a partnership shall file with  
14 the secretary of state a certificate of registration stating each of the following:

15 (a) The name of the partnership.

16 (b) The street address of its principal office.

17 (c) The name of the person designated as the partnership's resident agent, the street address  
18 of the resident agent where process may be served upon the partnership and the mailing address  
19 of the resident agent if it is different than his street address.

20 (d) The name and business address of each managing partner in this state.

21 (e) A brief statement of the professional service rendered by the partnership.



- 1 (f) That the partnership thereafter will be a registered limited-liability partnership.
- 2 (g) Any other information that the partnership wishes to include.
- 3 2. The certificate of registration must be executed by a majority in interest of the partners or
- 4 by one or more partners authorized to execute such a certificate.
- 5 3. The certificate of registration must be accompanied by a fee of ~~[\$125.]~~ \$175.
- 6 4. The secretary of state shall register as a registered limited-liability partnership any
- 7 partnership that submits a completed certificate of registration with the required fee.
- 8 5. The registration of a registered limited-liability partnership is effective at the time of the
- 9 filing of the certificate of registration.

10 **Sec. 33.** NRS 87.460 is hereby amended to read as follows:

11 87.460 1. A certificate of registration of a registered limited-liability partnership may be

12 amended by filing with the secretary of state a certificate of amendment. The certificate of

13 amendment must set forth:

- 14 (a) The name of the registered limited-liability partnership;
- 15 (b) The dates on which the registered limited-liability partnership filed its original certificate
- 16 of registration and any other certificates of amendment; and
- 17 (c) The change to the information contained in the original certificate of registration or any
- 18 other certificates of amendment.

19 2. The certificate of amendment must be:

- 20 (a) Signed by a managing partner of the registered limited-liability partnership; and
- 21 (b) Accompanied by a fee of ~~[\$75.]~~ \$125.





1       **Sec. 34.** NRS 87.470 is hereby amended to read as follows:

2       87.470 The registration of a registered limited-liability partnership is effective until:

3       1. Its certificate of registration is revoked pursuant to NRS 87.520; or

4       2. The registered limited-liability partnership files with the secretary of state a written notice  
5 of withdrawal executed by a managing partner. The notice must be accompanied by a fee of  
6 ~~[\$30.]~~ \$60.

7       **Sec. 35.** NRS 87.490 is hereby amended to read as follows:

8       87.490 1. If a registered limited-liability partnership wishes to change the location of its  
9 principal office in this state or its resident agent, it shall first file with the secretary of state a  
10 certificate of change that sets forth:

11       (a) The name of the registered limited-liability partnership;

12       (b) The street address of its principal office;

13       (c) If the location of its principal office will be changed, the street address of its new  
14 principal office;

15       (d) The name of its resident agent; and

16       (e) If its resident agent will be changed, the name of its new resident agent.

17       The certificate of acceptance of its new resident agent must accompany the certificate of change.

18       2. A certificate of change filed pursuant to this section must be:

19       (a) Signed by a managing partner of the registered limited-liability partnership; and

20       (b) Accompanied by a fee of ~~[\$15.]~~ \$30.

21       **Sec. 36.** NRS 87.510 is hereby amended to read as follows:



1        87.510   1.   A registered limited-liability partnership shall ~~{annually,}~~ *, on or before the first*  
2        *day of the second month after the filing of its certificate of registration with the secretary of*  
3        *state, and annually thereafter* on or before the last day of the month in which the anniversary  
4        date of the filing of its certificate of registration ~~{of limited partnership}~~ with the secretary of  
5        state occurs, file with the secretary of state, on a form furnished by him, a list ~~{containing:}~~ *that*  
6        *contains:*

7        (a) The name of the registered limited-liability partnership;  
8        (b) The file number of the registered limited-liability partnership, if known;  
9        (c) The names of all of its managing partners;  
10       (d) The mailing or street address, either residence or business, of each managing partner;  
11       ~~{and}~~

12       (e) *The total assets of the registered limited-liability partnership as reported on its federal*  
13       *income tax return for the preceding calendar year;*

14       (f) *The amount of its assets reported pursuant to paragraph (e) that are situated in or*  
15       *allocated to this state;*

16       (g) *The total net worth of the limited-liability partnership as reported on its federal income*  
17       *tax return for the preceding calendar year; and*

18       (h) The signature of a managing partner of the registered limited-liability partnership  
19       certifying that the list is true, complete and accurate.



SH     *Each list filed pursuant to this subsection must be accompanied by an affidavit that the*  
2     *registered limited-liability partnership has complied with the provisions of chapter 364A of*  
3     *NRS.*

4     2. Upon filing the list ~~[of managing partners,]~~ *required by subsection 1*, the registered  
5     limited-liability partnership shall pay to the secretary of state ~~[a fee of \$85.]~~ *the fee prescribed*  
6     *by section 31 of this act.*

7     3. The secretary of state shall, at least 60 days before the last day for filing the annual list  
8     required by subsection 1, cause to be mailed to the registered limited-liability partnership a  
9     notice of the fee due pursuant to subsection 2 and a reminder to file the annual list ~~[of managing~~  
10    ~~partners.]~~ *required by subsection 1*. The failure of any registered limited-liability partnership to  
11    receive a notice or form does not excuse it from complying with the provisions of this section.

12    4. If the list to be filed pursuant to the provisions of subsection 1 is defective, or the fee  
13    required by subsection 2 is not paid, the secretary of state may return the list for correction or  
14    payment.

15    5. An annual list that is filed by a registered limited-liability partnership which is not in  
16    default more than 60 days before it is due shall be deemed an amended list for the previous year  
17    and does not satisfy the requirements of subsection 1 for the year to which the due date is  
18    applicable.

19    Sec. 37. NRS 87.520 is hereby amended to read as follows:

20    87.520 1. A registered limited-liability partnership that fails to comply with the provisions  
21    of NRS 87.510 is in default.



1       2. Any registered limited-liability partnership that is in default pursuant to subsection 1  
2 must, in addition to the fee required to be paid pursuant to NRS 87.510, pay a penalty of ~~[\$15.]~~  
3 \$50.

4       3. On or before the 15th day of the third month after the month in which the fee required to  
5 be paid pursuant to NRS 87.510 is due, the secretary of state shall notify, by certified mail, the  
6 resident agent of any registered limited-liability partnership that is in default. The notice must  
7 include the amount of any payment that is due from the registered limited-liability partnership.

8       4. If a registered limited-liability partnership fails to pay the amount that is due, the  
9 certificate of registration of the registered limited-liability partnership shall be deemed revoked  
10 on the first day of the ninth month after the month in which the fee required to be paid pursuant  
11 to NRS 87.510 was due. The secretary of state shall notify a registered limited-liability  
12 partnership, by certified mail, addressed to its resident agent or, if the registered limited-liability  
13 partnership does not have a resident agent, to a managing partner, that its certificate of  
14 registration is revoked and the amount of any fees and penalties that are due.

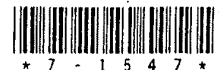
15       **Sec. 38.** NRS 87.530 is hereby amended to read as follows:

16       87.530 1. Except as otherwise provided in subsection 3, the secretary of state shall  
17 reinstate the certificate of registration of a registered limited-liability partnership that is revoked  
18 pursuant to NRS 87.520 if the registered limited-liability partnership:

19       (a) Files with the secretary of state the information required by NRS 87.510; and

20       (b) Pays to the secretary of state:

21       (1) The fee required to be paid by that section;



1 (2) Any penalty required to be paid pursuant to NRS 87.520; and

2 (3) A reinstatement fee of ~~[\$50.]~~ \$200.

3 2. Upon reinstatement of a certificate of registration pursuant to this section, the secretary of  
4 state shall:

5 (a) Deliver to the registered limited-liability partnership a certificate of reinstatement  
6 authorizing it to transact business retroactively from the date the fee required by NRS 87.510  
7 was due; and

8 (b) Upon request, issue to the registered limited-liability partnership one or more certified  
9 copies of the certificate of reinstatement.

10 3. The secretary of state shall not reinstate the certificate of registration of a registered  
11 limited-liability partnership if the certificate was revoked pursuant to NRS 87.520 at least 5 years  
12 before the date of the proposed reinstatement.

13 Sec. 39. NRS 87.550 is hereby amended to read as follows:

14 87.550 In addition to any other fees required by NRS 87.440 to 87.540, inclusive, *and*  
15 *section 31 of this act* and 87.560, the secretary of state shall charge and collect the following  
16 fees for services rendered pursuant to those sections:

17 1. For certifying documents required by NRS 87.440 to 87.540, inclusive, *and section 31 of*  
18 *this act* and 87.560, ~~[\$10]~~ \$20 per certification.

19 2. For executing a certificate verifying the existence of a registered limited-liability  
20 partnership, if the registered limited-liability partnership has not filed a certificate of amendment,  
21 ~~[\$15.]~~ \$30.



1       3. For executing a certificate verifying the existence of a registered limited-liability  
2 partnership, if the registered limited-liability partnership has filed a certificate of amendment,  
3 ~~[\$20.]~~ \$40.

4       4. For executing, certifying or filing any certificate or document not required by NRS  
5 87.440 to 87.540, inclusive, *and section 31 of this act* and 87.560, ~~[\$20.]~~ \$40.

6       5. For any copies made by the office of the secretary of state, \$1 per page.

7       6. For examining and provisionally approving any document before the document is  
8 presented for filing, \$100.

9       **Sec. 40.** Chapter 88 of NRS is hereby amended by adding thereto a new section to read as  
10 follows:

11       1. *Except as otherwise provided in this section, the fee for filing the initial or annual list*  
12 *required to be paid pursuant to NRS 88.395 must be determined as follows:*

13       *If the amount of the net worth of the limited partnership in Nevada is:*

14       *Not more than \$40,000..... \$150*

15       *More than \$40,000..... \$150, plus an amount equal*  
16 *to 0.35 percent of its net*  
17 *worth in Nevada in excess of*  
18 *\$40,000*

19       2. *The maximum fee that may be charged pursuant to this section is \$50,000 per year.*

20       3. *To determine the net worth of a limited partnership in Nevada for the purposes of this*  
21 *section, the dollar amount of the assets of the partnership that are situated in or allocated to*



1 *this state must be divided by the dollar amount of the total assets of the partnership, and the*  
2 *result of that calculation must be multiplied by the dollar amount of the total net worth of the*  
3 *partnership.*

4 *4. If the secretary of state determines that the amount of any fee paid pursuant to*  
5 *subsection 1 is not based on the true net worth of the limited partnership in Nevada, he may*  
6 *compute and determine the amount required to be paid upon the basis of:*

7 *(a) The information required to be filed pursuant to NRS 88.395; and*

8 *(b) Any other information obtained by the secretary of state from any source.*

9 *5. In addition to any other penalty provided by law, any limited partnership that fails to*  
10 *pay the fee provided for in this section is liable for the payment of a penalty equal to treble the*  
11 *difference between the amount paid and the amount that was required to be paid by this*  
12 *section.*

13 **Sec. 41.** NRS 88.395 is hereby amended to read as follows:

14 88.395 1. A limited partnership shall ~~annually,~~ *on or before the first day of the second*  
15 *month after the filing of its certificate of limited partnership with the secretary of state, and*  
16 *annually thereafter* on or before the last day of the month in which the anniversary date of the  
17 filing of its certificate of limited partnership occurs, file with the secretary of state, on a form  
18 furnished by him, a list ~~{containing;}~~ *that contains:*

19 (a) The name of the limited partnership;

20 (b) The file number of the limited partnership, if known;

21 (c) The names of all of its general partners;



- 1 (d) The mailing or street address, either residence or business, of each general partner; ~~[and]~~  
2 (e) *The total assets of the limited partnership as reported on its federal income tax return*  
3 *for the preceding calendar year;*  
4 (f) *The amount of its assets reported pursuant to paragraph (e) that are situated in or*  
5 *allocated to this state;*  
6 (g) *The total net worth of the limited partnership as reported on its federal income tax*  
7 *return for the preceding calendar year; and*  
8 (h) The signature of a general partner of the limited partnership certifying that the list is true,  
9 complete and accurate.

SH Each list filed pursuant to this subsection must be accompanied by an affidavit that the limited  
11 partnership has complied with the provisions of chapter 364A of NRS.

12 2. Upon filing the list ~~[of general partners,]~~ required by subsection 1, the limited  
13 partnership shall pay to the secretary of state ~~[a fee of \$85.]~~ the fee prescribed by section 40 of  
14 this act.

15 3. The secretary of state shall, 60 days before the last day for filing the *annual* list required  
16 by subsection 1, cause to be mailed to each limited partnership required to comply with the  
17 provisions of this section which has not become delinquent a notice of the fee due pursuant to the  
18 provisions of subsection 2 and a reminder to file the annual list. Failure of any limited  
19 partnership to receive a notice or form does not excuse it from the penalty imposed by NRS  
20 88.400.





1        4. If the list to be filed pursuant to the provisions of subsection 1 is defective or the fee  
2 required by subsection 2 is not paid, the secretary of state may return the list for correction or  
3 payment.

4        5. An annual list for a limited partnership not in default that is received by the secretary of  
5 state more than 60 days before its due date shall be deemed an amended list for the previous year  
6 and does not satisfy the requirements of subsection 1 for the year to which the due date is  
7 applicable.

8        **Sec. 42.** NRS 88.400 is hereby amended to read as follows:

9        88.400 1. If a corporation has filed the list in compliance with NRS 88.395 and has paid  
10 the appropriate fee for the filing, the canceled check received by the limited partnership  
11 constitutes a certificate authorizing it to transact its business within this state until the  
12 anniversary date of the filing of its certificate of limited partnership in the next succeeding  
13 calendar year. If the limited partnership desires a formal certificate upon its payment of the  
14 annual fee, its payment must be accompanied by a self-addressed, stamped envelope.

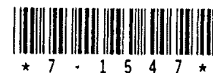
15        2. Each limited partnership which refuses or neglects to file the list and pay the fee within  
16 the time provided is in default.

17        3. For default there must be added to the amount of the fee a penalty of ~~[\$15.]~~ \$50, and  
18 unless the filings are made and the fee and penalty are paid on or before the first day of the ninth  
19 month following the month in which filing was required, the defaulting limited partnership, by  
20 reason of its default, forfeits its right to transact any business within this state.

21        **Sec. 43.** NRS 88.410 is hereby amended to read as follows:



1     88.410   1. Except as otherwise provided in subsections 3 and 4, the secretary of state may:  
2     (a) Reinstate any limited partnership which has forfeited its right to transact business; and  
3     (b) Restore to the limited partnership its right to carry on business in this state, and to  
4     exercise its privileges and immunities,  
5H   upon the filing with the secretary of state of the list required pursuant to NRS 88.395, and upon  
6     payment to the secretary of state of the annual filing fee and penalty set forth in NRS ~~88.395~~  
7     ~~and~~ 88.400 *and section 40 of this act* for each year or portion thereof during which the  
8     certificate has been revoked, and a fee of ~~[\$50]~~ \$200 for reinstatement.  
9     2. When payment is made and the secretary of state reinstates the limited partnership to its  
10    former rights, he shall:  
11    (a) Immediately issue and deliver to the limited partnership a certificate of reinstatement  
12    authorizing it to transact business as if the filing fee had been paid when due; and  
13    (b) Upon demand, issue to the limited partnership one or more certified copies of the  
14    certificate of reinstatement.  
15    3. The secretary of state shall not order a reinstatement unless all delinquent fees and  
16    penalties have been paid, and the revocation occurred only by reason of failure to pay the fees  
17    and penalties.  
18    4. If a limited partnership's certificate has been revoked pursuant to the provisions of this  
19    chapter and has remained revoked for a period of 5 years, the certificate must not be reinstated.  
20    Sec. 44. NRS 88.415 is hereby amended to read as follows:



- 1        88.415 The secretary of state, for services relating to his official duties and the records of  
2 his office, shall charge and collect the following fees:
- 3        1. For filing a certificate of limited partnership, or for registering a foreign limited  
4 partnership, ~~[\$125.]~~ \$175.
- 5        2. For filing a certificate of amendment of limited partnership or restated certificate of  
6 limited partnership, ~~[\$75.]~~
- 7        ~~3. For filing a reinstated certificate of limited partnership, \$50.~~
- 8        ~~4. For filing the annual list of general partners and designation of a resident agent, \$85.~~
- 9        ~~5.] \$125.~~
- 10       3. For filing a certificate of a change of location of the records office of a limited  
11 partnership or the office of its resident agent, or a designation of a new resident agent, ~~[\$15.]~~
- 12       ~~6.] \$30.~~
- 13       4. For certifying a certificate of limited partnership, an amendment to the certificate, or a  
14 certificate as amended where a copy is provided, ~~[\$10.]~~ \$20 per certification.
- 15       ~~7.]~~ 5. For certifying an authorized printed copy of the limited partnership law, ~~[\$10.]~~
- 16       ~~8.] \$20.~~
- 17       6. For reserving a limited partnership name, or for executing, filing or certifying any other  
18 document, \$20.
- 19       ~~9.]~~ 7. For copies made at the office of the secretary of state, \$1 per page.
- 20       ~~10.]~~ 8. For filing a certificate of cancellation of a limited partnership, ~~[\$30.]~~ \$60.



3H Except as otherwise provided in this section, the fees set forth in NRS 78.785 apply to this  
2 chapter.

3 **Sec. 45.** Chapter 88A of NRS is hereby amended by adding thereto a new section to read as  
4 follows:

5 *1. Except as otherwise provided in this section, the fee for filing the initial or annual list*  
6 *required to be paid pursuant to NRS 88A.600 must be determined as follows:*

7 *If the amount of the net worth of the business trust in Nevada is:*

8 *Not more than \$40,000..... \$150*

9 *More than \$40,000..... \$150, plus an amount equal*  
10 *to 0.35 percent of its net*  
11 *worth in Nevada in excess of*  
12 *\$40,000*

13 *2. The maximum fee that may be charged pursuant to this section is \$50,000 per year.*

14 *3. To determine the net worth of a business trust in Nevada for the purposes of this*  
15 *section, the dollar amount of the assets of the business trust that are situated in or allocated to*  
16 *this state must be divided by the dollar amount of the total assets of the business trust, and the*  
17 *result of that calculation must be multiplied by the dollar amount of the total net worth of the*  
18 *business trust.*

19 *4. If the secretary of state determines that the amount of any fee paid pursuant to*  
20 *subsection 1 is not based on the true net worth of the business trust in Nevada, he may*  
21 *compute and determine the amount required to be paid upon the basis of:*



1       (a) *The information required to be filed pursuant to NRS 88A.600; and*

2       (b) *Any other information obtained by the secretary of state from any source.*

3       5. *In addition to any other penalty provided by law, any business trust that fails to pay the*  
4 *fee provided for in this section is liable for the payment of a penalty equal to treble the*  
5 *difference between the amount paid and the amount that was required to be paid by this*  
6 *section.*

7       Sec. 46. NRS 88A.600 is hereby amended to read as follows:

8       88A.600 1. A business trust formed pursuant to this chapter shall ~~{annually,}~~ , *on or*  
9 *before the first day of the second month after the filing of its certificate of trust with the*  
10 *secretary of state, and annually thereafter* on or before the last day of the month in which the  
11 anniversary date of the filing of its certificate of trust with the secretary of state occurs, file with  
12 the secretary of state , on a form furnished by him , a list signed by at least one trustee  
13 ~~{containing the}~~ *that contains:*

14       (a) *The name and mailing address of its resident agent and at least one trustee [-];*

15       (b) *The total assets of the business trust as reported on its federal income tax return for the*  
16 *preceding calendar year;*

17       (c) *The amount of its assets reported pursuant to paragraph (b) that are situated in or*  
18 *allocated to this state; and*

19       (d) *The total net worth of the business trust as reported on its federal income tax return for*  
20 *the preceding calendar year.*



SH     *Each list filed pursuant to this subsection must be accompanied by an affidavit that the*  
2     *business trust has complied with the provisions of chapter 364A of NRS.*

3     2. Upon filing the list, the business trust shall pay to the secretary of state ~~the fee of \$85.~~  
4     ~~the fee prescribed by section 45 of this act.~~

5     3. The secretary of state shall, 60 days before the last day for filing the annual list required  
6     by subsection 1, cause to be mailed to each business trust which is required to comply with the  
7     provisions of NRS 88A.600 to 88A.660, inclusive, *and section 45 of this act* and which has not  
8     become delinquent, the blank forms to be completed and filed with him. Failure of a business  
9     trust to receive the forms does not excuse it from the penalty imposed by law.

10    ~~3.~~ 4. An annual list for a business trust not in default which is received by the secretary of  
11    state more than 60 days before its due date shall be deemed an amended list for the previous  
12    year.

13    **Sec. 47.** NRS 88A.630 is hereby amended to read as follows:

14    88A.630 1. Each business trust required to file the ~~annual~~ list and pay the fee prescribed  
15    in NRS 88A.600 to 88A.660, inclusive, *and section 45 of this act* which refuses or neglects to do  
16    so within the time provided shall be deemed in default.

17    2. For default, there must be added to the amount of the fee a penalty of ~~\$15.~~ \$50. The fee  
18    and penalty must be collected as provided in this chapter.

19    **Sec. 48.** NRS 88A.650 is hereby amended to read as follows:

20    88A.650 1. Except as otherwise provided in subsection 3, the secretary of state shall  
21    reinstate a business trust which has forfeited its right to transact business pursuant to the



1 provisions of this chapter and restore to the business trust its right to carry on business in this  
2 state, and to exercise its privileges and immunities, if it:

3 (a) Files with the secretary of state the list ~~[and designation]~~ required by NRS 88A.600; and

4 (b) Pays to the secretary of state:

5 (1) The annual filing fee and penalty set forth in NRS ~~[88A.600 and]~~ 88A.630 *and section*  
6 *45 of this act* for each year or portion thereof during which its certificate of trust was revoked;  
7 and

8 (2) A fee of ~~[\$50]~~ \$200 for reinstatement.

9 2. When the secretary of state reinstates the business trust, he shall:

10 (a) Immediately issue and deliver to the business trust a certificate of reinstatement  
11 authorizing it to transact business as if the filing fee had been paid when due; and

12 (b) Upon demand, issue to the business trust one or more certified copies of the certificate of  
13 reinstatement.

14 3. The secretary of state shall not order a reinstatement unless all delinquent fees and  
15 penalties have been paid, and the revocation of the certificate of trust occurred only by reason of  
16 the failure to file the list or pay the fees and penalties.

17 **Sec. 49.** NRS 88A.900 is hereby amended to read as follows:

18 88A.900 The secretary of state shall charge and collect the following fees for:

19 1. Filing an original certificate of trust, or for registering a foreign business trust, ~~[\$125.]~~  
20 \$175.



- 1        2. Filing an amendment or restatement, or a combination thereof, to a certificate of trust,
- 2        ~~[\$75.]~~ \$125.
- 3        3. Filing a certificate of cancellation, ~~[\$125.]~~ \$175.
- 4        4. Certifying a copy of a certificate of trust or an amendment or restatement, or a
- 5        combination thereof, ~~[\$10]~~ \$20 per certification.
- 6        5. Certifying an authorized printed copy of this chapter, ~~[\$10.]~~ \$20.
- 7        6. Reserving a name for a business trust, \$20.
- 8        7. Executing a certificate of existence of a business trust which does not list the previous
- 9        documents relating to it, or a certificate of change in the name of a business trust, ~~[\$15.]~~ \$30.
- 10       8. Executing a certificate of existence of a business trust which lists the previous documents
- 11       relating to it, ~~[\$20.]~~ \$40.
- 12       9. Filing a statement of change of address of the registered office for each business trust,
- 13       ~~[\$15.]~~ \$30.
- 14       10. Filing a statement of change of the registered agent, ~~[\$15.]~~ \$30.
- 15       11. Executing, certifying or filing any certificate or document not otherwise provided for in
- 16       this section, ~~[\$20.]~~ \$40.
- 17       12. Examining and provisionally approving a document before the document is presented
- 18       for filing, \$100.
- 19       13. Copying a document on file with him, for each page, \$1.
- 20       Sec. 50. Chapter 89 of NRS is hereby amended by adding thereto a new section to read as
- 21       follows:





1     1. Except as otherwise provided in this section, the fee for filing the initial or annual  
2 statement required to be paid pursuant to NRS 89.250 must be determined as follows:

3     If the amount of the net worth of the professional association in Nevada is:

4     Not more than \$40,000..... \$150

5     More than \$40,000..... \$150, plus an amount equal  
6 to 0.35 percent of its net  
7 worth in Nevada in excess of  
8 \$40,000

9     2. The maximum fee that may be charged pursuant to this section is \$50,000 per year.

10    3. To determine the net worth of a professional association in Nevada for the purposes of  
11 this section, the dollar amount of the assets of the association that are situated in or allocated  
12 to this state must be divided by the dollar amount of the total assets of the association, and the  
13 result of that calculation must be multiplied by the dollar amount of the total net worth of the  
14 association.

15    4. If the secretary of state determines that the amount of any fee paid pursuant to  
16 subsection 1 is not based on the true net worth of the professional association in Nevada, he  
17 may compute and determine the amount required to be paid upon the basis of:

18     (a) The information required to be filed pursuant to NRS 89.250; and

19     (b) Any other information obtained by the secretary of state from any source.

20    5. In addition to any other penalty provided by law, any professional association that fails  
21 to pay the fee provided for in this section is liable for the payment of a penalty equal to treble



1 *the difference between the amount paid and the amount that was required to be paid by this*  
2 *section.*

3 Sec. 51. NRS 89.210 is hereby amended to read as follows:

4 89.210 1. Within 30 days ~~[following]~~ *after* the organization of a professional association  
5 under this chapter, the association shall file with the secretary of state a copy of the articles of  
6 association, duly executed, and shall pay at that time a filing fee of ~~[\$25.]~~ *\$175*. Any such  
7 association formed as a common law association before July 1, 1969, shall file, within 30 days  
8 ~~[of]~~ *after* July 1, 1969, a certified copy of its articles of association, with any amendments  
9 thereto, with the secretary of state, and shall pay at that time a filing fee of \$25. A copy of any  
10 amendments to the articles of association adopted after July 1, 1969, must also be filed with the  
11 secretary of state within 30 days after the adoption of such amendments. Each copy of  
12 amendments so filed must be certified as true and correct and be accompanied by a filing fee of  
13 ~~[\$10.]~~ *\$125*.

14 2. The name of such a professional association must contain the words "Professional  
15 Association," "Professional Organization" or the abbreviations "Prof. Ass'n" or "Prof. Org." The  
16 association may render professional services and exercise its authorized powers under a fictitious  
17 name if the association has first registered the name in the manner required under chapter 602 of  
18 NRS.

19 Sec. 52. NRS 89.250 is hereby amended to read as follows:

20 89.250 1. A professional association shall, *on or before the first day of the second month*  
21 *after the filing of its articles of association with the secretary of state, and annually thereafter*



1 on or before the last day of the month in which the anniversary date of its organization occurs in  
2 each year, furnish a statement to the secretary of state ~~[showing the]~~ *that contains:*

3 (a) *The names and residence addresses of all members and employees in ~~[such association~~*  
4 *and] the association;*

5 (b) *The total assets of the professional association as reported on its federal income tax*  
6 *return for the preceding calendar year;*

7 (c) *The amount of its assets reported pursuant to paragraph (b) that are situated in or*  
8 *allocated to this state; and*

9 (d) *The total net worth of the professional association as reported on its federal income tax*  
10 *return for the preceding calendar year.*

11 *Each list filed pursuant to this subsection must be accompanied by an affidavit that the*  
12 *professional association has complied with the provisions of chapter 364A of NRS.*

13 2. *The professional association* shall certify that all members and employees are licensed to  
14 render professional service in this state.

15 ~~[2.]~~ 3. The statement must:

16 (a) Be made on a form prescribed by the secretary of state and must not contain any fiscal or  
17 other information except that expressly called for by this section.

18 (b) Be signed by the chief executive officer of the association.

19 ~~[3.]~~ 4. Upon filing the ~~[annual]~~ statement required by this section, the association shall pay  
20 to the secretary of state ~~[a fee of \$15.~~

21 ~~—4.]~~ *the fee prescribed by section 50 of this act.*



1        5. As used in this section, "signed" means to have executed or adopted a name, word or  
2 mark, including, without limitation, a digital signature as defined in NRS 720.060, with the  
3 present intention to authenticate a document.

4        **Sec. 53.** NRS 89.252 is hereby amended to read as follows:

5        89.252 1. Each professional association that is required to make a filing *pursuant to NRS*  
6 *89.250* and pay the fee prescribed in ~~[NRS 89.250]~~ *section 50 of this act* but refuses to do so  
7 within the time provided is in default.

8        2. For default, there must be added to the amount of the fee a penalty of ~~[\$5.]~~ \$50. The fee  
9 and penalty must be collected as provided in this chapter.

10       **Sec. 54.** NRS 89.256 is hereby amended to read as follows:

11       89.256 1. Except as otherwise provided in subsections 3 and 4, the secretary of state shall  
12 reinstate any professional association which has forfeited its right to transact business under the  
13 provisions of this chapter and restore the right to carry on business in this state and exercise its  
14 privileges and immunities if it:

15       (a) Files with the secretary of state the statement and certification required by NRS 89.250;  
16 and

17       (b) Pays to the secretary of state:

18       (1) The annual filing fee and penalty set forth in NRS ~~[89.250 and]~~ *89.252 and section 50*  
19 *of this act* for each year or portion thereof during which the articles of association have been  
20 revoked; and

21       (2) A fee of ~~[\$25]~~ \$200 for reinstatement.



1        2. When the secretary of state reinstates the association to its former rights, he shall:

2        (a) Immediately issue and deliver to the association a certificate of reinstatement authorizing  
3        it to transact business, as if the fees had been paid when due; and

4        (b) Upon demand, issue to the association a certified copy of the certificate of reinstatement.

5        3. The secretary of state shall not order a reinstatement unless all delinquent fees and  
6        penalties have been paid, and the revocation of the association's articles of association occurred  
7        only by reason of its failure to pay the fees and penalties.

8        4. If the articles of association of a professional association have been revoked pursuant to  
9        the provisions of this chapter and have remained revoked for 10 consecutive years, the articles  
10       must not be reinstated.

11       **Sec. 55.** NRS 92A.190 is hereby amended to read as follows:

12       92A.190 1. One or more foreign entities may merge or enter into an exchange of owner's  
13       interests with one or more domestic entities if:

14       (a) In a merger, the merger is permitted by the law of the jurisdiction under whose law each  
15       foreign entity is organized and governed and each foreign entity complies with that law in  
16       effecting the merger;

17       (b) In an exchange, the entity whose owner's interests will be acquired is a domestic entity,  
18       whether or not an exchange of owner's interests is permitted by the law of the jurisdiction under  
19       whose law the acquiring entity is organized;



1 (c) The foreign entity complies with NRS 92A.200 to 92A.240, inclusive, if it is the  
2 surviving entity in the merger or acquiring entity in the exchange and sets forth in the articles of  
3 merger or exchange its address where copies of process may be sent by the secretary of state; and

4 (d) Each domestic entity complies with the applicable provisions of NRS 92A.100 to  
5 92A.180, inclusive, and, if it is the surviving entity in the merger or acquiring entity in the  
6 exchange, with NRS 92A.200 to 92A.240, inclusive.

7 2. When the merger or exchange takes effect, the surviving foreign entity in a merger and  
8 the acquiring foreign entity in an exchange shall be deemed:

9 (a) To appoint the secretary of state as its agent for service of process in a proceeding to  
10 enforce any obligation or the rights of dissenting owners of each domestic entity that was a party  
11 to the merger or exchange. Service of such process must be made by personally delivering to and  
12 leaving with the secretary of state duplicate copies of the process and the payment of a fee of  
13 ~~[\$25]~~ \$50 for accepting and transmitting the process. The secretary of state shall forthwith send  
14 by registered or certified mail one of the copies to the surviving or acquiring entity at its  
15 specified address, unless the surviving or acquiring entity has designated in writing to the  
16 secretary of state a different address for that purpose, in which case it must be mailed to the last  
17 address so designated.

18 (b) To agree that it will promptly pay to the dissenting owners of each domestic entity that is  
19 a party to the merger or exchange the amount, if any, to which they are entitled under or created  
20 pursuant to NRS 92A.300 to 92A.500, inclusive.



1       3. This section does not limit the power of a foreign entity to acquire all or part of the  
2 owner's interests of one or more classes or series of a domestic entity through a voluntary  
3 exchange or otherwise.

4       **Sec. 56.** NRS 92A.210 is hereby amended to read as follows:

5       92A.210 The fee for filing articles of merger, articles of exchange or articles of termination  
6 is ~~[\$125.]~~ \$175.

7       **Sec. 57.** NRS 116.3103 is hereby amended to read as follows:

8       116.3103 1. Except as otherwise provided in the declaration, the bylaws, this section or  
9 other provisions of this chapter, the executive board may act in all instances on behalf of the  
10 association. In the performance of their duties, the officers and members of the executive board  
11 are ~~[fiduciaries and are]~~ subject to the *fiduciary duties and* insulation from liability provided for  
12 directors of corporations by the laws of this state. ~~[The members of the executive board are~~  
13 ~~required to exercise the ordinary and reasonable care of directors of a corporation, subject to the~~  
14 ~~business judgment rule.]~~

15       2. The executive board may not act on behalf of the association to amend the declaration ,  
16 ~~[(NRS 116.2117),]~~ to terminate the common-interest community , ~~[(NRS 116.2118),]~~ or to elect  
17 members of the executive board or determine their qualifications, powers and duties or terms of  
18 office , ~~[(subsection 1 of NRS 116.31034),]~~ but the executive board may fill vacancies in its  
19 membership for the unexpired portion of any term.

20       3. Within 30 days after adoption of any proposed budget for the common-interest  
21 community, the executive board shall provide a summary of the budget to all the units' owners,



1 and shall set a date for a meeting of the units' owners to consider ratification of the budget not  
2 less than 14 nor more than 30 days after mailing of the summary. Unless at that meeting a  
3 majority of all units' owners or any larger vote specified in the declaration reject the budget, the  
4 budget is ratified, whether or not a quorum is present. If the proposed budget is rejected, the  
5 periodic budget last ratified by the units' owners must be continued until such time as the units'  
6 owners ratify a subsequent budget proposed by the executive board.

7 **Sec. 58.** NRS 600.340 is hereby amended to read as follows:

8 600.340 1. A person who has adopted and is using a mark in this state may file in the  
9 office of the secretary of state, on a form to be furnished by the secretary of state, an application  
10 for registration of that mark setting forth, but not limited to, the following information:

- 11 (a) Whether the mark to be registered is a trade-mark, trade name or service mark;  
12 (b) A description of the mark by name, words displayed in it [ ] or other information;  
13 (c) The name and business address of the person applying for the registration and, if it is a  
14 corporation, limited-liability company, limited partnership or registered limited-liability  
15 partnership, the state of incorporation or organization;  
16 (d) The specific goods or services in connection with which the mark is used and the mode or  
17 manner in which the mark is used in connection with those goods or services and the class as  
18 designated by the secretary of state which includes those goods or services;  
19 (e) The date when the mark was first used anywhere and the date when it was first used in  
20 this state by the applicant or his predecessor in business which must precede the filing of the  
21 application; and





IN THE SUPREME COURT OF THE STATE OF NEVADA

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*Supreme Court Case No. 78301*

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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*

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**PETITIONER'S APPENDIX  
(VOLUME III OF VI)  
(APP00481 – APP00720)**

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## 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
208-11-29	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 III OF VI) (APP00481 – AP00720)**

properly addressed to the following:

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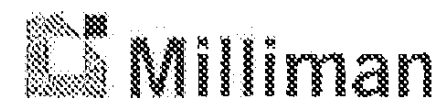
*Attorneys for Uni-Ter Underwriting  
Management Corp., Uni-Ter Claims  
Services Corp., and U.S. RE  
Corporation*

### **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

# EXHIBIT 41



## **Lewis & Clark LTC Risk Retention Group, Inc.**

**An Actuarial Evaluation of Loss and Loss  
Adjustment Expense Reserves as of  
December 31, 2011**

**Valued as of December 31, 2011**

Prepared for:  
Lewis & Clark LTC Risk Retention Group, Inc.

Prepared by:  
Milliman, Inc.

Richard B. Lord  
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April 12, 2012



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## I. INTRODUCTION

### Purpose of Report

Milliman, Inc. (Milliman) was engaged by Uni-Ter Underwriting Management Corporation (UUMC) on behalf of Lewis & Clark LTC Risk Retention Group, Inc. (Lewis & Clark) to perform an actuarial analysis of its loss and loss adjustment expense (LAE)<sup>1</sup> unpaid claim liabilities (estimated reserves). This analysis is based on data valued as of December 31, 2011 and other information provided through February 6, 2012. The purpose of this report is to assist Lewis & Clark with its financial reporting and budgeting and is the basis of our Statement of Actuarial Opinion. We have estimated reserves in this report on a gross basis and ceded basis, net of deductible recoveries.

This report presents the results of our analysis, and discusses the underlying methodology, assumptions, and limitations. The author of this report is a member of the American Academy of Actuaries (AAA) and meets the Qualification Standards of the AAA to render the actuarial opinion contained herein.

The National Association of Insurance Commissioners' ("NAIC") Annual Statement instructions require the Appointed Actuary to report to the Board of Directors ("the Board") each year on the items within the scope of the Statement of Actuarial Opinion. It is our understanding that the report to the Board could take the form of an oral report, an executive summary of the actuarial report, or the full actuarial report. In the event that an oral report or an executive summary report is made to the Board, the full actuarial report also must be made available to the Board.

Milliman acts as independent actuarial consultants to Lewis & Clark and its Board and has been retained to provide Lewis & Clark with an estimate of its loss and loss adjustment expense reserves as of December 31, 2011. In conjunction with this analysis, we have provided a Statement of Actuarial Opinion regarding Lewis & Clark's carried loss and loss adjustment expense reserves as of December 31, 2011. As the Appointed Actuary, we advise management with respect to the reasonableness of the carried reserves. The carried loss and loss adjustment expense reserves are the responsibility of Lewis & Clark management.

This report provides the support for the items within the scope of the Statement of Actuarial Opinion. During the course of the preparation of this report, results have been provided to and discussed with our primary

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<sup>1</sup> The NAIC categorizes LAE in the Annual Statement as defense and cost containment (DCC) and adjusting and other (A&O). Generally, DCC includes all defense and litigation-related expenses, whether internal or external to a company, while A&O includes all claims adjusting expenses, whether internal or external to a company. The terms ALAE and ULAE are utilized in this report to refer to DCC and A&O, respectively. Unless otherwise noted, all further references to "loss" in this report are meant to include ALAE.

management contact, Donna Dalton, Chief Financial Officer of LUMC. Lewis & Clark represented that its financial statements were prepared in accordance with United States Generally Accepted Accounting Principles.

In accordance with NAIC guidelines, this report and the Statement of Actuarial Opinion should be made available for the Board. In addition, this report should be retained for a period of seven years in the administrative offices of Company and made available for regulatory examination.

#### Scope of Analysis

We were asked to estimate the gross and net loss and LAE liabilities of Lewis & Clark as of December 31, 2011. There are several components of our loss reserve calculation:

1. Gross loss and Allocated Loss Adjustment Expense (ALAE) reserves on claims-made policies for claims reported as of the evaluation date;
2. Gross loss and ALAE reserves on extended reporting endorsements (tail policies) effective as of the evaluation date;
3. Gross loss and ALAE reserves on occurrence policies for claims incurred as of the evaluation date;
4. Ceded loss and ALAE reserves; and
5. Unallocated Loss Adjustment Expense (ULAE) reserves.

Unpaid claim liability estimates in this report are also referred to as "reserve estimate(s)" or "estimated reserve(s)". These should not be construed as indicating a liability amount booked by Lewis & Clark, which would be referred to as a "carried reserve" or a "booked reserve".

The BACKGROUND section of this report describes the claims covered by our unpaid claim estimates. Our unpaid claim estimates include provisions for losses and loss adjustment expense (LAE) only. LAE refers to ALAE plus ULAE. ULAE is the insurance industry term for costs associated with claim settlement that cannot be assigned to individual claims; salaries and overhead of in-house claims staff are examples of ULAE. In addition to loss and LAE costs, there are other administrative expenses entailed with an insurance program such as actuarial analyses, excess insurance premiums, broker fees and risk management costs that should also be considered. These other costs are outside the scope of this analysis and are not included in our estimates.

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#### Report Distribution

Milliman's work has been prepared solely for the internal use of Lewis & Clark and UUMC. No portion of Milliman's work may be provided to any other party without Milliman's prior written consent. Milliman does not intend to benefit or create a legal duty to any third party recipient of its work. Milliman's work may not be filed with the SEC or other securities regulatory bodies. In addition, references to Milliman or its estimates in communication with third parties are not authorized.

Milliman's consent to release its work product to any third party may be conditioned on the third party signing a Third Party Release Agreement, subject to the following exceptions:

- (a) Lewis & Clark may provide a copy of Milliman's work to its accounting auditor ("Auditor") to be used solely for audit purposes. In the event the Auditor's audit reveals any error or inaccuracy in the data underlying Milliman's work, Milliman requests the Auditor or Lewis & Clark notify Milliman as soon as possible.
- (b) Lewis & Clark may provide a copy of Milliman's work to governmental entities, as required by law.

In the event Milliman consents to release its work product, it must be provided in its entirety. We recommend that any such party have its own actuary or other qualified professional review the work product to ensure that the party understands the assumptions and uncertainties inherent in our estimates. No third party recipient of Milliman's work product should rely upon Milliman's work product.

Milliman's work shall include the preparation of the Statement of Actuarial Opinion. Milliman consents to the release of this document to the Nevada Division of Insurance. Any additional release of this document by Lewis & Clark or UUMC requires prior written consent by Milliman.

#### Use of Milliman's Name

Any reader of this report agrees that they shall not use Milliman's name, trademarks or service marks, or refer to Milliman directly or indirectly in any third party communication without Milliman's prior written consent for each such use or release, which consent shall be given in Milliman's sole discretion.

## II. BACKGROUND

Lewis & Clark is a risk retention group domiciled in Nevada that provides general and professional liability coverage to long-term care facilities.

During calendar year 2005, Lewis & Clark acquired the business of the former Henry Hudson LTC Risk Retention Group, Inc. (Hudson RRG), which wrote exclusively in New York. Lewis & Clark had assumed all the outstanding liabilities of Hudson RRG upon acquisition. There were only a handful of small general and professional liability claims from Hudson RRG, related to long-term facilities. All Hudson RRG claims have been closed since year-end 2005.

The Lewis & Clark long-term care general and professional liability program has written policies in multiple states. New York accounts for over half of the written premium, with California, Oregon and Washington accounting for a majority of the remaining premium.

Through the acquisition of Sophia Palmer Nurses Risk Retention Group (Sophia Palmer) in 2009, it also writes nurses' professional liability policies primarily in the state of Florida. We understand that Lewis & Clark assumed all the outstanding liabilities of Sophia Palmer upon its acquisition. Sophia Palmer was a risk retention group that provided general and professional liability coverage to nurses. Sophia Palmer is also managed by UUMC, and writes policies with limits \$100 thousand/\$200 thousand (per claim/per annual aggregate), \$250 thousand/\$750 thousand, and \$1 million/\$3 Million. ALAE is covered within the limit. The majority of policies have been written at limits of \$250 thousand. All historical premiums and losses of Sophia Palmer are included in our study.

Lewis & Clark writes policies with limits varying from \$100 thousand / \$300 thousand (per claim / per facility aggregate) up to \$2 million / \$4 million with ALAE within the limit. Since its inception Lewis & Clark has provided coverage on a claims-made basis. Starting in 2008, Lewis & Clark also began issuing policies on an occurrence basis; however, only a small number of such policies have been issued to date.

Lewis & Clark retains the first \$350 thousand per claim with reinsurance applying above this amount for policies attaching January 1, 2008 and subsequent. From January 1, 2005 through December 31, 2007 reinsurance attached at \$250 thousand per claim. There is no reinsurance applying to the 2004 policy year. Effective May 1, 2010, the reinsurance coverage was extended to the Sophia Palmer non-Florida nurses' professional liability claims. The following details our understanding of the reinsurance applying to Lewis & Clark claims through December 31, 2011.

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January 1, 2005 – December 31, 2006 Reinsurance Treaty

1. Applicable to \$750,000 excess of \$250,000 per claim.
2. Reinsurance aggregate limit is lesser of \$3,500,000 or 225% of ceded premium.
3. ALAE within the limit.
4. Ceded premium is 25% of gross net written premium income (GNWPI) for all policies.
5. Additional ceded premium is 20% plus 110% of incurred loss and ALAE (maximum 62.5% of GNWPI).

January 1, 2007 – December 31, 2007 Reinsurance Treaty

1. Applicable to \$750,000 excess of \$250,000 per claim.
2. Deductible is 22% of GNWPI.
3. Reinsurance aggregate limit is 300% of ceded premium.
4. ALAE within the limit.
5. Ceded premium is 20% of GNWPI for all policies.

July 1, 2006 – December 31, 2007 Reinsurance Treaty

1. Quota Share: Lewis & Clark retains 10% and cedes 90% of losses in the reinsured layer.
2. Applicable to \$1,000,000 excess of \$1,000,000 per claim (maximum underlying policy limits of \$2,000,000 per claim/\$4,000,000 facility aggregate).
3. Reinsurance aggregate limit is greater of \$3,000,000 or 300% of ceded premium.
4. ALAE within the limit.
5. Ceded premium is 100% of gross premium for policies with limits greater than \$1,000,000 per claim.

January 1, 2008 – March 31, 2009 Reinsurance Treaty

1. Applicable to \$650,000 excess of \$350,000 per claim (states other than Minnesota); \$700,000 excess of \$300,000 per claim (Minnesota).
2. Deductible is 13% of GNWPI or \$1,274,000, whichever is greater.
3. Reinsurance aggregate limit is 300% of ceded premium.
4. ALAE within the limit.
5. Ceded premium is 17.08% of GNWPI for all policies subject to a minimum of \$1,575,000.

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**April 1, 2009 – March 31, 2010 Reinsurance Treaty**

1. Applicable to \$650,000 excess of \$350,000 per claim.
2. Deductible is 11% of GNWPI or \$1,100,000, whichever is greater.
3. Reinsurance aggregate limit is 300% of ceded premium.
4. ALAE within the limit.
5. Ceded premium is 17.93% of GNWPI for all policies subject to a minimum of \$1,613,700.

**April 1, 2010 – May 31, 2011 Reinsurance Treaty**

1. Applicable to \$650,000 excess of \$350,000 per claim.
2. Deductible is 11% of GNWPI or \$1,220,000, whichever is greater.
3. Reinsurance aggregate limit is 300% of ceded premium.
4. ALAE within the limit.
5. Ceded premium is 17.00% of GNWPI for all policies subject to a minimum of \$1,890,000.

**December 1, 2009 – May 31, 2011 Reinsurance Treaty**

1. Quota Share: Lewis & Clark retains 25% and cedes 75% of losses in the reinsured layer.
2. Applicable to \$1,000,000 excess of \$1,000,000 per claim (maximum underlying policy limits of \$2,000,000 per claim/\$4,000,000 facility aggregate).
3. Reinsurance aggregate limit is greater of \$3,000,000 or 300% of ceded premium.
4. ALAE within the limit.
5. Ceded premium is 100% of net excess premium (gross written premium less ceding commission of 20%) for policies with limits greater than \$1,000,000 per claim.

**June 1, 2011 – May 31, 2012 Reinsurance Treaty**

1. Applicable to \$650,000 excess of \$350,000 per claim.
2. Deductible is 18.5% of GNWPI or \$1,300,000, whichever is greater.
3. Reinsurance aggregate limit is 300% of ceded premium.
4. ALAE within the limit.
5. Ceded premium is 17.00% of GNWPI for all policies subject to a minimum of \$1,190,000.

### III. RESULTS OF ANALYSIS

#### December 31, 2011 Reserves

Table 1 below presents a comparison of our reserve estimates to Lewis & Clark's carried reserves as of December 31, 2011. The low estimate discounted reserve amounts assume an annual effective interest rate of 3.0%, which has been adjusted to 2.8% and 2.2% for the central and high estimates, respectively, recognizing the limited amount of interest-bearing assets.

Table 1: Estimated Reserves as of December 31, 2011 (\$000's)

	(1)	(2)	(3)	(4)	(5)
	Low Estimate	Central Estimate	High Estimate	Lewis & Clark Carried Reserve	Difference from Central (4) - (2)
1. Gross Loss & LAE Undiscounted Reserve:	\$14,948	\$17,700	\$23,495	\$16,333	(\$1,367)
2. Ceded Loss & LAE Undiscounted Reserve:	<u>1,065</u>	<u>1,776</u>	<u>3,625</u>	<u>1,404</u>	<u>(372)</u>
3. Net Loss & LAE Undiscounted Reserve: (1) - (2)	\$13,881	\$15,924	\$19,869	\$14,929	(\$995)
4. Discount:	<u>\$865</u>	<u>\$837</u>	<u>\$931</u>	<u>\$902</u>	<u>(\$35)</u>
5. Net Loss & LAE Discounted Reserve: (3) - (4)	\$13,016	\$14,987	\$18,938	\$14,026	(\$961)



Table 2 below provides more detail of our discounted reserve estimates, by the type of policies issued:

Table 2: Estimated Discounted Reserves as of December 31, 2011 by Policy Type (\$000's)

	(1)	(2)	(3)
	Low Estimate	Central Estimate	High Estimate
<b>1. Gross Loss &amp; LAE Reserve:</b>			
General and professional liability for long-term care facilities (Lewis & Clark)	\$13,684	\$16,264	\$21,859
Nurses' professional liability (Sophia Palmer)	335	395	527
<b>TOTAL</b>	<b>\$14,020</b>	<b>\$16,659</b>	<b>\$22,386</b>
<b>2. Coded Loss &amp; LAE Reserve:</b>			
General and professional liability for long-term care facilities (Lewis & Clark)	\$1,003	\$1,672	\$3,448
Nurses' professional liability (Sophia Palmer)	0	0	0
<b>TOTAL</b>	<b>\$1,003</b>	<b>\$1,672</b>	<b>\$3,448</b>
<b>3. Net Loss &amp; LAE Reserve: (1) - (2)</b>			
General and professional liability for long-term care facilities (Lewis & Clark)	\$12,680	\$14,592	\$18,411
Nurses' professional liability (Sophia Palmer)	335	395	527
<b>TOTAL</b>	<b>\$13,016</b>	<b>\$14,987</b>	<b>\$18,938</b>

#### Change in Estimates

The ultimate loss and ALAE estimates have increased significantly since the prior report as of December 31, 2010. Through report/accident/tail effective year 2010, the selected ultimate loss and ALAE estimates have increased by \$9.2 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. All three of these insureds were written during each of the years with adverse loss development i.e. report years 2009 and 2010. Table 3 shows the change in ultimate loss and ALAE estimates for all policy types and lines of business combined. The change in estimates is shown separately for the continuing and non-continuing ultimate loss and ALAE estimates.

Table 3: Change in Estimates (\$000's)

	(1)	(2)	(3)	(4)	(5)	(6)
Report / Accident / Tail Effective Year	Continuing 12/31/11 Report Ultimate Loss & ALAE	Continuing 12/31/10 Report Ultimate Loss & ALAE	Continuing Change Ultimate Loss & ALAE	Non-Continuing 12/31/11 Report Ultimate Loss & ALAE	Non-Continuing 12/31/10 Report Ultimate Loss & ALAE	Non-Continuing Change Ultimate Loss & ALAE
2004	\$191	\$191	\$0	\$0	\$0	\$0
2005	374	374	0	0	0	0
2006	1,620	1,266	354	0	0	0
2007	3,350	3,288	62	0	0	0
2008	3,201	2,281	920	0	0	0
2009	4,983	2,917	2,066	1,995	1,378	619
2010	<u>5,510</u>	<u>3,546</u>	<u>1,964</u>	<u>5,450</u>	<u>2,226</u>	<u>3,224</u>
Total	\$19,229	\$13,863	\$5,366	\$7,445	\$3,602	\$3,843

## Notes:

1. Estimates are shown on a gross of reinsurance and gross of deductible basis.
2. Estimates include claims-made, tail, and occurrence policies for both nurses and nursing homes.
3. The 12/31/10 report did not include separate continuing and non-continuing estimates. The total estimate was allocated to continuing and non-continuing based on case reserves.

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#### IV. SCOPE OF ACTUARIAL ESTIMATES

##### Actuarial Estimates

Our results are presented as a range of reserve estimates. The central point estimate in this range is an actuarial central estimate, which is our estimate of the expected value over a range of reasonably possible outcomes. In this analysis, this is determined by our selections over the range of outcomes indicated by our actuarial methods and the parameters selected for each method. Since the range of reasonably possible outcomes may not include all conceivable outcomes, an actuarial central estimate is not an estimate of the mean of the true underlying distribution of all possible outcomes.

The estimated reserve range does not represent the lowest or highest result that could occur, but rather lower or higher estimates based on various estimation methods and reasonable alternative assumptions. The "low" and "high" endpoints of the range represent the outer bounds of what we consider reasonable alternative actuarial central estimates. Actuarial Standard of Practice No. 36 states "... a reserve to be reasonable if it is within a range of estimates that could be produced by an unpaid claim estimate analysis that is, in the actuary's professional judgment, consistent with both ASOP No. 43, Property/Casualty Unpaid Claim Estimates, and the identified stated basis of reserve presentation." The range of estimates presented in this report meets those criteria.

The data provided and resulting estimates of our analysis are net of salvage and subrogation recoveries.

The data provided and resulting estimates of our analysis are net of deductible recoveries.

Unpaid claim liabilities equal the sum of case reserves and incurred-but-not-reported (IBNR) reserves. Case reserves are reserves for reported claims established by claims adjusters. IBNR reserves are estimated by Milliman and provide for future development of case reserves, reopened claims and unreported (tail, or pure IBNR) claims.

##### Reinsurance

Our estimates are presented on both a gross basis (i.e., direct) and a net basis (i.e., gross less ceded) with respect to ceded reinsurance recoverables.

We did not review the actual ceded reinsurance contracts of the Lewis & Clark, but relied on summaries of the terms of the contracts provided by Lewis & Clark. Our results, net of ceded reinsurance, assume that all

ceded reinsurance is valid and collectible. While as of February 6, 2012, there were no material reinsurance recoverables with assuming companies that were rated vulnerable (B or lower) by A. M. Best, we are not able to assess the potential for uncollectible reinsurance without performing a substantial amount of additional work beyond the scope of our assignment. We have not anticipated any contingent liabilities that could arise if the reinsurers do not meet their obligations to Lewis & Clark as reflected in the data and other information provided to us. Unless otherwise noted, we have not included any provision for amounts that may exceed reinsurance limits.

#### Discounting/Timing of Payments

The estimates in our analysis include estimates that are discounted for the time value of money. For most outstanding claims, final claim settlement and payment will not be immediate. During this period of time, it is possible to earn investment income on loss reserves. The specific amount of investment income is dependent on loss payment patterns, actual funds invested, and the net investment yield.

In estimating Lewis & Clark's discounted unpaid claim liability, Lewis & Clark used an annual effective before income tax interest rate of 3.0%, adjusted to 2.8% and 2.2% for the limited amount of interest-bearing assets compared to our central and high estimates, respectively. The 3.0% interest rate was provided to us by Lewis & Clark and is based on its portfolio returns. Lewis & Clark selected the interest rate because Lewis & Clark has greater familiarity with its current investments, its investment policy, and the potential investment returns of its asset portfolio. We are not able to assess the reasonableness of the selected interest rate without performing a substantial amount of additional work beyond the scope of our assignment. As such, we express no opinion on the appropriateness of the interest rate.

The discounted unpaid claim estimate does not include a risk margin.

Future rates of return are not guaranteed and may exceed or fall below the assumed rate. Also, the actual timing of loss payments is subject to variability. Differences between actual and expected rates of return and timing of payments from those underlying our estimates may have a material effect on the amount of the discount. Further, our projections assume the existence of valid assets underlying the unpaid claim liabilities and that these assets are appropriate to meet the cash flow needs of Lewis & Clark. We have not reviewed the held assets.

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## V. METHODOLOGY

Our analysis utilizes generally accepted actuarial methodologies to project ultimate losses and calculate estimated reserves. It is based on the historical loss, ALAE, and ULAE experience of Lewis & Clark, discussions with management, and relevant industry data. Appendices A and B of this report presents a discussion of the underlying methodology. The Appendices are considered an integral part of our analysis and thus all users of this report are encouraged to consult the Appendices.

Summary Exhibit 1, Pages 1 and 2 detail the reserve components on a low, central and high basis for the nursing homes and nurseries business combined. Page 1 shows the reserves on an undiscounted basis. Page 2 shows the reserves on a discounted basis.

Three non-renewed insureds are excluded from our main analysis. The losses from these insureds are referred to as non-continuing in our report. The remaining losses are labeled continuing. The methods described below are used to develop the continuing ultimate loss estimates. The non-continuing ultimate losses are estimated using the continuing IBNR to case ratio.

### Actuarial Methods

Our unpaid claim estimates are based on projected ultimate losses minus paid losses to date. Our estimates of average claim frequency, severity, pure premium, and projected ultimate losses are based on various actuarial methods. Generally, we apply loss development methods to claim counts and amounts to produce preliminary estimates of ultimate values by exposure year. We then apply Bornhuetter-Ferguson, frequency-severity, and pure premium methods, in part based on the preliminary estimates, to estimate selected ultimate values. Following is a description of these methods.

### Loss Development Methods

Loss development methods are based on the assumption that the relative change in a given exposure period's cumulative loss from one development year to the next is constant. In using this method, actual historical cumulative amounts by exposure period are tabulated in a triangle format and are evaluated at the end of each calendar year. Loss development factors measure the relative development of an exposure period from one calendar year to the next. The inverse of loss development factors represent the proportion of the ultimate loss that has developed to date. For example, a loss development factor

of 1.25 implies that 1+1.25 or 60% of the ultimate loss has emerged, and that 20% will arise after that.

#### Bornhuetter-Ferguson Method

The Bornhuetter-Ferguson (B-F) method is a procedure that estimates an ultimate amount as a weighted-average of an *expected* ultimate amount and the result of the Loss Development Method. This method is useful when loss or ALAE data is immature or sparse because it is not as sensitive as the Loss Development Method to unusual variations in the paid or reported amounts. The B-F Method requires an initial estimate of the expected ultimate amount. The initial estimate is typically based on the results of the frequency-severity or pure premium methods.

#### Frequency-Severity Method

The Frequency-Severity (F-S) Method is a procedure that projects ultimate losses as the product of the projected ultimate claim counts and the projected average cost per claim (severity). The projected ultimate claim counts equal the projected ultimate claims per exposure unit (frequency) multiplied by the number of exposures. The projected ultimate frequency is generally estimated by applying the loss development method to claim counts, then deriving a selected ultimate frequency by applying a B-F method based on the development method frequency estimates. The projected severity is generally developed by applying the loss development method to paid and incurred losses and dividing the result by projected ultimate claim counts. The projected severity is adjusted for inflation using an exponential least-squares estimate of the inflationary trend.

#### Pure Premium Method

The Pure Premium Method is a procedure that projects ultimate losses as the product of the projected ultimate loss per exposure unit (pure premium) and the number of exposures. The projected pure premium is generally developed by applying the loss development method to paid and incurred losses and dividing the result by exposures. The projected pure premium is adjusted for inflation using an exponential least-squares estimate of the inflationary trend.

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## VI. LIMITATIONS

### Data Reliance

In performing this analysis, we relied on data and other information provided by UUMC. We have not audited or verified this data and other information. If the underlying data or information is inaccurate or incomplete, the results of our analysis may likewise be inaccurate or incomplete.

We performed a limited review of the data used directly in our analysis for reasonableness and consistency and have not found material defects in the data. If there are material defects in the data, it is possible that they would be uncovered by a detailed, systematic review and comparison of the data to search for data values that are questionable or for relationships that are materially inconsistent. Such a review was beyond the scope of our assignment.

### Variability of Results

We based our results on generally accepted actuarial procedures and our professional judgment. Our results reflect assumptions regarding issues such as loss development, trend, payout patterns and claim reporting patterns. However, due to the uncertainty associated with the estimation of future loss payments and the inherent limitations of the data, actual results will vary from our projections. Reasons for this uncertainty include statistical fluctuations as well as unanticipated changes in claim procedures and settlement practices, legislative and judicial decisions, attitudes of claimants and the courts, current and perceived social and economic inflation, and numerous other social, political, and economic factors.

Our estimates make no provision for extraordinary future emergence of new classes of losses or types of losses not sufficiently represented in Lewis & Clark's historical databases or which are not yet quantifiable.

Among the most important sources of uncertainty are:

1. Assumption that past loss is indicative of future loss. In times where there are rapidly changing loss costs, it is more difficult to predict future loss costs based on historical data.
2. Due to the immaturity of the program, some projection parameters were obtained from external sources. Although we believe these are appropriate for Lewis & Clark, the reliance on external data increases the variability.
3. The emergence of individual large losses (or changes in reserves on existing open claims) could materially change our estimates. The possibility of such large losses exposes Lewis & Clark's reserves to significant variability.

4. Industry benchmarks for accident reporting patterns and claims-made step factors have been used to estimate the IBNR claim reserves on occurrence and tail policies. To the extent that actual patterns for Lewis & Clark differ from the benchmarks used, the associated reserve estimates will be over or understated.
5. We have relied upon the claims experience emerged to date for Sophia Palmer nurses' professional liability. There were only a small number of claims from which to base our estimates. For example, there were between two to four nurses' liability claims reported in any one accident year. The small claims volume and limited years of historical data creates additional uncertainty to the projections.
6. Sophia Palmer has historically written most of its business in a single state. This increases variability from potential events such as an adverse judicial ruling or law change.

The estimates discussed in this report reflect our best professional judgment. However, given the factors discussed above, substantial variance of actual results from our projections is not unexpected.

#### RANGE OF VALUES

Our results should be considered point estimates within a wide range of possible outcomes. Where our results are presented in ranges, it is possible that actual results will fall outside of these ranges.

#### SENSITIVITY ANALYSIS

The impact of the key variables in the analysis was considered. Alternative trend factor, development factor, or selected expected severity estimates could change the results of this analysis materially, resulting in either greater or lesser reserve and funding estimates depending upon the manner in which the variable is changed.



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## VII. CONCLUSION

Milliman appreciates this opportunity to be of service to Uni-Ter Underwriting Management Corporation and Lewis & Clark LTC Risk Retention Group. We are available to answer questions concerning this analysis.



Richard B. Lord  
Fellow, Casualty Actuarial Society  
Member, American Academy of Actuaries

Milliman, Inc.  
April 12, 2012

Lewis & Clark LTC Risk Retention Group, Inc.  
NURSING HOMES AND NURSES

NET AND GROSS BASIS  
ESTIMATED UNDISCOUNTED RESERVES AS OF DECEMBER 31, 2011 (\$000'S)  
ALL STATES

(Data as of December 31, 2011)\*

	Low Estimated Liability	Central Estimated Liability	High Estimated Liability
1. Gross Loss & LAE Reserve:			
PL and GL long-term care facilities (Lewis & Clark)	\$14,584	\$17,277	\$22,940
Nurses' professional liability (Sophia Palmer)	362	423	555
Total Gross Loss & LAE Reserve	\$14,946	\$17,700	\$23,495
2. Ceded Loss & LAE Reserve:			
PL and GL long-term care facilities (Lewis & Clark)	\$1,085	\$1,776	\$3,625
Nurses' professional liability (Sophia Palmer)	\$0	\$0	\$0
Total Ceded Loss & LAE Reserve	\$1,085	\$1,776	\$3,625
3. Net Loss & LAE Reserve: (1) - (2)			
PL and GL long-term care facilities (Lewis & Clark)	\$13,519	\$15,501	\$19,314
Nurses' professional liability (Sophia Palmer)	362	423	555
Total Net Loss & LAE Reserve	\$13,881	\$15,924	\$19,869

NOTES:

1. Lewis & Clark reserve estimates are from Exhibit 1, Page 1.
2. Sophia Palmer reserve estimates are from Nurse Exhibit 1, Page 1.
3. (\*) Includes adjustments for subsequent activity.

Lewis & Clark LTC Risk Retention Group, Inc.  
NURSING HOMES AND NURSES

NET AND GROSS BASIS  
ESTIMATED DISCOUNTED RESERVES AS OF DECEMBER 31, 2011 (\$000'S)  
ALL STATES

(Data as of December 31, 2011)\*

	Low Estimated Liability	Central Estimated Liability	High Estimated Liability
1. Gross Loss & LAE Reserve:			
PL and GL long-term care facilities (Lewis & Clark)	\$13,664	\$16,264	\$21,859
Nurses' professional liability (Sophia Palmer)	396	395	527
Total Gross Loss & LAE Reserve	\$14,020	\$16,659	\$22,386
2. Ceded Loss & LAE Reserve:			
PL and GL long-term care facilities (Lewis & Clark)	\$1,003	\$1,672	\$3,448
Nurses' professional liability (Sophia Palmer)	\$0	\$0	\$0
Total Ceded Loss & LAE Reserve	\$1,003	\$1,672	\$3,448
3. Net Loss & LAE Reserve: (1) - (2)			
PL and GL long-term care facilities (Lewis & Clark)	\$12,660	\$14,592	\$18,411
Nurses' professional liability (Sophia Palmer)	396	395	527
Total Net Loss & LAE Reserve	\$13,016	\$14,987	\$18,938

NOTES:

1. Discounted central estimates assume a 2.5% annual effective rate of return. Discounted high estimates assume a 2.2% annual effective rate of return. The discounted low estimates assume a 3.0% return. These interest rates are based on a 3% interest rate adjusted to reflect the availability of only \$13.9M in assets to generate investment income.
2. Lewis & Clark reserve estimates are from Exhibit 1, Page 2.
3. Sophia Palmer reserve estimates are from Nurse Exhibit 1, Page 2.
4. (\*) Includes adjustments for subsequent activity.

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## APPENDIX A: METHODOLOGY FOR NURSING HOME GENERAL AND PROFESSIONAL LIABILITY

This Appendix presents the methodology and assumptions underlying our calculations in estimating the nursing home general and professional unpaid claim liabilities of Lewis & Clark LTC Risk Retention Group, Inc. (Lewis & Clark). There are several reserve components we estimate:

1. Gross claims-made and occurrence policy reserves,
2. Gross extended reporting endorsement (tail policy) reserves,
3. Gross occurrence policy reserves,
4. Unallocated loss adjustment expense (ULAE) reserves, and
5. Ceded reserves.

Exhibit 1, Pages 1 and 2 detail the estimated reserves on an undiscounted and discounted basis, respectively. Exhibit 1, Page 3 shows the nursing homes reserves on a report/tail effective/accident year basis. The ceded ultimate loss and ALAE estimates are shown in Exhibit 2. Exhibits 3 to 12 shows the methods used to estimate the nursing homes claims-made ultimate loss and ALAE. Exhibit 13 derives the ULAE reserves. Exhibit 14 shows the calculation of gross tail policy reserves. Exhibit 15 shows the occurrence ultimate loss and ALAE estimates. Exhibit 16 summarizes the data provided by Lewis & Clark.

### Claims-Made/Occurrence Policy Reserves

Exhibit 1 shows the derivation of estimated reserves as of December 31, 2011. For the claims-made and occurrence policies, the indicated reserve is equal to our estimated ultimate losses minus paid losses to date. The development reserve equals the total reserve minus the case reserve. Case reserves refer to reserves established on individual claims by the claims adjusters. The estimated tail policy reserves are added to the total claims-made and occurrence policy reserves to get the total gross reserves, gross of deductible recoveries.

The estimated future deductible recoveries are subtracted from the gross reserves to get the total net of deductible reserves. Exhibit 1, Page 5 shows the calculation of the net of deductible ultimate loss and ALAE estimates for claims-made, occurrence, and tail policies.

The gross ultimate losses and ALAE estimates for claims-made and occurrence policies are summarized in Exhibits 3, and 15, respectively.

Exhibit 4 shows the estimated ultimate loss and ALAE, split by continuing and non-continuing insureds.

Exhibit 5 shows the derivation of ultimate losses based on the BF method. The BF method ultimate losses are the sum of an unreported loss estimate and the incurred losses to date. The estimate of unreported loss is derived by applying an unreported factor to the expected ultimate loss from the Frequency x Severity method. The unreported factor is based on the selected incurred loss development factors on Exhibit 10.

Exhibits 6 through 9 show the derivation of the ultimate losses based on the Frequency x Severity method. The ultimate closed with indemnity payment (CWIP) claim counts are estimated using the Hindsight to CWIP ratio method and the CWIP development method. In Hindsight to CWIP ratio method, the ultimate CWIP equals CWIP to date plus the open counts multiplied by the selected outstanding CWIP ratio. The outstanding CWIP ratio is calculated as (preliminary ultimate CWIP count-CWIP to date)/open counts to date, for all the diagonals in the claim count triangles except the most recent one.

Then we selected the outstanding CWIP ratio at different ages based on the weighted average of those for different report years, as shown on Exhibit 8. The preliminary ultimate CWIP count is estimated using the development method, as shown on Exhibit 9. The preliminary ultimate severity in Exhibit 6 is estimated as the preliminary selected ultimate losses from the development method divided by the selected ultimate CWIP. A severity trend factor is selected based on the preliminary ultimate severities, which are used to adjust the preliminary ultimate severity amount for different report year to the 2011 severity level. A 2011 report year severity is then selected based on those on-level severities. The selected severity is then de-trended back to the corresponding report year. Those de-trended severities are the final selected severities for each report year. The ultimate losses are the product of the ultimate CWIP counts and the de-trended severities.

The development method ultimate losses are based on the adjusted incurred losses to date and incurred loss development factors, as shown on Exhibit 10. Exhibits 11 and 12 show the historical paid and adjusted incurred development triangles, respectively. The selected paid and incurred loss development factors are based on a combination of insurance industry and historical Lewis & Clark data. The adjusted incurred method adjusts incurred losses using the Berquist-Sherman method to reflect changes in the case reserve adequacy level.

Exhibit 15 shows our methodology for estimating the ultimate loss and ALAE for the occurrence policies. This is based on the Frequency x Severity method. Since Lewis & Clark only started writing occurrence policies in the last quarter of 2008 and there were only a handful of occurrence claims reported to date, we

have relied upon the claims experience of the claims-made policies. We selected the occurrence frequencies based on the indicated claims-made frequencies. For severity assumptions, we trended the report year average severities forward assuming a one-year reporting lag for the occurrence policies i.e., an accident occurring in 2011 will be reported to Lewis & Clark in 2012.

### ULAE Reserves

Exhibit 13 shows the derivation of the ULAE reserve. The estimated ULAE ratio is based on the average historical ULAE paid per dollar of loss and ALAE paid. In order to calculate the ULAE reserve, we use the expectation that approximately half the ULAE is paid at the opening of a claim and the rest during the remaining life span of the claim. Therefore, the ULAE reserve for reported claims is calculated as 50% times the selected ULAE ratio times the claims-made loss and ALAE reserve. The ULAE for unreported claims associated with tail and occurrence policies is calculated as the ULAE ratio applied against the sum of (a) 50% of the case reserves and (b) 100% of the IBNR reserves for the tail and occurrence policies.

### Ceded Reserves

Exhibit 2 shows the derivation of ceded reserves based on the reserve development method and average development reserve method. The reserve development method applies a reserve development factor, which equals the total reserves divided by the case reserves, to individual claim reserves to calculate the ceded reserve amount. The average development reserve method adds the average development reserve, which equals development reserves divided by open claim counts, to individual open claim reserves and calculates the ceded reserve. Selected ultimate ceded losses are based on a judgmental average of these methods. The ceded reserves are the ultimate ceded losses minus the ceded paid to date, subject to the annual aggregate deductible.

### Tail Policy Reserves

Exhibit 14 shows the derivation of the estimated tail policy reserves. There are two components to this reserve: one for claims already reported under tail policies and a second for IBNR claims. The reported claim liability reserve is estimated by applying the development reserve to case reserve ratio implied by our claims-made reserve analysis selections to the case reserves of tail policy claims. The IBNR reserve is estimated by applying an IBNR factor to the tail policy earned premium times the selected central estimate ultimate loss ratio. The IBNR factor is a function of Lewis & Clark's claims-made step factors.

Lewis & Clark LTC Risk Retention Group, Inc.  
NURSING HOMES

NET AND GROSS BASIS  
RANGE OF ESTIMATED UNDISCOUNTED RESERVES NET OF DEDUCTIBLE  
ALL STATES

(Data as of December 31, 2011)\*\*

	(1)	(2)	(3)
	Total	Total	Total
	Loss and LAE	Loss and LAE	Loss and LAE
Report	Reserves as of 12/31/11	Reserves as of 12/31/11	Reserves as of 12/31/11
Year	Low	Control	High
(A) Total L+ALAE Reserves (Page 3, Row (24)):	\$13,390,315	\$15,083,118	\$21,746,310
(B) ULAE Reserves (Exhibit 13):	\$621,437	\$621,437	\$621,437
(C) Direct Reserve Changes*:	\$572,203	\$572,203	\$572,203
(D) Total Direct Loss and LAE Reserves: (A) + (B) + (C):	\$14,583,955	\$17,276,758	\$22,939,951
(E) Ceded L+ALAE Reserves (Exhibit 2):	\$1,064,560	\$1,776,093	\$3,626,453
(F) Total Net Loss and LAE Reserves: (D) - (E):	\$13,519,395	\$15,500,665	\$19,313,498

NOTES:

1. ULAE is unallocated loss adjustment expense.
2. ALAE is allocated loss adjustment expense.
3. (\*) Reserve adjustments for recently settled claims.
4. (\*\*) Includes adjustments for subsequent activity.

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Lewis & Clark LTC Risk Retention Group, Inc.  
NURSING HOMES

NET AND GROSS BASIS  
RANGE OF ESTIMATED DISCOUNTED RESERVES NET OF DEDUCTIBLE  
ALL STATES

(Data as of December 31, 2011)\*\*

	(1)	(2)	(3)
Report Year	Total Loss and LAE Reserves as of 12/31/11 Low	Total Loss and LAE Reserves as of 12/31/11 Central	Total Loss and LAE Reserves as of 12/31/11 High
(A) Total L+ALAE Reserves (Page 3, Row (26)):	\$12,590,379	\$15,107,664	\$20,695,720
(B) ULAE Reserves (Exhibit 13):	\$681,364	\$693,689	\$691,501
(C) Direct Reserve Changes*:	\$572,203	\$572,203	\$572,203
(D) Total Direct Loss and LAE Reserves: (A) + (B) + (C):	\$13,843,866	\$16,373,557	\$21,960,424
(E) Ceded L+ALAE Reserves (Exhibit 2):	\$1,003,393	\$1,571,863	\$3,448,003
(F) Total Net Loss and LAE Reserves: (D) - (E):	\$12,860,473	\$14,801,693	\$18,512,421

NOTES:

1. ULAE is unallocated loss adjustment expense.
2. ALAE is allocated loss adjustment expense.
3. (\*) Reserve adjustments for recently settled claims.
4. (\*\*) Includes adjustments for subsequent activity.
5. Discounted central estimates assume a 2.5% annual effective rate of return. Discounted high estimates assume a 2.2% annual effective rate of return. The discounted low estimates assume a 3.0% return. These interest rates are based on a 3% interest rate adjusted to reflect the availability of only \$13.9M in assets to generate investment income.

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APP00507



Lewis & Clark LTC Risk Retention Group, Inc.  
NURSING HOMES

CEDED BASIS - CONTINUING AND NON-CONTINUING  
CEDED RESERVES CALCULATION  
ALL STATES

(Data as of December 31, 2011)\*\*

Reserve Development Method									
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	
Treaty Year	Reinsurer's Layer Paid	Reinsurer's Layer Incurred	Low Reinsurer's Layer Ultimate (Page 2)	Central Reinsurer's Layer Ultimate (Page 2)	High Reinsurer's Layer Ultimate (Page 2)	Reinsurer's Deductible	Net of Reinsurance Deductible Low Ceded Ultimate	Deductible Central Ceded Ultimate	Deductible High Ceded Ultimate
1/1-04 - 1/1-05	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
1/1-05 - 1/1-06	0	359,000	359,000	359,000	359,000	359,000	359,000	359,000	359,000
1/1-06 - 1/1-07	35,004	37,650	37,650	37,709	39,679		37,650	37,709	39,679
1/1-07 - 1/1-08									
1/1-08 - 3/31-09	0	\$3,000	65,308	106,888	314,878	\$1,718,872	0	0	0
4/1-09 - 3/31-10	838,155	1,044,187	1,064,404	1,225,317	1,595,270	1,270,237	0	0	310,033
4/1-10 - 3/31-11	1,100,460	1,540,057	2,043,821	2,768,265	4,292,753	1,340,007	702,014	1,414,358	2,661,548
6/1-11 - 6/1-12	0	0	0	0	0	225,285	0	0	0
	\$1,973,619	\$3,033,804	\$3,571,243	\$4,484,507	\$6,592,277		\$1,060,564	\$1,811,097	\$3,000,457
Average Development Reserve Method									
(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)	
Treaty Year	Ceded Paid As of 12/31/11	Ceded Incurred As of 12/31/11	Low Reinsurer's Layer Ultimate (Page 2)	Central Reinsurer's Layer Ultimate (Page 2)	Central Reinsurer's Layer Ultimate (Page 2)	Reinsurer's Deductible	Net of Reinsurance Deductible Low Ceded Ultimate	Deductible Central Ceded Ultimate	Deductible High Ceded Ultimate
1/1-04 - 1/1-05	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
1/1-05 - 1/1-06	0	359,000	359,000	359,000	359,000	359,000	359,000	359,000	359,000
1/1-06 - 1/1-07	35,004	37,650	37,650	39,248	72,346		37,650	39,248	72,346
1/1-07 - 1/1-08									
1/1-08 - 3/31-09	0	0	65,308	68,200	83,006	\$1,718,872	0	0	0
4/1-09 - 3/31-10	0	0	1,048,755	1,000,542	1,133,538	1,270,207	0	0	0
4/1-10 - 3/31-11	0	195,150	1,591,553	1,867,505	1,907,132	1,340,007	260,145	320,000	506,231
6/1-11 - 6/1-12	0	0	0	0	0	225,285	0	0	0
	\$35,004	\$365,000	\$2,053,337	\$3,214,086	\$3,557,520		\$840,793	\$724,947	\$887,577
Selected									
(19)	(20)	(21)	(22)	(23)	(24)	(25)	(26)		
Treaty Year	Low Selected Ceded Ultimate	Central Selected Ceded Ultimate	High Selected Ceded Ultimate	Low Ceded Reserve (19) - (20)	Central Ceded Reserve (23) - (21)	High Ceded Reserve (24) - (22)	11/30/2011 Prior Ultimate	Change Ultimate (26) - (25)	
1/1-04 - 1/1-05	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
1/1-05 - 1/1-06	359,000	359,000	359,000	359,000	359,000	359,000	359,000	0	
1/1-06 - 1/1-07	37,650	37,709	39,679	2,840	2,735	4,575	39,000	(261)	
1/1-07 - 1/1-08									
1/1-08 - 3/31-09	0	0	0	0	0	0	0	0	
4/1-09 - 3/31-10	0	0	310,033	0	0	310,033	0	0	
4/1-10 - 3/31-11	702,014	1,414,358	2,661,548	702,014	1,414,358	2,661,548	821,792	602,548	
6/1-11 - 6/1-12	0	0	0	0	0	0	0	0	
Total	\$1,060,564	\$1,811,097	\$3,000,457	\$1,064,500	\$1,770,903	\$3,923,453	\$1,218,701	\$602,306	

NOTES:

1. Total Reserves = Ultimate Losses - Paid Losses.
2. The reserve development method applies the reserve development factor to individual claim case reserves and calculates the ceded amount.
3. The average development reserve method adds the average development reserve to each open claim reserve and calculates the ceded amount.
4. The selected ceded reserve is based on a judgmental weighted average of the Reserve Development method and the Average Development Reserve method.
5. Treaty Year 1/1/2007 - 1/1/2008 has been commuted. Claims reported 1/1/2008 and after are covered by subsequent reinsurance treaties.
6. The reinsurance deductible for 2009 is the higher of 10% of Gross Written Premium, or \$1,274,000. 2008 is the higher of 11% of Gross Written Premium, or \$1,100,000. 2010 is the higher of 11% of Gross Written Premium, or \$1,220,000. 2011 is the higher of 10.6% of Gross Written Premium, or \$1,300,000.
7. (\*) 2010 reinsurance aggregate deductible is \$1,448,007 adjusted by an earned exposure factor of 0.926.
8. 2011 reinsurance aggregate deductible is adjusted by an earned exposure factor of 0.170.
9. The reinsurance deductible was provided by Lewis & Clark.
9. (\*\*) Includes adjustments for subsequent activity.

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Lewis & Clark LTC Risk Retention Group, Inc.  
HURDING HORNES

CEDED BASIS - CONTRIBUTING AND NON-CONTRIBUTING  
CEDED RESERVES CALCULATION  
ALL STATES

(Data as of December 31, 2011)\*

Account / Report Year	Reserve Development Method										11/30/2011 Prior Reinsurance Layer Ultimate (9) - (11)	Change Reinsurance Layer Ultimate (9) - (11)
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)		
	Low Direct Total Reserves	Central Direct Total Reserves	High Direct Total Reserves	Direct Case Reserves	Low Direct Reserve Development Factors (11) / (5)	Central Direct Reserve Development Factors (2) / (4)	High Direct Reserve Development Factors (3) / (4)	Low Reinsurance Layer Ultimate	Central Reinsurance Layer Ultimate	High Reinsurance Layer Ultimate		
2004	0	0	0	0	NA	NA	NA	0	0	0	0	0
2005	0	0	0	0	NA	NA	NA	0	0	0	0	0
2006	510,693	510,693	510,693	510,693	1,000	1,000	1,000	359,000	359,000	359,000	359,000	0
2007	142,859	142,859	142,859	142,859	1,000	1,000	1,000	553,731	553,731	553,731	553,731	0
2008	1,290,453	1,372,033	1,372,033	1,290,453	1,000	1,000	1,000	0	0	75,168	0	(263)
2009	3,113,493	3,478,636	4,038,132	3,986,343	1,642	1,154	1,391	270,222	257,703	634,743	310,953	58,750
2010	2,533,027	4,255,235	6,455,573	3,912,424	1,873	1,354	1,552	1,562,322	1,391,181	2,563,387	1,045,836	(44,653)
2011	6,398,675	6,329,813	9,030,115	4,077,432	1,317	1,592	2,239	1,312,043	1,928,385	3,013,180	1,312,266	510,082
								\$4,067,324	\$5,070,096	\$7,134,521	\$4,385,155	\$521,923

Average Development Reserves Method										11/30/2011 Prior Reinsurance Layer Ultimate (21) - (23)	Change Reinsurance Layer Ultimate (21) - (23)
(13)	(14)	(15)	(16)	(17)	(18)	(19)	(20)	(21)	(22)		
Low Direct Reserves (11) - (4)	Central Direct Reserves (2) - (4)	High Direct Reserves (3) - (4)	Open Claim Counts	Low Direct Average Development Reserves (13) / (18)	Central Direct Average Development Reserves (14) / (18)	High Direct Average Development Reserves (15) / (18)	Low Reinsurance Layer Ultimate	Central Reinsurance Layer Ultimate	High Reinsurance Layer Ultimate		
2004	0	0	0	NA	NA	NA	0	0	0	0	0
2005	0	0	0	NA	NA	NA	0	0	0	0	0
2006	0	0	0	2	0	0	359,000	359,000	359,000	359,000	0
2007	0	4,783	104,087	15	1,568	34,636	553,731	553,731	553,731	570,391	(4,932)
2008	0	78,551	678,551	19	9,237	42,257	0	0	0	0	0
2009	124,149	408,266	1,049,768	32	15,230	32,636	248,203	271,959	305,690	242,175	39,894
2010	40,593	1,742,811	3,338,149	53	21,066	55,945	1,589,857	1,530,610	1,738,175	1,544,868	85,542
2011	1,251,232	2,452,371	5,012,673	77	31,349	55,100	558,303	914,759	1,092,217	984,976	239,955
							\$3,619,416	\$3,740,767	\$4,083,908	\$3,481,981	\$532,636

NOTES:  
1. Total Reserves = Ultimate Losses - Paid Losses.  
2. The reserve development method applies the reserve development factor to individual claim reserve and calculates the reinsurance layer amount.  
3. The average development method uses the average development factor to which claim reserve and calculates the reinsurance layer amount.  
4. The average development factor is based on a weighted average of the prior reinsurance layer ultimate and the average development factor amount.  
5. The reinsurance layer ultimate for 2007 is 22% of Gross Written Premium; for 2008 is the higher of 10% of Gross Written Premium, or \$1,274,000; for 2009 is the higher of 10% of Gross Written Premium, or \$1,150,000; for 2010 is the higher of 10% of Gross Written Premium, or \$1,300,000.  
6. The reinsurance layer ultimate for 2011 is the higher of 10% of Gross Written Premium, or \$1,300,000.  
7. Includes adjustments for catastrophe.

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Lewis & Clark LTC Risk Retention Group, Inc.  
NURSING HOMES

ESTIMATED LOSS AND ALAE RESERVES AS OF DECEMBER 31, 2011  
*Claims Made Non-Tail Coverage - Continuing and Non-Continuing*

(Data as of December 31, 2011)\*

	(1)	(2)	(3)	(4)	(5)	(6)
Report Year	Central Total Ultimate Loss & ALAE (Exhibit 4: Page 2)	Paid Loss & ALAE As of 12/31/2011	Incurred Loss & ALAE As of 12/31/2011	Case Reserves As of 12/31/2011 (3) - (2)	Estimated Development Reserves As of 12/31/2011 (1) - (3)	Estimated Reserves As of 12/31/2011 (1) - (2)
2004	\$190,763	\$190,763	\$190,763	\$0	\$0	\$0
2005	373,816	373,816	373,816	0	0	0
2006	1,620,211	1,108,518	1,620,211	510,693	0	510,693
2007	3,100,706	2,953,053	3,095,913	142,859	4,793	147,653
2008	3,100,000	1,727,987	3,021,449	1,293,463	78,551	1,372,033
2009	6,694,507	3,349,017	6,338,360	2,989,343	358,146	3,345,490
2010	10,450,000	6,042,874	9,458,575	3,415,702	991,425	4,407,126
2011	7,620,000	1,681,521	6,744,886	4,062,854	1,875,615	5,938,479
Total	\$33,150,003	\$17,428,529	\$29,843,472	\$12,414,943	\$3,306,530	\$15,721,474

NOTES:

1. Amounts are gross of deductible recoveries.
2. Calculations may differ due to rounding.
3. (\*) Includes adjustments for subsequent activity.

Lewis & Clark LTC Risk Retention Group, Inc.  
NURSING HOMES

GROSS OF REINSURANCE BASIS - CONTINUING BUSINESS  
CLAIMS MADE SELECTED ULTIMATE LOSS & ALAE  
ALL STATES

(Data as of December 31, 2011)\*

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Report Year	Estimated # Future CWP Claims	Incurred Loss & ALAE As of 12/31/2011	Preliminary Selected Ultimate Loss & ALAE (Exhibit 10)	Freq & Sev Method Ultimate Loss & ALAE (Exhibit 8)	B-I Method Ultimate Loss & ALAE (Exhibit 6)	Low Selected Ultimate Loss & ALAE	Central Selected Ultimate Loss & ALAE	High Selected Ultimate Loss & ALAE
2004	0	\$190,763	\$190,763	\$252,977	\$190,763	\$190,763	\$190,763	\$190,763
2005	0	373,816	373,816	667,228	373,816	373,816	373,816	373,816
2006	1	1,620,211	1,620,211	1,548,632	1,620,211	1,620,211	1,620,211	1,620,211
2007	2	3,095,913	3,100,700	3,190,349	3,218,704	3,095,913	3,100,700	3,200,000
2008	4	3,021,449	3,004,248	3,886,771	3,356,088	3,021,449	3,100,000	3,700,000
2009	13	4,441,114	4,725,077	3,884,000	5,081,005	4,441,114	4,700,000	5,100,000
2010	12	4,470,970	5,724,445	3,980,227	5,810,400	4,470,970	5,000,000	5,000,000
2011	18	2,413,388	4,927,510	2,384,000	3,788,002	2,300,000	3,400,000	3,500,000
Total	50.4	\$19,636,631	\$24,357,662	\$20,473,091	\$23,461,400	\$20,123,243	\$21,488,498	\$24,504,780

NOTES:

1. ALAE is allocated loss adjustment expense.
2. Column (1) equals estimated ultimate CWP claims on Exhibit 7, less CWP claims to date.
3. (\*) Includes adjustments for subsequent activity.

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Lewis & Clark LTC Risk Retention Group, Inc.  
NURSING HOMES

GROSS OF REINSURANCE BASIS - CONTINUING AND NON-CONTINUING  
CLAIMS MADE SELECTED ULTIMATE LOSS & ALAE  
ALL STATES

(Data as of December 31, 2011)\*

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
	Low Continuing Policies IBNR: Case Ratio (Page 1)	Central Continuing Policies IBNR: Case Ratio (Page 1)	High Continuing Policies IBNR: Case Ratio (Page 1)	Non-Continuing Policies Insured Loss & ALAE As of 12/31/2011	Non-Continuing Policies Paid Loss & ALAE As of 12/31/2011	Low Non-Continuing Policies Ultimate Loss & ALAE [(4)-(5)]x(1)+(4)	Central Non-Continuing Policies Ultimate Loss & ALAE [(4)-(5)]x(2)+(4)	High Non-Continuing Policies Ultimate Loss & ALAE [(4)-(5)]x(3)+(4)
Report Year								
2004	0.000	0.000	0.000	\$0	\$0	\$0	\$0	\$0
2005	0.000	0.000	0.000	0	0	0	0	0
2006	0.000	0.000	0.000	0	0	0	0	0
2007	0.000	0.034	0.729	0	0	0	0	0
2008	0.000	0.051	0.525	0	0	0	0	0
2009	0.000	0.119	0.309	1,807,246	1,000,000	1,807,246	1,804,607	2,140,000
2010	0.000	0.280	0.790	4,378,588	3,354,431	4,378,588	5,450,000	6,270,000
2011	0.220	0.452	0.077	3,330,000	1,000,000	3,770,000	4,230,000	5,210,000
Total				\$10,205,842	\$5,354,431	\$10,545,540	\$11,664,607	\$13,620,000

	(9)	(10)	(11)	(12)	(13)	(14)
	Low Continuing Policies Ultimate Loss & ALAE (Page 1)	Central Continuing Policies Ultimate Loss & ALAE (Page 1)	High Continuing Policies Ultimate Loss & ALAE (Page 1)	Low Total Ultimate Loss & ALAE (9)+(12)	Central Total Ultimate Loss & ALAE (10)+(13)	High Total Ultimate Loss & ALAE (11)+(14)
Report Year						
2004	\$100,700	\$100,700	\$100,700	\$100,700	\$100,700	\$100,700
2005	373,816	373,816	373,816	373,816	373,816	373,816
2006	1,820,211	1,820,211	1,820,211	1,820,211	1,820,211	1,820,211
2007	3,065,913	3,100,706	3,268,000	3,065,913	3,100,706	3,200,000
2008	3,021,449	3,100,000	3,790,000	3,021,449	3,100,000	3,700,000
2009	4,441,114	4,700,000	5,100,000	6,338,360	6,804,607	7,240,000
2010	4,479,978	5,000,000	5,900,000	9,489,978	10,450,000	12,170,000
2011	3,800,000	3,400,000	4,500,000	6,870,000	7,825,000	9,710,000
Total	\$20,123,243	\$21,485,406	\$24,504,786	\$36,709,000	\$33,180,003	\$35,204,786

NOTES:

1. ALAE is allocated loss adjustment expense.
2. (\*) Includes adjustments for subsequent activity.

Lewis & Clark LTC Risk Retention Group, Inc.  
NURSING HOMES

GROSS OF REINSURANCE BASIS - CONTINUING BUSINESS  
BORNHUETT-FERGUSON METHOD BASED ON INCURRED LOSSES  
ALL STATES

(Data as of December 31, 2011)\*

	(1)	(2)	(3)	(4)
Report Year	Expected Ultimate Loss & ALAE (Exhibit 01)	Unreported Factor	Incurred Loss & ALAE As of 12/31/2011	Bornhuetter Ferguson Ultimate Loss & ALAE (1) x (2) + (3)
2004	\$252,977	0.000	\$190,763	\$190,763
2005	667,226	0.000	373,616	373,616
2006	1,548,632	0.000	1,620,211	1,620,211
2007	3,193,349	0.038	3,096,913	3,218,734
2008	3,995,771	0.084	3,021,449	3,358,089
2009	3,684,906	0.167	4,441,114	5,091,295
2010	3,966,227	0.334	4,479,976	6,810,489
2011	<u>2,944,000</u>	<u>0.467</u>	<u>2,413,368</u>	<u>3,788,092</u>
Total	\$20,473,091		\$19,636,631	\$23,451,489

NOTES:

1. ALAE is allocated loss adjustment expense.
2. Column (2) equals 1 minus the reciprocal of the selected ultimate incurred loss development factors from Exhibit 10.
3. (\*) Includes adjustments for subsequent activity.



Lewis & Clark LTC Risk Retention Group, Inc.  
NURSING HOMES

GROSS OF REINSURANCE BASIS - CONTINUING BUSINESS  
FREQUENCY X SEVERITY METHOD  
ALL STATES

(Data as of December 31, 2011)\*

	(1)	(2)	(3)	(4)	(5)	(6)	(7)
	Preliminary Selected Ultimate Loss & ALAE (Exhibit 10)	Selected Ultimate CWP Count (Exhibit 7)	Preliminary Loss & ALAE Severity (1) / (2)	Trend Factor	2011 On-Level Trended Severity (3) x (4)	Detrended Loss & ALAE Severity Selected (5) / (4)	Frequency x Severity Projected Ultimate (2) x (3)
Report Year							
2004	\$190,793	2	\$95,392	1.466	\$139,750	\$123,488	\$202,977
2005	373,816	5	74,763	1.379	103,087	133,445	667,226
2006	1,020,211	11	147,282	1.307	192,508	140,765	1,546,832
2007	3,100,706	22	144,219	1.238	179,662	140,528	3,193,369
2008	3,094,248	26	121,343	1.174	142,486	156,657	3,995,771
2009	4,725,977	24	201,106	1.113	223,836	185,318	3,654,005
2010	6,724,445	23	294,212	1.055	310,393	174,408	3,966,227
2011	4,527,516	16	282,870	1.000	282,870	184,000	2,944,000
Total	\$24,367,682	127	\$191,267				\$20,473,091
		<u>Indicated Trend</u>		<u>Average</u>			
		2006-2008:	7.0%	2006-2008:	\$184,372		
		Prior Selection:	2.5%	2004-2010:	\$184,245		
		Industry:	2.5%	Prior Selection:	\$145,000		
				Industry:	\$115,000		
		<u>Selected Trend:</u>	5.5%	<u>Selected Severity:</u>	\$184,000		

**NOTES:**

1. ALAE is allocated loss adjustment expense.
2. Trend factors are calculated as a multiplicative factor using the selected trend percentage.
3. CWP represents claims closed with an indemnity payment.
4. The industry trend and average severity are based on Fortis de Leon LTC Risk Retention Group, Inc. analysis.
5. (\*) Includes adjustments for subsequent activity.

Lewis & Clark LTC Risk Retention Group, Inc.  
NURSING HOMES

GROSS OF REINSURANCE BASIS - CONTINUING BUSINESS  
CLAIMS-MADE SELECTED ULTIMATE CWIP CLAIMS  
ALL STATES

(Data as of December 31, 2011)\*

	(1)	(2)	(3)	(4)	(5)	(6)
Report Year	CWIP Claims As of 12/31/2011	Development Method Ultimate CWIP Claims (Exhibit 9)	Hindsight Method Ultimate CWIP Claims (Exhibit 8)	Selected Ultimate CWIP Claims	Reported Claims As of 12/31/2011	CWIP RATIO (4) / (5)
2004	2	2	2	2	8	25%
2005	5	5	5	5	36	14%
2006	10	10	11	11	88	13%
2007	20	20	22	22	79	27%
2008	18	19	26	26	92	28%
2009	11	14	24	24	66	28%
2010	11	23	32	23	79	29%
2011	0	0	18	18	58	28%
Total	77	93	138	127	525	24%

NOTES:

1. Column (4) is a weighted average of Columns (1) through (3).
2. (\*) includes adjustments for subsequent activity.

Lewis & Clark LTC Risk Retention Group, Inc.  
NURSING HOMES

GROSS OF REINSURANCE BASIS - CONTINUING BUSINESS  
HINDSIGHT TO CWP RATIO METHOD  
ALL STATES

(Data as of December 31, 2011)\*

Report Year	Open Claims Triangle Age (in Months)								Open Counts	Ultimate CWP
	12	24	36	48	60	72	84	96		
2004		2	1	0	0	0	0	0	0	2
2005	30	2	2	1	0	0	0	0	0	6
2006	44	7	6	5	2	2			2	11
2007	54	21	18	7	3				5	22
2008	53	25	19	15					15	28
2009	64	27	25						35	24
2010	57	32							32	32
2011	55								30	18
Wtd Avg	0.322	0.601	0.600	0.423	0.500				127	138
Industry	0.450	0.700	0.700	0.850	1.000	1.000				
Prior	0.380	0.650	0.600	0.500	0.600	0.500	0.500	0.500		
Selected	0.380	0.650	0.500	0.600	0.500	0.500	0.500	0.500		

NOTES:

1. Amounts below the line in the triangle are cumulative CWP counts. Ratios above the line in the triangle are implied future CWP counts as a percent of open claim counts, which is calculated as (ultimate CWP count - CWP to date in Exhibit 9 page 1) + open counts to date.
2. For 2008 and subsequent, ultimate CWP equals CWP to date plus the open counts multiplied by the selected outstanding CWP ratio. For prior years ultimate CWP = CWP to date.
3. CWP represents claims closed with an indemnity payment.
4. Open counts exclude claims made tail policies and occurrence policies.
5. The Industry Loss Development Factors are based on Ponce de Leon LTC Risk Retention Group, Inc. analysis.
6. (\*) includes adjustments for subsequent activity.

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Lewis & Clark LTC Risk Retention Group, Inc.  
NURSING HOMES

GROSS OF REINSURANCE BASIS - CONTINUING BUSINESS  
PRELIMINARY CWIP CLAIM COUNT DEVELOPMENT  
ALL STATES

(Data as of December 31, 2011)\*

	(1)	(2)	(3)
Report Year	CWIP Count As of 12/31/2011	CWIP Count Development Factor [Page 2]	Preliminary Ultimate CWIP Count (1) x (2)
2004	2	1.000	2
2005	6	1.000	6
2006	10	1.000	10
2007	20	1.000	20
2008	18	1.050	19
2009	11	1.270	14
2010	11	2.078	23
2011	0	7.445	0
Total	77		93

NOTES:

1. CWIP represents claims closed with an indemnity payment.
2. CWIP counts exclude tail policies.
3. (\*) Includes adjustments for subsequent activity.

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Lewis & Clark LTC Risk Retention Group, Inc.  
NURSING HOMES

GROSS OF REINSURANCE BASIS - CONTINUING BUSINESS  
CWIP CLAIMS TRIANGLE  
ALL STATES

(Data as of December 31, 2011)\*

Report Year	CWIP Claims Triangle Age (in Months)						
	12	24	36	48	60	72	84
2004		1	2	2	2	2	2
2005	1	3	5	5	5	5	5
2006	2	5	9	10	10	10	
2007	3	9	12	17	20		
2008	2	8	15	16			
2009	1	7	11				
2010	2	11					
2011	0						

Report Year	Age to Age Development Triangle Age (in Months)						
	12 - 24	24 - 36	36 - 48	48 - 60	60 - 72	72 - 84	84 - 96
2004		2.000	1.000	1.000	1.000	1.000	1.000
2005	3.000	1.667	1.000	1.000	1.000	1.000	
2006	2.500	1.800	1.111	1.000	1.000		
2007	3.000	1.333	1.417	1.176			
2008	4.000	1.675	1.200				
2009	7.000	1.571					
2010	3.687						
Wld Avg	3.583	1.636	1.209	1.088	1.000	1.000	1.000
Industry	2.800	1.510	1.110	1.090	1.000	1.000	
Prior	3.500	1.636	1.209	1.050	1.000	1.000	1.000
Selected	3.583	1.636	1.209	1.050	1.000	1.000	1.000
Cumulative	7.445	2.078	1.270	1.050	1.000	1.000	1.000

NOTES:

1. CWIP represents claims closed with an indemnity payment.
2. CWIP counts exclude tail policies.
3. The Industry Loss Development Factors are based on Ponce de Leon LTC Risk Retention Group, Inc. analysis.
4. (\*) Includes adjustments for subsequent activity.

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Lewis & Clark LTC Risk Retention Group, Inc.  
NURSING HOMES

GROSS OF REINSURANCE BASIS - CONTINUING BUSINESS  
LOSS DEVELOPMENT METHODS  
ALL STATES

(Data as of December 31, 2011)\*\*

	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Report Year	Paid Loss & ALAE As of 12/31/2011	Paid Loss & ALAE Development Factor [Exhibit 11]	Paid Development Method Ultimate Loss & ALAE (1) x (2)	Incurred Loss & ALAE As of 12/31/2011	Adjusted Incurred Loss & ALAE Development Factor [Exhibit 12]	Adjusted Incurred Method Ultimate Loss & ALAE (4) x (5)	Preliminary Selected Ultimate Loss & ALAE
2004	\$190,783	1.000	\$190,783	\$190,783	1.000	\$190,783	\$190,783
2005	373,816	1.000	373,816	373,816	1.000	373,816	373,816
2006	1,109,518	1.000	1,109,518	1,890,211	1.000	1,890,211	1,890,211
2007	2,553,353	1.050	2,681,020	3,095,913	1.040	3,219,740	3,100,706
2008	1,727,987	1.187	2,052,375	3,021,448	1.092	3,299,423	3,094,348
2009	2,288,137	1.582	3,619,874	4,441,114	1.201	5,283,528	4,725,977
2010	2,088,443	2.011	7,019,524	4,479,975	1.501	6,724,445	6,724,445
2011	278,012	14.822	4,085,987	2,413,388	1.878	4,527,515	4,527,515
Total	\$11,589,709		\$21,538,664	\$19,536,631		\$25,230,451	\$24,357,682

NOTES:

1. ALAE is allocated loss adjustment expense.
2. Amounts exclude tail policies.
3. Column (7) is based on a weighted average of columns (3) and (6).
4. (\*) \$250,000 related to a claim that reached its sublimit was excluded from development.
5. (\*\*) Includes adjustments for subsequent activity.

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Lewis & Clark LTC Risk Retention Group, Inc.  
NURSING HOMES

GROSS OF REINSURANCE BASIS - CONTINUING BUSINESS  
PAID LOSSES AND ALAE DEVELOPMENT TRIANGLES  
ALL STATES

(Data as of December 31, 2011)\*

Report Year	Paid Losses and ALAE Triangle							
	Age (in Months)							
	12	24	36	48	60	72	84	96
2004	\$1,361	\$139,336	\$191,346	\$191,346	\$191,346	\$191,346	\$191,346	\$190,763
2005	22,065	334,429	372,298	373,580	373,816	373,816	373,816	
2006	54,209	290,136	641,817	683,813	699,010	1,109,516		
2007	150,634	895,273	1,266,971	2,507,384	2,663,063			
2008	156,347	681,097	1,380,163	1,727,967				
2009	442,816	1,480,564	2,268,137					
2010	307,483	2,688,443						
2011	278,012							

Report Year	Age to Age Development Triangle							
	Age (in Months)							
	12-24	24-36	36-48	48-60	60-72	72-84	84-96	96-011
2004	102.378	1.373	1.000	1.000	1.000	1.000	0.997	
2005	15.144	1.113	1.003	1.001	1.000	1.000		
2006	4.519	2.211	1.377	1.131	1.111			
2007	6.573	1.446	1.933	1.178				
2008	4.228	2.116	1.236					
2009	3.344	1.532						
2010	8.743							
Wtd Avg	5.619	1.623	1.457	1.142	1.071	1.000	0.997	
Industry	3.300	1.670	1.200	1.140	1.010	1.005		
Prior	6.500	1.640	1.330	1.120	1.050	1.000	1.000	
Selected	5.600	1.640	1.330	1.140	1.050	1.000	1.000	
Cumulative	14.622	2.611	1.892	1.197	1.050	1.000	1.000	1.000

NOTES:

1. ALAE is allocated loss adjustment expense.
2. Amounts exclude tail policies.
3. The Industry Loss Development Factors are based on Ponce de Leon LTC Risk Retention Group, Inc. analysis.
4. (\*) Includes adjustments for subsequent activity.

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Lewis & Clark LTC Risk Retention Group, Inc.  
NURSING HOMES

GROSS OF REINSURANCE BASIS - CONTINUING BUSINESS  
ADJUSTED INCURRED LOSS AND ALAE DEVELOPMENT TRIANGLES  
ALL STATES

(Data as of December 31, 2011)\*\*

Report Year	Adjusted Incurred Loss and ALAE Age (in Months)							
	12	24	36	48	60	72	84	96
2004	1,381	220,343	257,860	191,345	191,345	191,345	191,345	190,783
2005	951,287	420,101	612,624	373,560	373,516	373,516	373,516	
2006	1,501,997	606,483	1,085,746	1,094,533	1,266,211	1,620,211		
2007	2,022,243	1,896,510	2,546,454	2,849,582	3,095,913			
2008	2,063,974	1,918,504	2,084,531	3,021,449				
2009	2,898,539	2,913,366	4,441,114					
2010	2,614,904	4,479,976						
2011	2,413,388							

Report Year	Age to Age Development Triangle Age (in Months)							
	12 - 24	24 - 36	36 - 48	48 - 60	60 - 72	72 - 84	84 - 96	96 - UN
2004	162.045	1.169	0.742	1.000	1.000	1.000	0.997	
2005	0.442	1.220	0.729	1.001	1.000	1.000		
2006	0.404	1.790	1.005	1.157	1.280			
2007	0.936	1.343	1.119	1.088				
2008	0.921	1.545	1.019					
2009	1.005	1.624						
2010	1.713							
Avg.	0.904 *	1.432	0.923	1.061	1.093	1.000	0.997	
Industry	1.590	1.150	1.100	1.010	1.000	1.000		
Prior	1.310	1.341	1.105	1.060	1.000	1.000	1.000	
Selected	1.250	1.280	1.100	1.050	1.040	1.000	1.000	
Cumulative	1.876	1.501	1.201	1.092	1.040	1.000	1.000	1.000

NOTES:

1. ALAE is allocated loss adjustment expense.
2. The adjusted incurred losses are adjusted using the Berquist-Shorman method to reflect changes in the case reserve adequacy level.
3. Amounts exclude tail policies.
4. The Industry Loss Development Factors are based on Ponce de Leon LTC Risk Retention Group, Inc. analysis.
5. (\*) Excludes 2004.
6. (\*\*) Includes adjustments for subsequent activity.

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Lewis & Clark LTC Risk Retention Group, Inc.  
NURSING HOMES

GROSS OF REINSURANCE BASIS - CONTINUING AND NON-CONTINUING  
PROJECTED ULAE PER REPORTED CLAIM  
ALL STATES

(Data as of December 31, 2011)\*

	(1)	(2)	(3)
Calendar Year	Incremental Paid ULAE	Incremental Unlimited Paid Loss & ALAE	Calendar Year Ratio of Paid ULAE to Paid Loss & ALAE (1) / (2)
2006	\$109,362	\$388,814	28.1%
2007	133,014	393,931	33.8%
2008	175,426	1,228,069	14.3%
2009	206,847	1,771,666	11.7%
2010	326,686	4,895,412	6.7%
2011	568,157	8,697,311	6.5%
Total	\$1,519,483	\$17,375,184	
		Average Ratio:	18.8%
		Weighted Average Ratio:	8.7%
		Industry:	8.5%
(4)		Selected ULAE Ratio:	7.0%
(5)	Claims-Made Loss + ALAE Case Reserves:		\$12,414,943
(6)	Claims-Made Loss + ALAE Development Reserves:		3,306,530
(7)	Occurrence / Tail Loss + ALAE Case Reserves:		\$111,301
(8)	Occurrence / Tail Loss + ALAE Development Reserves:		961,291
(9)	= (4) x {50% x [(5)+(6)+(7)] + (8)}		ULAE Reserve: \$621,437
(10)			ULAE Case Reserves: 308,897
(11)	= (9) - (10)		ULAE Development Reserves: 314,541

**NOTES:**

1. ULAE is unallocated loss adjustment expense.
2. Lines (6) and (8) from Exhibit 1, Page 3.
3. Line (9) assumes half of ULAE is paid when claims are first opened.
4. (\*) Includes adjustments for subsequent activity.

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Lewis & Clark LTC Risk Retention Group, Inc.  
NURSING HOMES

GROSS OF REINSURANCE BASIS - CONTINUING AND NON-CONTINUING  
ESTIMATED TOTAL TAIL RESERVES  
ALL STATES

(Data as of December 31, 2011)\*

	(1)	(2)	(3)	(4)	(5)	(6)
	Purchased Tail Reported Claims					
Tail Effective Year	Paid L+ALAE as of 12/31/2011	Incurred L+ALAE as of 12/31/2011	Case Reserves as of 12/31/2011 (2)-(1)	Development Reserve	Purchased Tail IBNR Reserves as of 12/31/2011	Total Tail Policy Reserves as of 12/31/2011 (3)+(4)+(5)
2004	\$0	\$0	\$0	\$0	\$0	\$0
2005	0	0	0	0	0	0
2006	0	0	0	0	0	0
2007	17,047	17,047	0	0	0	0
2008	0	0	0	0	0	0
2009	0	0	0	0	0	0
2010	8,048	11,000	2,952	1,363	131,368	135,683
2011	0	0	0	0	0	0
Total	\$25,095	\$28,047	\$2,952	\$1,363	\$131,368	\$135,683

NOTES:

1. ALAE is allocated loss adjustment expense.
2. Column (4) from Exhibit 5 page 2 is allocated to tail effective year on a per claim basis.
3. Column (5) is from Exhibit 14, Page 3 Column (8) total.
4. (\*) Includes adjustments for subsequent activity.

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Lewis & Clark LTC Risk Retention Group, Inc.  
NURSING HOMES

GROSS OF REINSURANCE BASIS - CONTINUING AND NON-CONTINUING  
ESTIMATED ULTIMATE FOR TAIL REPORTED CLAIMS  
ALL STATES

(Data as of December 31, 2011)\*

	(1)	(2)	(3)	(4)	(5)	(6)
Report Year	Paid Loss + ALAE as of 12/31/2011	Incurred Loss + ALAE as of 12/31/2011	Case Reserves as of 12/31/2011 (2)-(1)	Claims-Made Development to Case Reserve Ratio	Development Reserve (3)*(4)	Tail Reported Claims Ultimate Loss + ALAE (2)+(5)
2004	\$0	\$0	\$0	NA	\$0	\$0
2005	0	0	0	NA	0	0
2006	0	0	0	0%	0	0
2007	17,047	17,047	0	3%	0	17,047
2008	0	0	0	6%	0	0
2009	0	0	0	12%	0	0
2010	0	0	0	29%	0	0
2011	8,048	11,000	2,952	46%	1,353	12,353
Total	\$25,095	\$28,047	\$2,952		\$1,353	\$28,410

**NOTES:**

1. ALAE is allocated loss adjustment expenses.
2. Column (4) is equal to [Exhibit 1, Page 5, Column (5)] / [Exhibit 1, Page 5, Column (4)].
3. (\*) Includes adjustments for subsequent activity.

Lewis & Clark LTO Risk Retention Group, Inc.  
NURSING HOMES

GROSS OF REINSURANCE BASIS - CONTINUING AND NON-CONTINUING  
CALCULATION OF PURCHASED TAIL INR LIABILITY  
ALL STATES

(Data as of December 31, 2011)\*

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Tail Coverage Effective Date	Tail Coverage Expiration Date	Retroactive Date	Evaluation Date	Relative INR Factor	Ultimate Loss ratio (Exhibit 1, P2)	Tail Premium	Expected INR (5)(6)(7)
01/18/2007	01/18/2009	09/30/2006	12/31/2011	0.000	61.4%	\$388,283	\$0
05/01/2008	05/01/2012	03/31/2008	12/31/2011	0.000	61.4%	15,000	0
06/01/2010	06/01/2013	06/01/2002	12/31/2011	0.006	61.4%	237,600	13,540
12/01/2010	12/01/2013	12/01/2004	12/31/2011	0.213	61.4%	500,000	117,830
Total						\$1,842,170	\$131,368

NOTES:

1. Column (5) is the expected INR factor as of the evaluation date relative to the expected INR factor as of the Tail Coverage Effective Date.
2. Column (6) is based on the central claims-made ultimate loss and ALAE estimate, net of deductible recoveries.
3. (\*) Includes adjustments for subsequent activity.

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Lewis & Clark Life Risk Retention Group, Inc.  
HARRING HARBOR

GROSS OF REINSURANCE BASIS - CONTINUING  
ORDINARY BUSINESS - LLOYD'S & ALICE  
ALLIANCE

(Data as of December 31, 2011)\*

Year	(1)			(2)			(3)			(4)		
	Estimated Claims Made or Incurred CUMULATIVE (1994-2011)			Claims Made or Incurred			Frequency Per \$1 million Earned Premium			Estimated Losses & ALAE Reserve		
	Low	Central	High	Low	Central	High	Low	Central	High	Low	Central	High
2004	0.0	0.0	0.0	\$1,000,000			1.7			\$100,000	\$100,000	\$100,000
2005	0.0	0.0	0.0	1,000,000			0.0			100,000	100,000	100,000
2006	1.0	1.0	1.0	1,000,000			2.0			100,000	100,000	100,000
2007	2.0	2.0	2.0	1,000,000			0.0			100,000	100,000	100,000
2008	2.0	2.0	2.0	1,000,000			0.0			100,000	100,000	100,000
2009	2.0	2.0	2.0	1,000,000			3.3			100,000	100,000	100,000
2010	2.0	2.0	2.0	1,000,000			0.0			100,000	100,000	100,000
2011	0.0	0.0	0.0	1,000,000			2.2			100,000	100,000	100,000
Total	0.0	0.0	0.0	\$1,000,000								

Year	(5)			(6)			(7)			(8)			(9)		
	Estimated Claims Made or Incurred CUMULATIVE (1994-2011)			Claims Made or Incurred			Frequency Per \$1 million Earned Premium			Estimated Losses & ALAE Reserve			Estimated Uninsured Losses & ALAE		
	Low	Central	High	Low	Central	High	Low	Central	High	Low	Central	High	Low	Central	High
2004															
2005															
2006															
2007															
2008	0.0	0.0	0.0	1,000,000			2.2	0.0	0.0	\$100,000	\$100,000	\$100,000	\$0	\$0	\$0
2009	1.0	1.0	1.0	1,000,000			0.0	0.0	0.0	100,000	100,000	100,000	100,000	100,000	100,000
2010	1.0	1.0	1.0	1,000,000			0.0	0.0	0.0	100,000	100,000	100,000	100,000	100,000	100,000
2011	2.4	2.4	2.4	1,000,000			0.0	0.0	0.0	100,000	100,000	100,000	100,000	100,000	100,000
Total	4.4	4.4	4.4	\$1,000,000									\$100,000	\$1,000,000	\$1,000,000

- NOTES:
1. Estimate for claims made outstanding not included.
  2. ALAE is allocated to the adjustment company.
  3. Column (5) - CUMULATIVE claims to date & no open claims; (6) & (7) otherwise.
  4. Column (7) based on (5).
  5. Column (9) based on (8), increased for each accident 1 year regarding any other accident.
  6. (7) includes adjustments for subsequent activity.

Lewis & Clark LTC Risk Retention Group, Inc.  
HUNTSVILLE, ALABAMA

GROSS OF REINSURANCE BASIS  
DATA SUMMARY - CONTINUED BUSINESS  
ALL STATES

(Data as of December 31, 2011)

ALL CLAIMS

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Accident Report Year	Paid L/A/LAE	Incurred L/A/LAE	Point Deductible Recovery	Incurred L/A/LAE	Reported Counts	CWP Counts	Open Counts	Deductible Recoverable
2004	\$190,763	\$190,763	\$15,000	\$20,458	8	2	0	0
2005	\$73,816	\$73,816	\$2,000	\$9,409	30	5	0	0
2006	\$1,109,516	\$1,020,211	\$4,748	\$10,189	88	10	2	0
2007	\$2,070,101	\$1,142,060	\$0,000	\$28,067	80	20	3	0
2008	\$1,727,967	\$3,021,440	\$0,000	\$37,885	92	10	15	0
2009	\$2,000,888	\$4,381,985	\$7,024	\$35,955	90	12	25	\$0,000
2010	\$2,720,100	\$4,905,484	\$63,811	\$38,500	89	11	58	\$1,450
2011	\$86,401	\$2,469,388	\$7,000	\$14,316	66	0	97	\$2,469
Total	\$11,997,703	\$19,850,003	\$400,853	\$159,170	543	70	141	\$4,398

CLAIMS MADE FOR POLICY CLAIMS

(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)
Report Year	Paid L/A/LAE	Incurred L/A/LAE	Point Deductible Recovery	Incurred L/A/LAE	Reported Counts	CWP Counts	Open Counts	Deductible Recoverable
2004	\$0	\$0	\$0	\$0	0	0	0	0
2005	0	0	0	0	0	0	0	0
2006	0	0	0	0	0	0	0	0
2007	\$17,047	\$17,047	0	\$1,427	1	0	0	0
2008	0	0	0	0	0	0	0	0
2009	0	0	0	0	0	0	0	0
2010	0	0	0	0	0	0	0	0
2011	\$8,046	\$11,000	0	\$8,000	1	0	1	0
Total	\$25,093	\$28,047	\$0	\$9,427	2	0	1	0

CLAIMS MADE FOR POLICY CLAIMS

(19)	(20)	(21)	(22)	(23)	(24)	(25)	(26)	(27)
Report Year	Paid Loss & LAE	Incurred Loss & LAE	Point Deductible Recovery	Incurred L/A/LAE	Reported Counts	CWP Counts	Open Counts	Deductible Recoverable
2004	\$190,763	\$190,763	\$15,000	\$20,458	8	2	0	0
2005	\$73,816	\$73,816	\$2,000	\$9,409	30	5	0	0
2006	\$1,109,516	\$1,020,211	\$4,748	\$10,189	88	10	2	0
2007	\$2,070,101	\$1,142,060	\$0,000	\$28,067	79	20	3	0
2008	\$1,727,967	\$3,021,440	\$0,000	\$37,885	92	10	15	0
2009	\$2,000,888	\$4,441,114	\$7,024	\$31,375	85	11	25	\$0,000
2010	\$2,680,443	\$4,470,070	\$63,811	\$38,051	79	11	52	\$1,450
2011	\$26,072	\$2,410,388	\$7,000	\$10,015	66	0	99	\$2,469
Total	\$11,980,708	\$19,826,321	\$456,853	\$158,737	543	77	127	\$4,800

CONFORMANCE POLICY CLAIMS

(28)	(29)	(30)	(31)	(32)	(33)	(34)	(35)	(36)
Accident Year	Paid L/A/LAE	Incurred L/A/LAE	Point Deductible Recovery	Incurred L/A/LAE	Reported Counts	CWP Counts	Open Counts	Deductible Recoverable
2004	\$0	\$0	\$0	\$0	0	0	0	0
2005	0	0	0	0	0	0	0	0
2006	0	0	0	0	0	0	0	0
2007	0	0	0	0	0	0	0	0
2008	0	0	0	0	0	0	0	0
2009	\$0,851	\$0,801	\$1,000	\$4,827	3	1	0	0
2010	\$1,707	\$20,478	0	\$2,478	7	0	7	0
2011	\$0,021	\$0,000	0	\$0,000	6	0	0	0
Total	\$2,579	\$11,029	\$5,000	\$7,305	16	1	17	0

NOTES:

1. Data provided by Lewis & Clark.
2. CWP represents claims closed with an indemnity payment.
3. Excludes claims on 3 non-renewed policies.
4. (\*) includes adjustments for subsequent activity.

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Lewis & Clark LTC Risk Retention Group, Inc.  
NURSING HOMES

GROSS OF REINSURANCE BASIS  
DATA SUMMARY - NON-CONTINUING BUSINESS  
ALL STATES

(Data as of December 31, 2011)\*

ALL CLAIMS

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Report Year	Paid L+ALAE	Incurred L+ALAE	Paid Deductible Recovery	Incurred ULAE	Reported Counts	CWP* Counts	Open Counts	Deductible Recoverable
2004	\$0	\$0	\$0	\$0	0	0	0	0
2005	0	0	0	0	0	0	0	0
2006	0	0	0	0	0	0	0	0
2007	0	0	0	0	0	0	0	0
2008	0	0	0	0	0	0	0	0
2009	1,000,000	1,007,340	0	63,302	14	3	7	0
2010	3,354,431	4,078,000	0	137,775	34	6	28	75,000
2011	1,403,000	3,300,000	0	80,517	28	1	20	0
Total	\$5,330,820	\$10,200,842	\$0	\$241,453	74	0	47	75,000

CLAIMS MADE TAIL POLICY CLAIMS

(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)
Report Year	Paid L+ALAE	Incurred L+ALAE	Paid Deductible Recovery	Incurred ULAE	Reported Counts	CWP* Counts	Open Counts	Deductible Recoverable
2004	\$0	\$0	\$0	\$0	0	0	0	0
2005	0	0	0	0	0	0	0	0
2006	0	0	0	0	0	0	0	0
2007	0	0	0	0	0	0	0	0
2008	0	0	0	0	0	0	0	0
2009	0	0	0	0	0	0	0	0
2010	0	0	0	0	0	0	0	0
2011	0	0	0	0	0	0	0	0
Total	\$0	\$0	\$0	\$0	0	0	0	0

CLAIMS MADE NON-TAIL POLICY CLAIMS

(19)	(20)	(21)	(22)	(23)	(24)	(25)	(26)	(27)
Report Year	Paid L+ALAE	Incurred L+ALAE	Paid Deductible Recovery	Incurred ULAE	Reported Counts	CWP* Counts	Open Counts	Deductible Recoverable
2004	\$0	\$0	\$0	\$0	0	0	0	0
2005	0	0	0	0	0	0	0	0
2006	0	0	0	0	0	0	0	0
2007	0	0	0	0	0	0	0	0
2008	0	0	0	0	0	0	0	0
2009	1,000,000	1,007,340	0	63,302	14	3	7	0
2010	3,354,431	4,078,000	0	137,775	34	6	28	75,000
2011	1,403,000	3,300,000	0	80,517	28	1	20	0
Total	\$5,330,820	\$10,200,842	\$0	\$241,453	74	0	47	75,000

EXCESS/RENEWAL POLICY CLAIMS

(28)	(29)	(30)	(31)	(32)	(33)	(34)	(35)	(36)
Report Year	Paid L+ALAE	Incurred L+ALAE	Paid Deductible Recovery	Incurred ULAE	Reported Counts	CWP* Counts	Open Counts	Deductible Recoverable
2004	\$0	\$0	\$0	\$0	0	0	0	0
2005	0	0	0	0	0	0	0	0
2006	0	0	0	0	0	0	0	0
2007	0	0	0	0	0	0	0	0
2008	0	0	0	0	0	0	0	0
2009	0	0	0	0	0	0	0	0
2010	0	0	0	0	0	0	0	0
2011	0	0	0	0	0	0	0	0
Total	\$0	\$0	\$0	\$0	0	0	0	0

NOTES:

1. Data provided by Lewis & Clark.
2. CWP\* represents claims closed with an indemnity payment.
3. Excludes claims on 3 non renewed contracts, Healthcare Associates, Country Vita, and Oak Valley.
4. (\*) Includes adjustments for subsequent activity.

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## APPENDIX B: METHODOLOGY FOR NURSE AND ALLIED HEALTHCARE PROVIDER PROFESSIONAL LIABILITY (FORMER SOPHIA PALMER BUSINESS)

This Appendix presents the methodology and assumptions underlying our calculations in estimating the unpaid nurses professional claim liabilities of the former Sophia Palmer Nurses Risk Retention Group, Inc. (Sophia Palmer), now part of the Lewis & Clark LTC Risk Retention Group, Inc. following the acquisition of Sophia Palmer in 2009. There are several reserve components we estimate:

1. Gross claims-made policy reserves,
2. Gross occurrence policy reserves, and
3. Unallocated loss adjustment expense (ULAE) reserves.

The reported nurses professional liability claims to date are all from the state of Florida. The ceded reserves are estimated as zero since there is no claims activity that approaches the reinsurance attachment points.

Exhibit 1, Pages 1 and 2 detail each of these reserve components on a low, central and high basis both undiscounted and discounted, respectively. The gross ultimate claims-made loss estimates and occurrence loss estimates are derived in Exhibit 2. Exhibit 3 shows the calculation of permissible loss and ALAE ratio, based on Sophia Palmer's pricing assumptions. Exhibit 4 derives the ULAE reserves. Exhibit 5 summarizes the data provided by Sophia Palmer.

### Claims-Made/Occurrence Policy Reserves

Exhibit 1 shows the derivation of estimated reserves as of December 31, 2011 for both claims-made policies and occurrence policies. Since there are no reported claims to date for the claims-made policies, and only a handful of reported claims for the occurrence policies, the reserves are IBNR reserves for occurrence policies<sup>1</sup>. This is shown on Exhibit 2, Page 1. Bornhuetter-Ferguson (BF) incurred method and paid method are used to estimate the ultimate loss and ALAE. The incurred BF method ultimate losses are the sum of an unreported loss estimate and the incurred losses to date. The estimate of unreported loss is derived by applying an unreported factor to the expected ultimate loss. The expected ultimate loss is estimated using the frequency x severity method. The unreported factor is derived from industry loss development pattern. The paid BF method ultimate losses are derived similarly.

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<sup>1</sup> There is a possibility of pipeline IBNR claims on the claims-made policies, but we think the possibility is remote.



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### ULAE Reserves

Exhibit 4 shows the derivation of the ULAE reserve. The ULAE reserve is calculated as a function of the expected ULAE to Loss and ALAE ratio and the estimated Loss and ALAE reserves on Exhibit 1, Page 2. The ULAE to Loss and ALAE ratio is selected based on both Sophia Palmer's data and recent industry averages.

Lewis & Clark LTC Risk Retention Group, Inc.

Nurse and Allied Healthcare Provider Professional Liability

GROSS, CEDED, AND NET BASIS

SUMMARY AND RANGE OF ESTIMATED UNDISCOUNTED RESERVES AS OF DECEMBER 31, 2011

(Data as of December 31, 2011)

	(1)	(2)	(3)
	Estimated Total Loss and LAE Reserves as of 12/31/11		
Estimate	Low	Central	High
Total Loss & ALAE Reserves* (A):	\$344,236	\$406,180	\$639,860
ULAE Reserves* (B):	\$18,036	\$18,036	\$18,036
Total Direct Loss and LAE Reserves (C) = (A) + (B):	\$362,272	\$423,187	\$654,887
Ceded Loss & ALAE Reserves** (D):	\$0	\$0	\$0
Total Net Loss & LAE Reserves (E) = (C) - (D):	\$362,272	\$423,187	\$654,887

NOTES:

1. ALAE is allocated loss adjustment expense.
2. ULAE is unallocated loss adjustment expense.
3. (\*) Total Reserves estimates and ULAE Reserves are from Exhibit 1, Page 3 Column (8).
4. (\*\*) Reinsurance coverage applies only to non-FL nurses

Million

Lewis & Clark LTC Risk Retention Group, Inc.

Nurse and Allied Healthcare Provider Professional Liability

GROSS, CEDED, AND NET BASIS

SUMMARY AND RANGE OF ESTIMATED DISCOUNTED RESERVES AS OF DECEMBER 31, 2011

(Data as of December 31, 2011)

	(1)	(2)	(3)
	Estimated Total Loss and LAE Reserves as of 12/31/11		
Estimate	Low	Central	High
Total Loss & ALAE Reserves* (A):	\$310,593	\$375,326	\$509,730
ULAE Reserves* (B):	\$10,725	\$16,808	\$17,082
Total Direct Loss and LAE Reserves (C) = (A) + (B):	\$321,318	\$392,134	\$526,812
Ceded Loss & ALAE Reserves** (D):	\$0	\$0	\$0
Total Net Loss & LAE Reserves (E) = (C) - (D):	\$321,318	\$392,134	\$526,812

**NOTES:**

1. ALAE is allocated loss adjustment expense.
2. ULAE is unallocated loss adjustment expense.
3. (\*) Total Reserves estimates and ULAE Reserves are based on the undiscounted amounts from Exhibit 1, Page 2 Column (5).
4. (\*\*) Reinsurance coverage applies only to non-FL nurses.
5. Discounted central estimates assume a 2.8% annual effective rate of return. Discounted high estimates assume a 2.2% annual effective rate of return. The discounted low estimates assume a 3.0% return. These interest rates are based on a 3% interest rate adjusted to reflect the availability of only \$13.9M in assets to generate investment income.

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Lewis & Clark LFC Risk Retention Group, Inc.

Notes and related Healthcare Provider Professional Liability

GRASS OF REINSURANCE BASIS

SELECTED ULTIMATE LOSS AND ALAE

(Data as of December 31, 2011)

CLAIMS-MADE POLICIES										
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
Report Year	Expected Ultimate Loss & ALAE [Page 2]	Incurred Loss & ALAE as of 12/31/11	Paid Loss & ALAE as of 12/31/11	Estimated Unreported Factor	Estimated Unpaid Factor	Incurred B-F Ultimate Loss & ALAE [Page 1] (6)	Paid B-F Ultimate Loss & ALAE [Page 1] (7)	Estimated Ultimate Loss & ALAE Low	Estimated Ultimate Loss & ALAE High	Prior Central Ultimate Loss & ALAE (9)
2007	\$0	\$0	\$0	0.1%	4.6%	\$0	\$0	\$0	\$0	\$0
2008	0	0	0	0.3%	12.8%	0	0	0	0	0
2009	0	0	0	2.2%	32.2%	0	0	0	0	0
2010	0	0	0	12.5%	62.5%	0	0	0	0	0
2011	0	0	0	45.0%	91.1%	0	0	0	0	0
Total	\$0	\$0	\$0			\$0	\$0	\$0	\$0	\$0

OCCURRENCE POLICIES

	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)	(19)	(20)
Report Year	Expected Ultimate Loss & ALAE [Page 2]	Incurred Loss & ALAE as of 12/31/11	Paid Loss & ALAE as of 12/31/11	Estimated Unreported Factor	Estimated Unpaid Factor	Incurred B-F Ultimate Loss & ALAE [Page 1] (6)	Paid B-F Ultimate Loss & ALAE [Page 1] (7)	Estimated Ultimate Loss & ALAE Low	Estimated Ultimate Loss & ALAE High	Prior Central Ultimate Loss & ALAE (9)
2007	\$230,000	\$221,858	\$185,559	4.5%	8.5%	\$221,858	\$185,559	\$221,858	\$221,858	\$221,858
2008	110,000	108,800	100,800	6.3%	10.2%	108,800	100,800	108,800	108,800	108,800
2009	110,000	98,726	56,726	10.7%	26.8%	98,726	56,726	98,726	98,726	98,726
2010	183,176	69,768	15,738	30.0%	72.3%	69,768	15,738	69,768	69,768	69,768
2011	217,220	7,059	7,059	85.0%	95.0%	7,059	7,059	7,059	7,059	7,059
Total	\$840,496	\$467,150	\$364,130			\$467,150	\$364,130	\$467,150	\$467,150	\$467,150

NOTES:

1. ALAE is allocated loss adjustment expenses.
2. Columns (4), (5), (14) and (15) are based on history development method.
3. Column (6) is selected from columns (1), (3), (5) and (7).
4. Column (7) is selected from columns (1), (3), (5) and (7).
5. Prior ultimate loss and ALAE estimates are from the previous report dated August 30, 2011.

8/8/2011

Lewis & Clark LTC Risk Retention Group, Inc.

Nurse and Aged Healthcare Provider Professional Liability

GROSS OF REINSURANCE BASIS

EXPECTED ULTIMATE LOSS AND ALAE

(Data as of December 31, 2011)

CLAIMS-MADE POLICIES

Report Year	(1) Earned Premium [Exhibit 5]	(2) Reported Claims As of 12/31/2011	(3) Estimated Ultimate Reported Claims	(4) Frequency Per \$1000 Premium (3811x1.00)	(5) CWP Claims As of 12/31/2011	(6) Estimated Ultimate CWP Claims	(7) Preliminary Ultimate Loss & ALAE	(8) Indicated Loss & ALAE Severity (7)(6)	(9) Expected Ultimate Loss & ALAE Severity (8)(6)
2007	39,166	0	0.0	0.000	0	0.0	50	50	50
2008	56,424	0	0.0	0.000	0	0.0	0	0	0
2009	86,825	0	0.0	0.000	0	0.0	0	0	0
2010	129,048	0	0.0	0.000	0	0.0	0	0	0
2011	197,945	0	0.0	0.000	0	0.0	0	0	0
							Selected Severity:	50	50

OCCURRENCE POLICIES

Accident Year	(10) Earned Premium [Exhibit 5]	(11) Reported Claims As of 12/31/2011	(12) Estimated Ultimate Reported Claims	(13) Frequency Per \$1000 Premium (12)(11)x1.00	(14) CWP Claims As of 12/31/2011	(15) Estimated Ultimate CWP Claims	(16) Preliminary Ultimate Loss & ALAE	(17) Indicated Loss & ALAE Severity (16)(15)	(18) Expected Ultimate Loss & ALAE Severity (17)(15)
2007	586,502	4	4.0	0.000	1	2.0	\$232,400	\$118,200	\$270,000
2008	377,529	2	2.0	0.000	1	1.0	107,693	197,610	110,000
2009	554,571	4	4.1	0.007	0	1.0	109,373	108,373	110,000
2010	870,078	2	4.2	0.006	0	1.7	51,195	94,959	183,278
2011	794,357	2	5.0	0.006	0	2.0	45,747	24,685	217,223
							Selected Severity: \$110,000	\$110,000	\$9,40,436

NOTE:

1. ALAE is allocated loss adjustment expense.
2. Column (12) for 2007 through 2008 is reported claims to date. For 2010 and 2011, ultimate reported claims is based on the 2008 and 2009 average frequency.
3. Column (15) for 2007 through 2009 is based on CWP claims to date and open claims. For 2010 and 2011, ultimate CWP claims is based on the 2007 through 2009 CWP average CWP ratio.
4. Column (16) = Inverted to date (11 - Page 1, Column (14))

Milliman

Nurse  
Exhibit 3

Lewis & Clark LTC Risk Retention Group, Inc.

Nurse and Allied Healthcare Provider Professional Liability

GROSS OF REINSURANCE BASIS

CALCULATION OF PERMISSIBLE LOSS AND ALAE RATIO

(1)	Sophia Palmer Expense Provisions (% of Premium):	54.0%
	UUMC management fee	30.00%
	Other commission	0.00%
	ULAE charge	1.00%
	Taxes, licenses and fees	3.00%
	Reinsurance expenses	12.75%
	General expense	7.20%
	Profit	0.00%
	Total	53.95%
(2)	Permissible Loss and ALAE Ratio:	46.1%
	[1.0 - (1)]	

- NOTES:
1. ALAE is allocated loss adjustment expense.
  2. Data provided by Lewis & Clark.

MSB/MSB

Nurse  
Exhibit 4

Lewis & Clark LTC Risk Retention Group, Inc.

Nurse and Allied Healthcare Provider Professional Liability

GROSS OF REINSURANCE BASIS

ULAE RESERVE ESTIMATE AS OF DECEMBER 31, 2011

(Data as of December 31, 2011)

(1) Sophie Palmer implied ULAE Percentage of Loss & ALAE	2.2%
(2) Industry ULAE Percentage of Loss & ALAE	6.5%
(3) Selected ULAE Percentage of Loss & ALAE Reserves	5.1%
(4) Direct & Assumed Loss & ALAE Case Reserves	\$103,000
(5) Direct & Assumed Loss & ALAE Development Reserves	\$302,150
Estimated Direct & Assumed ULAE Reserve = (3) x (50% of (4) + (5))	\$18,036

NOTES:

1. ULAE is unallocated loss adjustment expense.
2. Line (1) is based on the percentages in Exhibit 3.  $(\$1,029,146,196) \div 2.2\%$
3. Line (2) is the average of the last five years' industry aggregate ultimate ULAE to ultimate loss & ALAE ratio taken from Schedule P, Part 1F.
4. Lines (4), (5) are from Exhibit 1, Page 2.
5. We assume 50% of ULAE is paid when a claim is open.

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Lewis &amp; Clark LTC Risk Retention Group, Inc.

Nurse  
Exhibit 5

Nurse and Allied Healthcare Provider Professional Liability

## GROSS OF REINSURANCE BASIS

DATA SUMMARY AS OF DECEMBER 31, 2014

## CLAIMS-MADE POLICIES

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Report Year	Earned Premium	Paid Loss & ALAE	Incurred Loss & ALAE	Paid Deductible Recovery	Incurred ULAE	Reported Counts	CWP Counts	Open Counts
2007	\$9,166	\$0	\$0	\$0	\$0	0	0	0
2008	\$6,426	0	0	0	0	0	0	0
2009	\$6,689	0	0	0	0	0	0	0
2010	\$28,049	0	0	0	0	0	0	0
2011	\$67,915	0	0	0	0	0	0	0
Total	\$478,442	\$0	\$0	\$0	\$0	0	0	0

## OCCURRENCE POLICIES

(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)
Accident Year	Earned Premium	Paid Loss & ALAE	Incurred Loss & ALAE	Paid Deductible Recovery	Incurred ULAE	Reported Counts	CWP Counts	Open Counts
2007	\$180,502	\$189,859	\$221,856	\$0	\$22,536	4	1	2
2008	\$177,939	100,609	100,600	0	2,960	2	1	0
2009	\$54,571	\$0,726	\$6,726	0	\$,667	4	0	0
2010	\$70,008	\$6,726	\$6,726	0	2,815	2	0	1
2011	\$84,357	1,039	7,039	0	1,635	2	0	0
Total	\$2,505,778	\$394,150	\$457,150	\$0	\$29,790	14	2	5

## NOTES:

1. Data provided by Lewis & Clark.  
2. CWP represents claims closed with an indemnity payment.

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## APPENDIX C: ITEMS RELATED TO THE STATEMENT OF ACTUARIAL OPINION

### Reconciliation to Schedule P

As part of our work to support the Statement of Actuarial Opinion, we independently reviewed the loss and loss adjustment expense paid and case reserve amounts associated with Schedule P. There were minor differences as compared to the data, but they are immaterial and do not affect our opinion regarding Lewis & Clark's loss and loss adjustment expense reserve. Appendix C, Exhibit 1 details the comparison.

### Risk of Material Adverse Deviation

There are a variety of risk factors that expose Lewis & Clark's reserves to significant variability. I have identified the major risk factors as Lewis & Clark's short operating history, the potential for large individual losses, and the financial condition of Lewis & Clark. The potential impact of these risk factors is described in more detail in the following paragraphs. The absence of other risk factors from this listing does not imply that additional risk factors will not be identified in the future as being a significant influence on Lewis & Clark's reserves.

Lewis & Clark has a relatively short operating history and a relatively small volume of loss data and has experienced significant premium fluctuations in recent historical coverage periods. Therefore, its loss experience is subject to considerable variability from year to year due to random fluctuation and a changing mix of insureds, and there is increased uncertainty in the estimated average and trends that form the basis for some of our actuarial methods. These considerations add to the uncertainty and variability inherent in my estimates.

The variability of Lewis & Clark's reserves is magnified by the exposure to large, fortuitous losses within its direct and net policy limits. The emergence of individual large losses (or changes in reserves on existing open claims) could materially change my estimates. The possibility of such large losses exposes Lewis & Clark's reserves to significant variability.

Lewis & Clark's carried reserves are within a reasonable range, however other points within the reasonable range would cause surplus to be below zero. Therefore I believe that there are significant risks and uncertainties that could result in material adverse deviation in the loss and loss adjustment expense reserves, possibly by amounts exceeding surplus.

The financial condition of Lewis & Clark thus creates an additional risk factor. My analysis of reserves implicitly assumes Lewis & Clark is viable. If it is not viable (e.g., due to developments such as regulatory actions, inability to meet claim payments, etc.), reserves may be affected in ways that cannot be quantified at this time.

I believe that the risk factors above, coupled with the variability that is inherent in any estimate of unpaid loss and loss adjustment expense obligations, could result in material adverse deviation from the carried net reserve amounts. By this, I mean that the probability of such a deviation occurring is not so low as to be remote. In making this determination, I have considered a material adverse deviation to be one in which the actual net unpaid losses and loss adjustment expenses exceed the carried net reserve by an amount greater than \$181,000. This materiality standard is equal to 5% of Lewis & Clark's statutory surplus shown on the Liabilities, Surplus and Other Funds page of the Annual Statement. In selecting this materiality standard I considered several factors, such as the policy limits and coverages written by Lewis & Clark and the amount of adverse development that would result in an unusual value in one of the IRIS tests One-Year Reserve Development to Surplus or Two-Year Reserve Development to Surplus. My selection of the materiality standard was based on the fact that this opinion is prepared for the regulatory review of Lewis & Clark. Other measures of materiality might be used for reserves that are being evaluated in a different context.

#### Reinsurance

This actuarial report in support of this opinion includes a summary of Lewis & Clark's ceded reinsurance that is or could be material to Lewis & Clark's ceded loss and loss adjustment expense reserves as of December 31, 2011. Lewis & Clark has represented that the summary is materially accurate and complete, and that Lewis & Clark has determined that these contracts should be accounted for as reinsurance under statutory accounting principles. The assessment of whether a reinsurance contract meets the requirements for reinsurance accounting is a management and accounting decision. As such, I express no opinion as to whether Lewis & Clark's ceded reinsurance contracts meet the requirements for reinsurance accounting.

Based on representations made by Lewis & Clark's management and its description of its ceded and assumed reinsurance, I am not aware of any reinsurance transaction that either has been or should have been accounted for as retroactive reinsurance or as financial reinsurance (defined as contractual arrangements that do not include transfer of both timing and underwriting risk).

I reviewed Lewis & Clark's ceded reinsurance balances as shown in Schedule F of Lewis & Clark's Annual Statement. There are no material reinsurance recoverables on paid losses that are classified as over 90

days past due. Further, Lewis & Clark has represented that it knows of no uncollectible reinsurance cessions and no disputed reinsurance balances. I have relied on Lewis & Clark's assessment of the potential for uncollectible reinsurance as Lewis & Clark has more extensive knowledge of and a closer relationship with its reinsurers. I am not aware of any reinsurance that Lewis & Clark treated as collectible but should have treated as uncollectible.

Based on the information cited above, my opinion on the loss and loss adjustment expense reserves net of ceded reinsurance assumes that all ceded reinsurance is valid and collectible. I have performed no additional review of the collectibility of Lewis & Clark's reinsurance and am expressing no opinion on the financial condition of its reinsurers. I am not able to further assess the potential for uncollectible reinsurance without performing a substantial amount of additional work beyond the scope of my review. I have not anticipated any contingent liabilities that could arise if the reinsurers do not meet their obligations to Lewis & Clark as reflected in the data and other information provided to me.

#### IRIS Ratios

The booked reserves create exceptional values in the IRIS tests One-Year Reserve Development to Surplus and Two-Year Reserve Development to Surplus. 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.

#### Methods and Assumptions

Starting December 31, 2011, Lewis & Clark began carrying unpaid claim reserves on a discounted basis in accordance with modified GAAP accounting practices prescribed by the Nevada Division of Insurance. Further, the loss experience related to three non-renewed insureds was excluded from my loss development, claim frequency, and claim severity analysis. These insureds were renewed without tail coverage and I evaluated the run-off of their pending claims separately.

#### Other Disclosures

##### *Discounting*

I evaluated the loss and loss adjustment expense reserves on a discounted basis with regard to the time value of money. Lewis & Clark has represented that it reduces its reserves to reflect discounting. In estimating Lewis & Clark's discounted loss and loss adjustment expense reserves, Lewis & Clark used an

annual effective before income tax interest rate of 3.0%. The 3.0% interest rate was provided to me by Lewis & Clark and is based on its portfolio returns. Lewis & Clark selected the interest rate because Lewis & Clark has greater familiarity with its current investments, its investment policy, and the potential investment returns of its asset portfolio. I am not able to assess the reasonableness of the selected interest rate without performing a substantial amount of additional work beyond the scope of the assignment. As such, I express no opinion on the appropriateness of the interest rate.

The amount of discount determined by Lewis & Clark as of December 31, 2011 is \$902,000 on a net basis, or approximately 6.4% of the carried net reserves.

#### *Risk Margin*

Lewis & Clark has represented that the reserves do not include an explicit risk margin.

#### *Salvage and Subrogation*

Lewis & Clark has represented that its total carried reserves are net of anticipated salvage and subrogation recoveries. Lewis & Clark has not quantified salvage and subrogation recoverable in the Annual Statement.

#### *Underwriting Pools and Associations*

Lewis & Clark has represented that it does not participate in pools and associations.

#### *Asbestos and Environmental Exposure*

I have reviewed Lewis & Clark's exposure to asbestos and environmental claims. In my opinion, there is a remote chance of material liability, since no claims have been reported to date and Lewis & Clark writes only long-term care professional liability coverage, which does not typically experience these types of claims.

#### *Extended Loss and Expense Reserves*

Lewis & Clark has represented that it does not provide extended loss and expense coverage within professional liability claims-made contracts and therefore carries no extended loss and expense reserves.

#### *Contractual Liability for Service Contracts*

Lewis & Clark has represented that it does not provide contractual liability coverage for service contracts (vehicles, appliances, etc).

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*Loss Adjustment Expenses*

The loss adjustment expense reserves carried by Lewis & Clark include provisions for all loss adjustment expenses, such as coverage dispute costs, defense and investigation costs, and claims administration expenses. Lewis & Clark has represented that the reserve for unpaid loss adjustment expenses was established based on the estimated amount to adjust all open and unreported claims, regardless of pre-payments made to third party claims administrators.

Lewis &amp; Clark Life Risk Retention Group, Inc.

## SCHEDULE PART 1 - SUMMARY DATA RECONCILIATION

(Data as of December 31, 2011)

	(1)	(2)	(3)	(4)	(5)	(6)	(7)
<b>A. Data Provided to Milliman (\$000's)</b>							
Report Year/ER Accident Year	Direct & Assumed Earned Premium	Ceded Earned Premium	Direct & Assumed Loss & DCC Payments	Ceded Loss and DCC Payments	Direct & Assumed A&O Payments	Direct & Assumed Unpaid Case Loss & DCC	Ceded Unpaid Case Loss and DCC
2004	\$1,166	N/A	\$170	\$0	\$58	\$0	\$0
2005	1,067	N/A	342	0	89	0	0
2006	4,361	N/A	1,866	0	213	\$11	299
2007	5,886	N/A	3,060	681	235	175	3
2008	9,980	N/A	1,736	0	248	1,284	0
2009	10,666	N/A	3,354	0	338	3,643	0
2010	14,800	N/A	6,061	0	328	5,637	0
2011	10,772	N/A	1,861	0	127	4,147	188
Total	\$58,003	N/A	\$17,540	\$681	\$1,045	\$12,020	\$381
<b>B. Data from Schedule P, Part 1 (\$00's)</b>							
Report/ Year/ER Accident Year	Direct & Assumed Earned Premium (Col (1) of Sch. P)	Ceded Earned Premium (Col (2) of Sch. P)	Direct & Assumed Loss & DCC Payments (Col (4)+(5) of Sch. P)	Ceded Loss and DCC Payments (Col (6)+(7) of Sch. P)	Direct & Assumed A&O Payments (Col (8) of Sch. P)	Direct & Assumed Unpaid Case Loss & DCC (Col (13)+(17) of Sch. P)	Ceded Unpaid Case Loss and DCC (Col (14)+(18) of Sch. P)
2004	\$1,166	\$100	\$177	\$0	\$50	\$0	20
2005	1,079	853	341	0	86	0	0
2006	4,360	1,152	1,866	0	213	916	0
2007	5,838	1,108	3,060	0	238	175	0
2008	9,980	1,543	1,736	630	245	1,284	0
2009	9,991	1,707	3,343	0	338	3,643	0
2010	14,990	2,468	4,048	0	329	4,618	0
2011	11,400	1,431	1,867	0	129	4,147	0
Total	49,043	\$10,020	\$10,100	\$630	\$1,045	\$13,007	\$0
<b>C. Known Adjustments</b>							
Report/ Year/ER Accident Year	Direct & Assumed Earned Premium	Ceded Earned Premium	Direct & Assumed Loss & DCC Payments	Ceded Loss and DCC Payments	Direct & Assumed A&O Payments	Direct & Assumed Unpaid Case Loss & DCC	Ceded Unpaid Case Loss and DCC
2004							
2005							
2006							
2007							
2008			10			(\$7)	
2009			1,022			(1,272)	
2010			2			(78)	
2011							
Total	\$0	\$0	\$1,030	\$0	\$0	(\$1,357)	\$0
<b>D. Differences = B-(A-C) (\$00's)</b>							
Report/ Year/ER Accident Year	Direct & Assumed Earned Premium	Ceded Earned Premium	Direct & Assumed Loss Payments	Ceded Loss and DCC Payments	Direct & Assumed A&O Payments	Direct & Assumed Unpaid Case Loss & DCC	Ceded Unpaid Case Loss and DCC
2004	(\$0)	N/A	\$1	\$0	\$1	\$0	\$0
2005	(\$1)	N/A	(\$1)	0	(\$1)	0	0
2006	30	N/A	1	0	0	(\$1)	(\$30)
2007	(\$5)	N/A	0	(\$5)	1	0	(\$5)
2008	0	N/A	0	630	0	1	0
2009	(1,005)	N/A	(\$1)	0	0	(\$1)	0
2010	190	N/A	(\$1)	0	(\$1)	19	0
2011	727	N/A	0	0	2	(\$1)	(\$19)
Total	(\$120)	N/A	27	\$78	\$2	\$1	(\$181)

## NOTES:

1. Loss payments are net of deductibles recoveries.
2. Known adjustments include 1. Four claims where, for the purposes of the analysis, the reserves were assumed to be paid; 2. Differences in outstanding ALAE over reserves.
3. Deductible recoveries.

Milliman

# EXHIBIT 42



## NAIC PROPERTY AND CASUALTY FINANCIAL RATIO RESULTS FOR 2011

All ratios are reported as percentages, rounded to the nearest percent. For the Investment Yield Ratio, results are rounded to the nearest tenth of one percent.

2/23/2012

SUMMARY

RATIO		Unusual Values Equal to or		Your Results	
		Over	Under		
1.	Gross Premiums Written to Policyholders' Surplus.....	900	---	282.0	
2.	Net Premiums Written to Policyholders' Surplus.....	300	---	248.0	
3.	Change in Net Premiums Written.....	33	-33	-25.0	
4.	Surplus Aid to Policyholders' Surplus.....	15	---	1.0	
5.	Two-Year Overall Operating Ratio.....	100	---	125.0	*
6.	Investment Yield.....	6.5	3.0	2.1	*
7.	Gross Change in Policyholders' Surplus.....	50	-10	-21.0	*
8.	Change in Adjusted Policyholders' Surplus.....	25	-10	-82.0	*
9.	Adjusted Liabilities to Liquid Assets.....	100	---	134.0	*
10.	Gross Agents Bal. (in collection) to Policyholders' Surplus.....	40	---	3.0	
11.	One-Year Reserve Development to Policyholders' Surplus.....	20	---	128.0	*
12.	Two-Year Reserve Development to Policyholders' Surplus.....	20	---	123.0	*
13.	Estimated Current Res. Def. to Policyholders' Surplus.....	25	---	-21.0	

U - indicates result is automatically considered unusual.

NR - indicates no result is calculated.

P&C Overall Ratio 1: Gross Premiums Written to Policyholders' Surplus			
W0101	A. Direct Premiums Written.....	Page 8, Line 35, Column 1.....	10,224,774.0
W0102	B. Reinsurance Assumed - Affiliates.....	Page 8, Line 35, Column 2.....	
W0103	C. Reinsurance Assumed - Non-Affiliates.....	Page 8, Line 35, Column 3.....	
W0104	D. Policyholders' Surplus.....	Page 3, Line 37, Column 1.....	3,525,316.3
W0105	Result = $100 * (A+B+C)/D$ .....		282.0 %
	If D is zero or negative, result is 999.		
	If D is positive and (A+B+C) is negative, result is zero.		

P&C Overall Ratio 2: Net Premiums Written to Policyholders' Surplus			
W0201	A. Net Premiums Written.....	Page 8, Line 36, Column 6.....	8,997,524.0
	B. Policyholders' Surplus.....	Page 3, Line 37, Column 1.....	3,525,316.3
W0202	Result = $100 * (A/B)$ .....		248.0 %
	If B is zero or negative, result is 999.		
	If B is positive and A is negative, result is zero.		

P&C Overall Ratio 3: Change in Net Premiums Written			
	A. Net Premiums Written, Current Year.....	Page 8, Line 36, Column 6.....	8,997,524.0
W0301	B. Net Premiums Written, Prior Year.....	PY: Page 8, Line 36, Column 6.....	11,945,738.0
W0302	Result = $100 * (A-B)/B$ .....		-25.0 %
	If A and B are both zero or negative, result is zero.		
	If B is positive and A is zero or negative, result is 999.		

NAIC PROPERTY AND CASUALTY FINANCIAL RATIO RESULTS FOR 2011

P&C Overall Ratio 4: Surplus Aid to Policyholders' Surplus		
W0401	A. Reinsurance Ceded Commissions.....	Page 11, Line 2.3, Column 2..... 66,000.0
W0402	B. Reinsurance Ceded Contingent Commissions.....	Page 11, Line 2.6, Column 2.....
W0403	C. Reinsurance Premiums Ceded - Affiliates.....	Page 8, Line 35, Column 4.....
W0404	D. Reinsurance Premiums Ceded - Non-Affiliates.....	Page 8, Line 35, Column 5..... 1,227,250.0
W0405	E. Unearned Premiums - Total Authorized and	Page 22, Lines (0599999 + 1499999)
	Unauthorized Other US Unaffiliated Insurers.....	Column 13, * 1000.....
W0406	F. Unearned Premiums - Total Authorized and	Page 22, Lines (0699999 + 0799999 + 1599999
	Unauthorized Mandatory and Voluntary Pools.....	+ 1699999) Column 13, * 1000.....
W0407	G. Unearned Premiums - Total Authorized and	Page 22, Lines (0899999 + 1799999)
	Unauthorized Other Non-US Insurers.....	Column 13, * 1000..... 740,000.0
	H. Sum of Unearned Premiums (E+F+G).....	740,000.0
	I. Surplus Aid = [(A+B)/(C+D)] * H.....	33,766.6
	J. Policyholders' Surplus.....	Page 3, Line 37, Column 1..... 3,625,316.3
W0408	Result = 100 * (I/J).....	1.0 %
If (C+D) or I is zero or negative, result is zero.		
If I is positive and J is zero or negative, result is 999.		

P&C Profitability Ratio 5: Two-Year Overall Operating Ratio		
W0501	A. Losses and LAE Incurred, Current Year.....	Page 4, Lines 2 + 3, Column 1..... 12,760,779.2
W0502	B. Losses and LAE Incurred, Prior Year.....	PY: Page 4, Lines 2 + 3, Column 1..... 8,193,816.5
W0503	C. Dividends to Policyholders, Current Year.....	Page 4, Line 17, Column 1.....
W0504	D. Dividends to Policyholders, Prior Year.....	PY: Page 4, Line 17, Column 1.....
W0505	E. Premiums Earned, Current Year.....	Page 4, Line 1, Column 1..... 10,096,592.0
W0506	F. Premiums Earned, Prior Year.....	PY: Page 4, Line 1, Column 1..... 12,514,088.0
W0507	G. Other Underwriting Exp. & Write-ins, Current Year.....	Page 4, Lines 4 + 5, Column 1..... 3,374,840.0
W0508	H. Other Underwriting Exp. & Write-ins, Prior Year.....	PY: Page 4, Lines 4 + 5, Column 1..... 4,059,093.4
W0509	I. Total Other Income, Current Year.....	Page 4, Line 15, Column 1..... 1,301.5
W0510	J. Total Other Income, Prior Year.....	PY: Page 4, Line 15, Column 1..... 48,724.8
W0511	K. Net Premiums Written, Current Year.....	Page 8, Line 35, Column 6..... 8,997,524.0
W0512	L. Net Premiums Written, Prior Year.....	PY: Page 8, Line 35, Column 6..... 11,946,738.0
W0513	M. Net Investment Income Earned, Current Year.....	Page 4, Line 9, Column 1..... 286,905.0
W0514	N. Net Investment Income Earned, Prior Year.....	PY: Page 4, Line 9, Column 1..... 243,225.0
	O. Loss Ratio = 100 * [(A+B+C+D)/(E+F)].....	93.0
	P. Expense Ratio = 100 * [(G+H+I)/(K+L)].....	36.0
	Q. Investment Income Ratio = 100 * [(M+N)/(E+F)].....	2.0
W0515	Result = (O+P-Q).....	126.0 %
If (A+B+C+D+G+H+I-J-M-N) is zero or negative, result is zero.		
If (E+F) or (K+L) is zero or negative, result is 999.		

NAIC PROPERTY AND CASUALTY FINANCIAL RATIO RESULTS FOR 2011

P&C Profitability Ratio 6: Investment Yield			
W0601	A. Total Cash and Invested Assets, Current Year.....	Page 2, Line 12, Column 3.....	13,514,557.4
W0602	B. Total Cash and Invested Assets, Prior Year.....	PY: Page 2, Line 12, Column 3.....	13,942,321.6
W0603	C. Investment Income Due and Accrued, Current Year.....	Page 2, Line 14, Column 3.....	77,287.1
W0604	D. Investment Income Due and Accrued, Prior Year.....	PY: Page 2, Line 14, Column 3.....	95,414.0
W0605	E. Borrowed Money, Current Year.....	Page 3, Line 8, Column 1.....	
W0606	F. Borrowed Money, Prior Year.....	PY: Page 3, Line 8, Column 1.....	
W0607	G. Net Investment Income Earned.....	Page 4, Line 9, Column 1.....	286,605.0
W0608	Result = $200 \times [(A+B+C+D-E-F-G)]$ Limit result to a minimum of zero.		2.1 %

P&C Profitability Ratio 7: Gross Change in Policyholders' Surplus			
	A. Policyholders' Surplus, Current Year.....	Page 3, Line 37, Column 1.....	3,625,316.3
W0701	B. Policyholders' Surplus, Prior Year.....	PY: Page 3, Line 37, Column 1.....	4,579,709.7
W0702	Result = $100 \times [(A-B)/B]$ If A is zero or negative, result is -99. If A is positive and B is zero or negative, result is 999.		-21.0 %

P&C Profitability Ratio 8: Change in Adjusted Policyholders' Surplus			
W0801	A. Policyholders' Surplus, Current Year.....	Page 3, Line 37, Column 1.....	3,625,316.3
W0802	B. Change in Surplus Notes.....	Page 4, Line 29, Column 1.....	2,700,000.0
W0803	C. Capital Paid-In or Transferred.....	Page 4, Line 32.1 + 32.2 + 32.3, Column 1.....	739.0
W0804	D. Surplus Paid-In or Transferred.....	Page 4, Line 33.1 + 33.2 + 33.3, Column 1.....	116,226.2
W0805	E. Policyholders' Surplus, Prior Year.....	PY: Page 3, Line 37, Column 1.....	4,579,709.7
W0806	Result = $[(A-B-C-D-E) / ABS(E)] \times 100$ If A is zero or negative, result is -99. If A is positive and E is zero or negative, result is 999.		-92.0 %

P&C Liquidity Ratio 9: Adjusted Liabilities to Liquid Assets			
W0901	A. Total Liabilities.....	Page 3, Line 28, Column 1.....	18,215,255.3
W0902	B. Liabilities Equal to Deferred Agents' Balances.....	Page 2, Line 16.2, Column 3.....	
W0903	C. Adjusted Liabilities = (A-B).....		18,215,255.3
W0904	D. Bonds.....	Page 2, Line 1, Column 3.....	10,618,359.0
W0905	E. Stocks, Preferred & Common.....	Page 2, Line 2.1 + 2.2, Column 3.....	
W0906	F. Cash, Cash Equivalents & Short-Term Investments.....	Page 2, Line 5, Column 3.....	2,695,198.4
W0907	G. Receivable for Securities.....	Page 2, Line 9, Column 3.....	
W0908	H. Investment Income Due & Accrued.....	Page 2, Line 14, Column 3.....	77,287.1
W0909	I. Investments in Parent, Sub. & Affiliates.....	Page 17, Line 42+43+44+45, Column 1.....	
W0910	J. Liquid Assets = (D+E+F+G+H+I).....		13,591,844.5
W0911	Result = $100 \times (C / J)$ If J is zero or negative, result is 999.		134.0 %

**NAIC PROPERTY AND CASUALTY FINANCIAL RATIO RESULTS FOR 2011**

P&C Liquidity Ratio 10: Gross Agents' Balances (in collection) to Policyholders' Surplus		
W1001	A. Gross Agents' Balances in the Course of Collection..... Page 2, Line 15.1, Column 3.....	122,031.0
	B. Policyholders' Surplus..... Page 3, Line 37, Column 1.....	3,625,316.3
W1002	Result = $100 * (A/B)$ .....	3.0 %
	If A is zero or negative, result is zero.	
	If A is positive and B is zero or negative, result is 999.	
P&C Reserve Ratio 11: One-Year Reserve Development to Policyholders' Surplus		
W1101	A. One-Year Loss Reserve Development..... Page 32, Part 2, Line 12 * 1000, Column 11.....	5,862,000.0
	B. Policyholders' Surplus, Prior Year..... PY: Page 3, Line 37, Column 1.....	4,579,709.7
W1102	Result = $100 * (A/B)$ .....	128.0 %
	If A is positive and B is zero or negative, result is 999.	
P&C Reserve Ratio 12: Two-year Reserve Development to Policyholders' Surplus		
W1201	A. Two-Year Loss Reserve Development..... Page 32, Part 2, Line 12, Column 12, * 1000.....	4,945,000.0
W1202	B. Policyholders' Surplus, Second Prior Year..... 2nd PY: Page 3, Line 35, Column 1.....	4,031,349.6
W1203	Result = $100 * (A/B)$ .....	123.0 %
	If A is positive and B is zero or negative, result is 999.	
P&C Reserve Ratio 13: Estimated Current Reserve Deficiency to Policyholders' Surplus		
W1301	A. Losses & LAE Reserves, Second Prior Year..... 2nd PY: Page 3, Lines 1 + 3, Column 1.....	6,255,487.9
	B. Two-Year Loss Reserve Development..... Page 32, Part 2, Line 12 * 1000, Column 12.....	4,945,000.0
W1302	C. Premiums Earned, Second Prior Year..... 2nd PY: Page 4, Line 1, Column 1.....	7,792,504.3
	D. Developed Loss & LAE Reserves to Premiums Ratio Second Prior Year = $[(A+B)/C]$ ..... If C is zero, negative or less than 1/10, D=H.....	1.4
W1303	E. Losses & LAE Reserves, Prior Year..... PY: Page 3, Lines 1 + 3, Column 1.....	9,161,477.1
	F. One-Year Loss Reserve Development..... Page 32, Part 2, Line 12 * 1000, Column 11.....	5,862,000.0
W1304	G. Premiums Earned, Prior Year..... PY: Page 4, Line 1, Column 1.....	12,514,086.0
	H. Developed Loss & LAE Reserves to Premiums Ratio Ratio Prior Year = $[(E+F)/G]$ .....	1.2
	I. Premiums Earned, Current Year..... Page 4, Line 1, Column 1.....	10,066,502.0
W1305	J. Losses & LAE Reserves, Current Year..... Page 3, Lines 1 + 3, Column 1.....	14,026,020.0
	K. Estimated Loss & LAE Reserve Deficiency (Redundancy) = $[(1/2 * (D+H)) * I] - J$ .....	-752,997.5
	If G is zero, negative or less than 1/10, K = zero	
	L. Policyholders' Surplus..... Page 3, Line 37, Column 1.....	3,625,316.3
W1306	Result = $100 * (K/L)$ .....	-21.0 %
	If K is positive and L is zero or negative, result is 999.	
	If K and L are both zero or negative, result is zero.	

# EXHIBIT 43

**Lewis and Clark LTC Risk Retention Group, Inc.**  
**Summary Balance Sheet**  
**As of February 29, 2012**

	Mar-12	Dec-11
<b>Assets</b>		
Fixed Maturities available for sale	10,519,651	10,618,359
Cash	1,485,681	2,752,803
Cash Equivalents & Short Term Investments	200,102	143,598
Cash and Short Term Investments	1,745,783	2,896,401
Total investments and cash	12,265,433	13,514,760
Deferred Policy Acquisition Costs	1,139,655	1,087,202
Premium Receivable	811,168	122,031
Capital Subscription Receivable	(2,358)	478,552
Prepaid Expense	1,013	1,013
Interest Income Due & Accrued	77,287	77,287
Misc Receivables	134,829	249,796
Reinsurance Deposits	3,080,347	3,084,020
Cash on Deposit	623,628	623,628
Deferred Tax Asset	3,291,925	2,032,485
Total Assets	21,403,107	21,840,571
<b>Liabilities</b>		
Unpaid losses and loss expenses	14,607,612	14,028,019
Unearned premiums	3,231,127	3,013,041
Ceded premiums payable	992,729	750,084
Management fee payable	(73,540)	87,617
Premium Tax payable	167,950	138,243
Accounts Payable, accrued exp and other	121,249	200,251
FIT Payable	-	-
Total Liabilities	19,047,327	18,219,254
<b>Shareholder's Equity</b>		
Common Stock	38,382	27,629
Surplus Note	3,700,000	3,700,000
Paid-in and contributed capital	3,147,314	3,147,314
Accumulated income	(4,629,818)	(3,349,729)
Unrealized Gain/(Loss)	99,902	99,902
Total shareholders' equity	2,355,760	3,625,316
Total Liabilities and shareholders' equity	21,403,107	21,840,570
Assets = Liab & Equity	(0)	0

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Lewis and Clark LTC Risk Retention Group, Inc.  
Statement of Operations  
As of February 29, 2012

	Year to date Mar-12
Premiums:	
Gross premiums written	\$1,563,571
Ceded premiums written	<u>242,646</u>
Net premiums written	1,310,925
Net Underwriting Income:	
Net premiums earned	1,092,840
Net loss and loss exp	2,711,778
Policy Acquisitions	247,335
Administrative expense	<u>55,665</u>
Net Underwriting Income (loss)	<u>(1,021,930)</u>
Net Investment Income:	
Investment Income	14,259
Realized gains (losses)	<u>0</u>
Net Investment Income (loss)	<u>14,259</u>
Other income (expense):	
Miscellaneous Income	0
Interest on Surplus note	<u>(31,950)</u>
	<u>(31,950)</u>
Net Income (loss) before tax	<u>(1,039,529)</u>
Tax Expense	<u>(669,440)</u>
Net Income after tax	<u>(\$1,280,089)</u>
Combined Ratio	
Loss & loss exp	248.14%
Policy acquisition cost ratio	22.63%
Administrative expense ratio	<u>5.1%</u>
Combined Ratio	<u>275.9%</u>

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**Lewis and Clark LTC Risk Retention Group, Inc.**  
**Summary Balance Sheet**  
**As of February 29, 2012**

	Mar-12	Dec-11
<b>Assets</b>		
Fixed Maturities available for sale	10,610,651	10,610,350
Cash	1,485,681	2,762,603
Cash Equivalents & Short Term Investments	260,102	143,596
Cash and Short Term Investments	1,745,783	2,906,198
Total Investments and cash	12,296,413	13,514,567
Deferred Policy Acquisition Costs	1,139,855	1,087,202
Premium Receivable	811,160	122,091
Capital Subscription Receivable	(2,360)	478,562
Prepaid Expense	1,013	1,013
Interest Income Due & Accrued	77,287	77,287
Misc Receivables	134,829	249,796
Reinsurance Deposits	3,060,347	3,064,020
Cash on Deposit	623,628	623,628
Deferred Tax Asset	3,281,925	2,632,485
<b>Total Assets</b>	<b>21,403,107</b>	<b>21,840,571</b>
<b>Liabilities</b>		
Unpaid losses and loss expenses	14,607,812	14,026,019
Unearned premiums	3,231,127	3,013,041
Ceded premiums payable	992,729	750,084
Management fee payable	(73,540)	87,617
Premium Tax payable	167,950	138,243
Accounts Payable, accrued exp and other	121,249	200,261
FIT Payable	-	-
<b>Total Liabilities</b>	<b>19,047,327</b>	<b>18,215,254</b>
<b>Shareholder's Equity</b>		
Common Stock	35,382	27,829
Surplus Note	3,700,000	3,700,000
Paid-In and contributed capital	3,147,314	3,147,314
Accumulated income	(4,629,619)	(3,349,729)
Unrealized Gain/(Loss)	99,802	99,802
<b>Total shareholders' equity</b>	<b>2,355,780</b>	<b>3,625,316</b>
<b>Total Liabilities and shareholders' equity</b>	<b>21,403,107</b>	<b>21,840,570</b>
Assets = Liab & Equity	(0)	0

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Lewis and Clark LTC Risk Retention Group, Inc.  
Statement of Operations  
As of February 29, 2012

	Year to date Mar-12
Premiums:	
Gross premiums written	\$1,653,571
Ceded premiums written	242,646
Net premiums written	1,310,926
Net Underwriting Income:	
Net premiums earned	1,092,840
Net loss and loss exp	2,711,778
Policy Acquisitions	247,335
Administrative expense	55,655
Net Underwriting Income (loss)	(1,921,939)
Net Investment Income:	
Investment Income	14,259
Realized gains (losses)	0
Net Investment Income (loss)	14,259
Other income (expense):	
Miscellaneous Income	0
Interest on Surplus note	(31,850)
	(31,850)
Net Income (loss) before tax	(1,939,529)
Tax Expense	(559,440)
Net Income after tax	(\$1,280,089)
Combined Ratio	
Loss & loss exp	248.14%
Policy acquisition cost ratio	22.63%
Administrative expense ratio	5.1%
Combined Ratio	275.9%

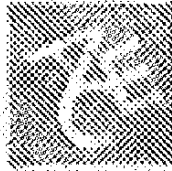
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# EXHIBIT 44

**Lewis and Clark LTC Risk Retention Group, Inc.**  
**Comparative Summary Balance Sheet**

	Mar-12	Mar-11	Mar-10	Mar-09	Mar-08
<b>Assets</b>					
Fixed Mortgages available for sale	10,506,432	12,188,052	12,578,470	7,925,825	7,150,414
Cash	1,804,083	890,883	1,676,107	1,544,086	677,304
Cash Equivalents & Short Term Investments	1,024,467	828,287	1,017,789	1,187,684	1,880,383
Cash and Short Term Investments	2,828,550	1,699,170	2,693,896	2,731,770	2,557,687
Total investments and cash	13,334,982	13,887,222	15,272,366	10,657,595	9,708,101
Deferred policy acquisition costs	980,858	1,377,532	1,388,881	884,130	734,189
Premiums Receivable	747,242	2,630,568	1,838,753	979,080	170,369
Capital Subscription Receivables	425	1,008	36,805	70,590	13,350
Prepaid Expense	-	29,825	16,864	3,078	3,769
Interest Income Due & Accrued	88,788	76,845	87,055	100,421	62,448
Misc Receivables	134,626	26,679	159	8,820	-
Reinsurance Deposits	1,883,338	3,270,858	1,860,416	3,844,318	473,821
Deferred Tax Asset	2,146,324	1,488,626	738,810	481,535	236,220
<b>Total Assets</b>	<b>18,888,263</b>	<b>22,448,353</b>	<b>18,827,871</b>	<b>18,898,181</b>	<b>11,854,844</b>
<b>Liabilities</b>					
Unpaid losses and loss expenses	33,381,385	6,963,324	7,313,171	4,324,881	3,424,303
Unearned premiums	3,036,004	4,888,781	4,388,738	3,772,275	2,098,280
Ceded premiums payable	-	2,725,345	2,398,965	1,736,297	493,387
Management fee payable	104,800	320,751	1,907,173	1,328,908	727,567
Premium Tax payable	53,639	125,243	106,883	309,043	50,200
Accounts Payable, accrued and other	158,849	40,979	68,331	134,782	108,041
PTT Payable	(408,885)	-	(327,374)	182,647	(3,982)
<b>Total Liabilities</b>	<b>36,275,782</b>	<b>15,870,428</b>	<b>16,805,780</b>	<b>11,681,884</b>	<b>6,848,191</b>
<b>Shareholder's Equity</b>					
Common Capital Stock	20,178	27,170	28,343	23,802	31,424
Surplus Note	3,706,000	1,050,000	1,050,000	1,050,000	1,750,000
Paid-in and contributed capital	3,184,414	3,019,687	2,801,508	2,350,628	2,198,488
Accumulated income	(8,307,460)	(401,185)	(137,240)	481,880	(475,711)
Unrealized Gain/(Loss)	128,389	177,883	93,054	64,774	84,347
<b>Total shareholder's equity</b>	<b>8,711,581</b>	<b>3,749,926</b>	<b>3,894,348</b>	<b>4,617,085</b>	<b>3,500,358</b>
<b>Total Liabilities and shareholder's equity</b>	<b>18,888,263</b>	<b>22,448,353</b>	<b>18,827,871</b>	<b>18,898,181</b>	<b>11,854,844</b>

# EXHIBIT 45



ACE USA

## APPLICATION FOR INSURANCE COMPANY PROFESSIONAL LIABILITY

### Instructions for Completing This Application

Please read carefully and check below all coverages you seek. Fully answer all questions and submit all requested information for each coverage you seek. All applicants must complete the General Information and the first section of the Application. Terms appearing in bold face in this Application are defined in the Policy and have the same meaning in this Application as in the Policy. This Application, including all materials submitted herewith, shall be held in confidence.

### GENERAL INFORMATION

1. a. The Company to be Named in Item 1. of the Declarations (the "Company"):

Lewis & Clark LTC Risk Retention Group, Inc.

Street Address:

1000 Buckhead Parkway, Suite 200

City: Atlanta

State: GA

Zip Code: 30322

- b. Officer designated to receive correspondence and notices from the insurer:

Diana Dalton

(Name of Officer)

678.0000

(Phone)

3. Please provide the following information regarding current insurance coverage:

Insurance	Carrier	Limits (in MMs)	Premium	Expiration Date
D&O Liability	RSUI Indemnity Co.	\$5M	\$19,600	04/01/2013
Ins Co E&O	N/A			
Computer Liability	N/A			
Employment Practices	N/A			
Fiduciary Liability	N/A			

# INSURANCE COMPANY PROFESSIONAL LIABILITY APPLICATION

Please attach copies of the following:

- Latest annual and quarterly Compensation Statement for each insurance company to be covered
- A copy of the latest Insurance Company's latest financial statement report along with management's response letter
- A copy of the Insurance Company's latest financial statement report along with management's response letter
- Latest 10-K, 10-Q, 8-K, if applicable

## 1. Type of Insurance Company(ies) in Group and % of Revenue/GWP Derived from It:

- ☒ Property & Casualty ☒ 100%
- ☐ Life, Accident & Health \_\_\_\_\_%
- ☐ Reinsurance \_\_\_\_\_%
- ☐ Title Insurance \_\_\_\_\_%
- ☐ Other: \_\_\_\_\_%


## 2. Category of Insurance Company (check all that apply):

- ☒ Stock
- ☒ Mutual
- ☒ Captive
- ☒ Federal Organization
- ☒ Risk Retention Group
- ☒ Reinsurance Company

## 3. Services Provided By the Company:

Indicate which of the following professional services you currently provide, offer or plan to offer to policyholders and non-policyholders, either directly (through one or more subsidiary companies) or indirectly through contracted agents and/or independent contractors:

Professional Service: N/A Handled by Underwriting Agent Corp. MGA	
<input checked="" type="checkbox"/> Claims Handling & Adjusting	<input type="checkbox"/> Risk Consulting
<input checked="" type="checkbox"/> Personal Injury & Rehabilitation Services	<input type="checkbox"/> Premium Financing
<input checked="" type="checkbox"/> Safety Inspection & Control	<input type="checkbox"/> Arbitration & Mediation
<input type="checkbox"/> Insurance Fraud Detection & Investigation	

## 4. Claims Handling and Adjusting

(a) Claims Handling & Adjusting Services are provided for:

- (i) Total number of Claims Adjusters and Examiners: \_\_\_\_\_
- (ii) Total number of Field Claims Offices: \_\_\_\_\_
- (iii) Percentage of Claims Handled in the Field: \_\_\_\_\_%
- (iv) Number of Claims Adjusters and Examiners in Field: \_\_\_\_\_

- (f) What types of claims are handled by Field Personnel and what is the highest level of authority for these


- (g) How often are the Field Offices audited: ☐ Annually ☐ Semi-Annually  
☐ Quarterly ☐ Every Other Year  
☐ Other: \_\_\_\_\_

- (h) Total # of Claims Handled as of most recent year-end:

Auto and Boat Acc.	
Auto Property Damage	
Auto Personal Damage	
Commercial Property	
Commercial Liability	
Med. Malpractice Liability	
Product Liability	
Other Liability	
Other Property	
Liability	
Liability	
Accident and Health	

- (i) Percentage of Claims Adjusting performed by Outside Firms: \_\_\_\_\_%
- (j) Is a Claims Adjusting Manual employed? ☐ Yes ☐ No
- (k) Are the Applicant's agents granted authority to settle claims? ☐ Yes ☐ No
- (l) Does the Company utilize investigatory and/or surveillance services to determine the validity and/or magnitude of a claim? ☐ Yes ☐ No

5. Safety Engineering and Loss Control

*N/A Handled by United Underwriting Group, Inc.*

- (a) Loss Control/Safety Engineering Services are provided to:  
☐ Policyholders ☐ Other Policyholders (Annual Revenue: \$ \_\_\_\_\_)

- (b) Total number of employees: Loss Control Representatives \_\_\_\_\_  
Safety Engineers: \_\_\_\_\_

- (c) Total # of annual Surveys/inspections performed as of most recent year-end:

Engineering Surveys: \_\_\_\_\_

Loss Control Inspections: \_\_\_\_\_

- (d) Percentage of Loss Control/Safety Engineering performed by Outside Firms: \_\_\_\_\_%
- (e) Is a Loss Control/Safety Engineering Manual employed? ☐ Yes ☐ No
- (f) Do Engineering/Loss Control Supervisors determine:  
if Yes, please attach a sample copy of such language ☐ Yes ☐ No
- (g) What is the approximate annual turnover rate of Safety Engineering and Loss Control personnel (excluding secretarial and clerical)? \_\_\_\_\_%

(g) (If YES, please attach a sample copy of such language)

6. Personal Injury Rehabilitation

N/A

(a) Personal Injury Rehabilitation Services are provided to:  
☐ Policyholders ☐ Non-Policyholders (Annual Revenue: \$\_\_\_\_\_)

(b) Total number of Personal Injury Rehabilitation Specialists Employed: \_\_\_\_\_

(c) What are the Applicant's education requirements for Personal Injury Rehabilitation Specialists:

☐ Nursing degree (RN) ☐ BS/BA Degree ☐ MS/MA Degree  
☐ Doctoral Degree ☐ Professional Certification ☐ No Requirements

(d) Percentage of Rehabilitation Services performed by Outside Firms: \_\_\_\_\_%

7. Premium Finance

N/A

(a) Premium Finance Services are provided to:  
☐ Policyholders ☐ Non-Policyholders (Annual Revenue: \$\_\_\_\_\_)

(b) Percentage of Premium Finance Services performed by Outside Firms: \_\_\_\_\_%

8. Insurance Pool and/or Captive Management

N/A

(a) Does the Applicant provide Management Services to Insurance Pools and/or Captive Insurance Companies which it DOES NOT own/insure? ☐ Yes ☐ No

(b) Please check ALL services provided by the Applicant in the Pool and/or Captive:  
☐ Actuarial Consulting ☐ Claims Handling & Adjusting  
☐ Risk Processing ☐ Personal Injury Rehabilitation Services  
☐ Premium Financing ☐ Safety Inspection and Control  
☐ Salvage and Subrogation  
☐ Other (Describe): \_\_\_\_\_

9. Salvage and Subrogation

N/A

For the below listed Third-Party Services, answer ONLY if the Applicant provides these services to non-policyholders:

(a) Salvage and Subrogation Services are provided to:  
☐ Non-Policyholders (Annual Revenue: \$\_\_\_\_\_)

(b) Primary Customer for Service: ☐ Insurance Companies  
☐ Captive/POs/IFOs  
☐ Self-Insured Programs/METs  
☐ Other

10. Reinsurance

(a) Regarding the below and noting none of these the applicant buys for itself, with respect to coverages for:  
Casualty: ☐ None ☐ Exclusively Excluded ☐ Specifically Excluded  
Property: ☐ None ☐ Exclusively Excluded ☐ Specifically Excluded  
Other: ☐ None ☐ Exclusively Excluded ☐ Specifically Excluded

(b) Please provide the names of principal reinsurers:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

11. Claims History

Have any Professional Liability (E&O) judgments, settlements, payments, claims or suits seeking punitive or exemplary or extra-contractual damages been made during the past five years against the Applicant or any of its past or present directors, officers, employees or any predecessors in business?

☐ Yes ☒ No



If "YES", please provide the following information for each judgment, settlement, payment, claim or suit made in the past five years:

- (1) The date the underlying claim was reported to the Applicant
- (2) The date the EEOC action was made against the Applicant
- (3) A narrative of the facts and circumstances which led to the EEOC action against the Applicant
- (4) The current status of the EEOC action, and the following information:
  - If OPEN:
    - (a) The current demand by the plaintiff for: Contractual Damages, Extra Contractual Damages and/or Punitive/Exemplary Damages
    - (b) The current reserve established for the Claim
  - If CLOSED:
    - (a) Date of judgment or settlement
    - (b) The judgment, settlement or payment made for: Contractual Damages, Extra Contractual Damages, Punitive/Exemplary Damages and Defense Expenses

**TO BE COMPLETED BY ALL APPLICANTS**

None of the insureds is responsible for or has knowledge of any Wrongful Act or fact, circumstance or situation which (s)he has reason to suppose might result in a future Claim, except as follows:  
If "NONE", Please check this box ☒


It is agreed by all concerned that if any of the insured is responsible for or has knowledge of any Wrongful Act, fact, circumstance, or situation which (s)he has reason to suppose might result in a future Claim, whether or not described above, any such Claim subsequently emanating therefrom shall be excluded from coverage under the proposed insurance.

This Application shall be maintained on file by the insurer, shall be deemed attached as if physically attached to the proposed Policy and shall be considered as incorporated into and constituting a part of the proposed Policy.

The persons signing this Application declare that to the best of their knowledge the statements set forth herein and the information in the materials submitted herewith are true and correct and that reasonable efforts have been made to obtain sufficient information from all insureds to facilitate the proper and accurate completion of this Application for the proposed Policy. Signing of this Application does not bind the undersigned to purchase the insurance, but it is agreed that this Application shall be the basis of the contract should a Policy be issued. The undersigned agrees that if after the date of this Application and prior to the effective date of any Policy based on this Application, any occurrence, event or other circumstance should render any of the information contained in this Application inaccurate or incomplete, then the undersigned shall notify the insurer of such occurrence, event or circumstance and shall provide the insurer with information that would complete, update or correct such information. Any outstanding questions may be modified or withdrawn at the sole discretion of the insurer.

The information requested in this Application is for underwriting purposes only and does not constitute notice to the insurer under any Policy of a Claim or potential Claim. All such notices must be submitted to the insurer pursuant to the terms of the Policy, if and when issued.

The undersigned acknowledges that he or she is aware that Defense Costs reduce and may exhaust the applicable Limits of Liability. The insurer is not liable for any Loss (which includes Defense Costs) in excess of the applicable Limits of Liability.

This Application must be signed by the Chairman of the Board or by the President:

Signed: Donald E. Smith  
Title: CEO  
Corporation: Blue Cross of New York  
Date: 10/1/11

A POLICY CANNOT BE ISSUED UNLESS THIS APPLICATION IS PROPERLY SIGNED AND DATED.

ANY PERSON WHO, WITH INTENT TO DEFRAUD OR KNOWINGLY THAT (S)HE IS FACILITATING A FRAUD AGAINST AN INSURER, SUBMIT AN APPLICATION OR FILES A CLAIM CONTAINING A FALSE OR DECEPTIVE STATEMENT MAY BE GUILTY OF INSURANCE FRAUD.

FOR NEW YORK RESIDENTS ONLY:

**WARNING**

ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEFRAUD ANY INSURANCE COMPANY OR OTHER PERSON, FILES AN APPLICATION FOR INSURANCE OR STATEMENT OF CLAIM CONTAINING ANY MATERIALLY FALSE INFORMATION, OR CONCEALS FOR THE PURPOSE OF MISLEADING INFORMATION CONCERNING ANY MATERIAL FACT THEREOF, COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME AND SHALL ALSO BE SUBJECT TO A CIVIL PENALTY NOT TO EXCEED FIVE THOUSAND DOLLARS AND THE STATED VALUE OF THE CLAIM FOR EACH SUCH VIOLATION.

This Application must be signed by the Chairman of the Board or by the President:

Signed:

Title:

Corporation:

Date:

A POLICY CANNOT BE ISSUED UNLESS THE APPLICATION IS PROPERLY SIGNED AND DATED.

Please submit this Application, when completed, signed and dated to:

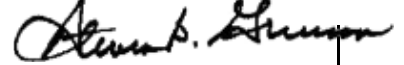
ACE USA Professional Risk

D&O Division

140 Broadway

14<sup>th</sup> Floor

New York, NY 10005



TRAN

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

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

Plaintiff, )

vs. )

ROBERT CHUR, et al, )

Defendants. )

CASE NO. A-14-711535-C

DEPT NO. XXVII

**Transcript of  
Proceedings**

BEFORE THE HONORABLE NANCY ALLF, DISTRICT COURT JUDGE

**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**

THURSDAY, SEPTEMBER 15, 2016

APPEARANCES:

FOR THE PLAINTIFF: BRENOCH WIRTHLIN, ESQ.

FOR THE DEFENDANTS: GEORGE F. OGILVIE, III, ESQ.  
ANGELA T. NAKAMURA OCHOA, ESQ.

RECORDED BY: TRACI RAWLINSON, COURT RECORDER  
TRANSCRIBED BY: JULIE POTTER, TRANSCRIBER

1       LAS VEGAS, NEVADA, THURSDAY, SEPTEMBER 15, 2018, 11:19 A.M.

2                       (Court was called to order)

3               MS. OCHOA: Good morning, Your Honor. Angela Ochoa on  
4 behalf of the defendants Robert Chur, Steve Fogg, Mark Garber,  
5 Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall,  
6 and Eric Stickels.

7               THE COURT: Thank you.

8               MR. OGILVIE: Good morning, Your Honor. George  
9 Ogilvie on behalf of US Re Corporation, Uni-Ter Underwriting  
10 Management Corporation, and Uni-Ter Claims Services.

11              THE COURT: Thank you.

12              MR. WIRTHLIN: Good morning, Your Honor. Brenoch  
13 Wirthlin on behalf of plaintiff.

14              THE COURT: Thank you. We have two motions today.  
15 The first is the Uni-Ter motion to dismiss the negligent  
16 misrepresentation claim of the third amended complaint. And  
17 then we have the Chur motion to dismiss the first amended  
18 complaint. Let's take the Uni-Ter motion first. I'd like to  
19 argue all of Uni-Ter and then all of the Chur motion before I  
20 rule on both.

21              Mr. Ogilvie.

22              MR. OGILVIE: Thank you, Your Honor. Before I  
23 commence, Your Honor, let me compliment you on your choice of  
24 law clerks. I met --

25              THE COURT: Do you know Mr. Cameron?

1 MR. OGILVIE: I met him as a -- when he was a  
2 first-year law student and I tried to hire him when he was a  
3 second-year law student.

4 THE COURT: Well, I got him. I got lucky.

5 MR. OGILVIE: As the Court indicated, this is the  
6 Uni-Ter Underwriting Management Corporation's motion to dismiss.  
7 I know that the Court reads everything and is pretty familiar  
8 with --

9 THE COURT: You know, we do, but I -- I don't want to  
10 cut you off, either.

11 MR. OGILVIE: No, but I'm not going to belabor the  
12 factual background is what I was going to indicate. I will  
13 certainly get into the legal arguments. But just as a summary  
14 of the factual background, the receiver for Lewis and Clark  
15 brought five causes of action against the individual directors  
16 represented by Ms. Ochoa. That is the first and second claim  
17 for relief.

18 The third claim for relief is the one that is being  
19 challenged by this motion today, that is negligent  
20 misrepresentation, purportedly committed by Uni-Ter Underwriting  
21 Management Corp, which is a sister corporation to Uni-Ter Claims  
22 Services Corp, which is named along with Uni-Ter Underwriting  
23 Management in the fourth claim for relief. And then the fifth  
24 claim for relief is solely against US Re Corporation, which I  
25 also represent.

1           Both Uni-Ter Claims Services Corporation and US Re  
2 have answered the complaint, and the only matter in dispute  
3 prior to moving forward with, as it relates to my clients,  
4 before we move forward with this litigation is the motion  
5 currently brought by Uni-Ter, what we refer to as Uni-Ter UMC,  
6 but I may just refer to it as Uni-Ter. And in that reference  
7 I'm only referring to Uni-Ter Underwriting Management Corp as  
8 opposed to Uni-Ter Claims Services Corporation.

9           So, again, the only claim for relief that is being  
10 challenged by this motion is the claim for negligent  
11 misrepresentation brought against Uni-Ter UMC. As we stated in  
12 the motion and in our reply brief, the basis for the motion is  
13 that the allegations of negligent misrepresentation are  
14 essentially superseded by the claims brought by the receiver  
15 against the individual directors, and that is that there was no  
16 justifiable reliance on the part of the company Lewis and Clark,  
17 which is a risk retention group.

18           And as I get into the facts and -- the facts and the  
19 law kind of intersect as -- as we go through an analysis of the  
20 motion. We have indicated in our moving papers the allegations  
21 set forth by the receiver, the plaintiff, against the individual  
22 directors, which, as we indicate in our reply brief, essentially  
23 plead them out of an allegation of negligent misrepresentation  
24 brought against my client, Uni-Ter UMC.

25           And we indicated, cited, the -- the Sprewell versus

1 Golden State Warriors case out of the Ninth Circuit which  
2 indicated that a plaintiff can plead himself out of a claim by  
3 including factual allegations contrary to the factual elements  
4 of his claims. And Uni-Ter's position in this motion is that  
5 the receiver has done exactly that.

6           And we have cited the -- the allegations set forth in  
7 the third amended complaint, which -- which are entirely  
8 contradictory and completely negate any claim against -- against  
9 Uni-Ter UMC for negligent misrepresentation on the basis that  
10 the allegation set forth by the receiver in the third amended  
11 complaint indicate that there wasn't any justifiable reliance,  
12 which is one of the elements of negligent misrepresentation.

13           And when I say justifiable reliance, it's justifiable  
14 reliance on behalf of the board of directors of Lewis and Clark  
15 which, and this is jumping ahead a little bit, but as I say, the  
16 facts and the law intersect in this argument. It's important to  
17 point out, and it's set forth in the briefs of all the parties,  
18 there isn't any dispute as to the composition of Lewis and  
19 Clark.

20           Lewis and Clark is a risk retention group that is  
21 comprised of individual long-term care facilities. So the  
22 long-term care facilities get together and form this risk  
23 retention group for which Uni-Ter was essentially the manager.  
24 And -- and this gets to one of the arguments made by -- by the  
25 receiver that there can't be any imputation of the knowledge of



1 the board to the company.

2 Well, let's just examine what the company is. I mean,  
3 as I said, Lewis and Clark is comprised of these long-term care  
4 facilities. They are the members of this company. And in this  
5 instance it is a corporation, so they are the shareholders.  
6 There aren't any other shareholders other than the members which  
7 are the long -- long-term care facilities. Each one of these  
8 long-term -- well, each member of the board is a representative  
9 of these facilities.

10 So getting away from the law, because sometimes we  
11 cherry -- lawyers cherry pick pieces of cases and -- and make  
12 legal argument and just focus on whether there is -- there can  
13 be imputed to the company the knowledge held by the board. And  
14 if we look at it just in common sense in this instance, when we  
15 have information provided to the board, and the board is  
16 comprised of members or representatives of the shareholders, and  
17 the shareholders are the only members of the company, who are we  
18 talking about? We're talking about they're all the same. There  
19 isn't any division between directors and shareholders.

20 THE COURT: Well, there -- there is a legal  
21 distinction, though, is there not?

22 MR. OGILVIE: No.

23 THE COURT: Even -- even --

24 MR. OGILVIE: And that gets to the sole actor rule  
25 that is cited in our reply brief. And that states that when

1 there is -- when the corporation and its agents, in this case  
2 the agents being the board, are indistinguishable from each  
3 other, there is a uniform, for purposes of the law, the parties  
4 are the same. You can't distinguish between the corporation and  
5 its board because they are all one and the same.

6           And that comes straight out of the USACM Liquidating  
7 Trust case cited in our reply brief that shows that there is no  
8 difference between the board and the shareholders such that any  
9 information provided to the board is imputed to the shareholders  
10 because the board is comprised of the shareholders. So it is --

11           THE COURT: Well, the shareholders are individual  
12 entities and the board is individuals, and that's what I meant  
13 as far as the distinction.

14           MR. OGILVIE: Sure. Okay.

15           THE COURT: Okay. That's what I meant.

16           MR. OGILVIE: I see what you mean, but there is no --

17           THE COURT: Because it's the entities that are the  
18 members, and then there are representatives of those who I  
19 assume were the Chur group.

20           MR. OGILVIE: Let me -- let me draw a distinction.

21           THE COURT: Please.

22           MR. OGILVIE: We don't have a board of directors here  
23 that -- of a -- of a large corporation that is -- whether it's  
24 publicly held or privately held, it doesn't really matter --

25           THE COURT: And --

1 MR. OGILVIE: -- where you have --

2 THE COURT: -- I don't understand. Were the -- the  
3 individual members of the board of directors also principals of  
4 the members, or are they independent?

5 MR. OGILVIE: No, they weren't independent, and that  
6 was the distinction that I was going to draw.

7 THE COURT: Okay.

8 MR. OGILVIE: There aren't any third-party independent  
9 board members here. They are all selected by the individual  
10 members, the shareholders, the long-term care facilities.

11 THE COURT: Okay. That's what I had thought all  
12 along, but I'm sorry your argument confused me on that this  
13 morning.

14 MR. OGILVIE: I'm sorry.

15 THE COURT: Thank you for clarifying that.

16 MR. OGILVIE: I'm sorry. So the board of directors,  
17 and there isn't any dispute about this, the board of directors  
18 is comprised of representatives of the shareholders. They are  
19 selected by the individual shareholders.

20 THE COURT: Right.

21 MR. OGILVIE: And, you know, for instance, there is  
22 the Oneida (phonetic), which is represented by the -- by Mr.  
23 Stickels, who is the board member which is being sued. So  
24 Oneida is the long -- it's just an example, but it's the same  
25 for all of them. Oneida Health is one of the long-term care

1 facilities. It chose Mr. Stickels to be its representative on  
2 the board. He's on the board. He's being sued as a board  
3 member.

4           So there is no distinction between the board and the  
5 shareholders in that the shareholders all have representatives  
6 on the board. So that gets to one of the rules that is the  
7 exception to the adverse interest exception, that is argued by  
8 the receiver in opposition to our motion. And essentially when  
9 we look at the adverse interest exception in that information  
10 relayed to a board or another agent can't be imputed to the  
11 corporation, again, there is a vast difference to independent  
12 directors receiving information and perhaps acting on their own.

13           And, again, the Nevada Supreme Court case, Amerco,  
14 indicated to some very limited exceptions to that adverse  
15 interest exception. And, again, the -- the general agency rule  
16 is that information related to an agency is imputed --  
17 in-running to an agent is imputed to the agency, is imputed to  
18 the corporation. What receiver, the receiver has relied upon is  
19 this limited exception, the adverse interest exception.

20           And as the Supreme Court, the Nevada Supreme Court  
21 stated in the In Re Amerco Derivative Litigation, these are --  
22 it's a very limited exception. It's stated that the exception  
23 is very narrow, and it only occurs in a narrow exception of  
24 cases in which there may be outright theft, looting, or  
25 embezzlement of the -- by the director or the agent against the

1 interests of the corporation.

2           We don't have any allegation. We have an allegation  
3 of gross negligence, but we don't have any allegation in this  
4 instance by the receiver against the individual directors that  
5 they were somehow feathering their own nest by this gross  
6 negligence. And that's Uni-Ter's position.

7           THE COURT: And instead they pled a deepening of the  
8 insolvency.

9           MR. OGILVIE: Correct.

10          THE COURT: Right. In lieu of.

11          MR. OGILVIE: Well, in lieu of feathering their own  
12 nests? No, I don't believe so. Again, what we have is the --  
13 the member facilities being represented by their -- their  
14 representatives on the board of directors, and any action taken  
15 by that board of directors to the detriment of the corporation  
16 is going to be a detriment to the facility that they represent.  
17 They are a principal of that facility. So they're only hurting  
18 themselves if they were taking some action. And the Court  
19 pointed out a deepening of --

20          THE COURT: Or failing to act.

21          MR. OGILVIE: Or failing to act. Okay. And any act  
22 or omission. The Court mentioned a deepening insolvency.  
23 That's only if --

24          THE COURT: It's collateral.

25          MR. OGILVIE: Yes. If -- if the deepening insolvency

1 hurts Lewis and Clark, it hurts each one of the members. So  
2 there isn't an action taken, and there isn't any allegation that  
3 the individual directors were pocketing money by their acts or  
4 omissions. And so what we're left with is the only -- the only  
5 benefit that would inure as a result of this act or omission  
6 would be to their own facility.

7 But by definition of the facts of this case and the  
8 composition of the risk retention group, any act or omission  
9 that hurts Lewis and Clark hurts the individual members. So  
10 there isn't an allegation that there was an adverse action or  
11 omission taken by the individual board members that would  
12 benefit anybody. They just simply failed to act or acted  
13 improperly.

14 So the adverse interest exception which is cited by  
15 the receiver doesn't apply. Even if it did apply as we argued  
16 and as I -- as I already set forth, there is no distinction,  
17 factual distinction here between the board and the -- and the  
18 individual shareholders such that the sole actor rule would take  
19 this out of the adverse -- adverse interest exception.

20 The other argument that the plaintiff has made in  
21 opposition to the motion to dismiss is that it is generally  
22 understood, and certainly Uni-Ter doesn't dispute the fact that  
23 a party can -- a plaintiff can assert alternative claims for  
24 relief, but that's not what we have here. An alternative -- a  
25 classic claim for alternative relief or alternative claims for

1 relief in a commercial context would be a claim for breach of  
2 contract and breach of the implied covenant of good faith and  
3 fair dealing.

4           Both claims rely and are founded upon the same set of  
5 factual allegations and it's just a matter of whether or not the  
6 -- the breach that's described in the factual allegations arise  
7 to a level of, okay, the defendant satisfied the letter of the  
8 contract, but didn't satisfy the -- the spirit of the contract.  
9 Or, alternatively, that the breach, the allegations of breach  
10 that are described in the factual allegations rise beyond that  
11 to actually constitute a material breach of the letter of the  
12 contract. That's alternative pleading.

13           What we have here is entirely inconsistent pleading.  
14 And as I said under the Sprewell versus Golden State Warriors  
15 case, plaintiff has essentially pled itself out of the  
16 allegations against Uni-Ter for providing purportedly inaccurate  
17 and unreliable information to the board of directors. And we  
18 cited in our moving papers several of the allegations. And I  
19 just want to focus on a few of them for purposes of the argument  
20 today.

21           The allegation in paragraph 122 of the third amended  
22 complaint states despite this knowledge, and, again, it's the  
23 knowledge of the information provided by Uni-Ter, the board  
24 failed to exercise even a slight degree of diligence or care  
25 with respect to accepting the information and recommendations

1 provided by Mr. Elsass and Uni-Ter UMC and failed to verify  
2 whether this information was accurate and whether the  
3 recommendations should be adopted.

4           And then the -- in paragraph 145, and they qualify  
5 paragraph 145 on information and belief. But I -- I think it's  
6 fairly apparent, and I think it's very apparent, that that  
7 qualification is -- is misplaced. Because the allegation is on  
8 information and belief, the minutes of the October 5, 2011,  
9 action taken by the board demonstrate that the board was  
10 well-aware it was not receiving accurate and complete  
11 information from Uni-Ter.

12           Well, the receiver, the plaintiff here, has the  
13 documents. They -- they see what the minutes of the October 5,  
14 2011, meeting state. And in the receiver's allegations, those  
15 minutes demonstrate, in paragraph 145, the -- the plaintiff  
16 states that those minutes demonstrate that the board was  
17 well-aware it was not receiving accurate and complete  
18 information from Uni-Ter.

19           Whether or not they pleaded on information and belief,  
20 this is the allegation that the receiver is stating, that those  
21 minutes that the receiver is looking at indicate, demonstrate  
22 that the board was well-aware it was not receiving accurate and  
23 incomplete -- or it was not receiving accurate and complete  
24 information from Uni-Ter.

25           And let me also digress for just a moment. This is an



1 instance that the facts demonstrate that there was an order of  
2 liquidation entered by Judge Gonzalez on February 28, 2013,  
3 three and a half year ago. That order of liquidation, and its  
4 attached as Exhibit 1 to the third amended complaint, in  
5 paragraph 3 of that order of liquidation it says that the  
6 receiver is hereby authorized to collect all the property, all  
7 of the papers, all of the documents.

8           And so the receiver, for three and a half years, has  
9 been in possession of all of the property, all of the documents,  
10 all of the -- the board minutes. So this isn't a situation in  
11 which there is a -- an alternative claim for relief because the  
12 plaintiff is somehow deprived of the information necessary to  
13 assert the factual allegations against a defendant. The  
14 plaintiff, the receiver, for three and a half years has been in  
15 possession of all of the documentation that support.

16           Now, I read in -- in the receiver's opposition to the  
17 individual directors' motion to dismiss that through the actions  
18 of the board it -- it may not have all the documents that it  
19 needs to support its claims. But what we do know from the  
20 allegations set forth, and they are very precise in the  
21 documentation that is in possession of the -- of the receiver,  
22 and which the receiver based its allegations, it is very precise  
23 in -- in the documentation and what that documentation shows as  
24 it relates to the allegations against the board of directors.

25           And that is set forth and summarized in the receiver's

1 supplement to the opposition of the individual directors' motion  
2 to dismiss which the receiver filed on September 8th last week,  
3 a week ago today. And if we go to page 4 of that opposition, it  
4 -- it states -- actually, if we start at the bottom of page 3.  
5 The receiver states, however, below is a brief summary of the  
6 information supporting the claims as set forth more fully in the  
7 complaint and incorporated by reference herein.

8           And all of this information as the receiver states and  
9 as I reviewed the -- the -- and compared the allegations  
10 summarized in its opposition to the individual directors' motion  
11 to dismiss with the third amended complaint, all of the  
12 information set forth that I'm about to cite the Court to is  
13 included in -- in the third amended complaint.

14           And the receiver states, for example, as of the end of  
15 2011 there was an overwhelming amount of information that  
16 clearly showed that L&C's, Lewis and Clark's, financial  
17 condition was in peril. The information available to the board  
18 at that time showed a rapid and drastic increase in loss  
19 reserves, reports of inadequate reserves requiring repeated  
20 capital infusions in late 2011 and early 2012, high loss  
21 rations, drastically decreasing realized premiums, absence of  
22 any adjustment of premium rates, implementation of a new  
23 underwriting philosophy that would result in a 35 to 40 percent  
24 drop in premiums, and a drastically decreasing company surplus.

25           Had the board properly informed itself of the

1 financial situation of L&C, it would have known the following,  
2 which include pertinent items from the information available to  
3 the board at that time. These are not on information and  
4 belief. The allegation is that the board had this information,  
5 and the allegation is made based on the receiver's collection of  
6 all the documents since 2013 that established these allegations.

7           And the receiver then goes through one, two, three,  
8 four, five, six, seven bullet points of information that the  
9 receiver has in its possession. Oh, I'm sorry, seven, eight,  
10 nine, ten, eleven, twelve pieces of information, documentation  
11 that was supplied to the board either by Uni-Ter or by the  
12 commissioner of insurance saying don't rely -- you don't have to  
13 rely on the information that Uni-Ter is providing to you.

14           This is the commissioner of insurance saying for this  
15 reason, this reason, and this reason, your company has real  
16 problems and you need to take immediate action to -- to avert  
17 the financial disaster that eventually occurred.

18           And this is the most important part here. The  
19 receiver goes on to state that the board had all of this  
20 information from Uni-Ter and from the Department of Insurance,  
21 and -- and then states if the board saw and reviewed all of this  
22 information as alleged, they were grossly negligent in not  
23 taking immediate corrective action by at least 2011, for  
24 example, by raising premium rates.

25           Alternatively, if the board did not review or

1 understand this information, they were grossly negligent by not  
2 taking action to inform themselves of the factual condition of  
3 L&C.

4           So what we have, Your Honor, is based on the  
5 receiver's collection of all the documentation related to L&C  
6 back during the relevant time frame, the receiver has alleged  
7 that for all of these reasons, all the documents that it cites  
8 in those 12 bullet points which are taken directly out of the  
9 third amended complaint, that the receiver had possession of  
10 these documents, knows that the board had that information, and  
11 is saying either the board failed to take action after reviewing  
12 it and was grossly negligent for that reason, or the board  
13 failed to review that information and was grossly negligent for  
14 not reviewing it.

15           So in essence, the board -- the receiver says -- is --  
16 is saying this company died and the board of directors are  
17 responsible and, Uni-Ter, you're responsible. Uni-Ter, you  
18 brought a knife to the fight, but the board shot the company.  
19 There is no way that there can be an allegation that survives  
20 that Uni-Ter bring a knife to the fight constitutes the -- the  
21 basis or the reason for the corporation dying.

22           The board of directors, as alleged by the receiver,  
23 either took the information and disregarded it or didn't look at  
24 it. Either way, it's grossly negligent and the actions -- and  
25 those acts or omissions supersede any conduct by Uni-Ter UMC in

1 providing purportedly inaccurate or unreliable information. And  
2 for that reason the receiver has pleaded itself out of a claim  
3 for negligent misrepresentation asserted against Uni-Ter UMC.

4 THE COURT: Thank you, Mr. Ogilvie.

5 In order to -- for the comfort of the Court, I need a  
6 five-minute recess. We started at 9:30 this morning. And I  
7 don't want to cut you off, so we'll be in recess for about five  
8 minutes. Thank you.

9 (Court recessed at 11:50 a.m., until 11:56 p.m.)

10 THE COURT: And your opposition, please.

11 MR. WIRTHLIN: Thank you, Your Honor. At the outset I  
12 think -- I think it's important to point out that Uni-Ter is  
13 correct that the Court is required to take the allegations of  
14 the complaint as true for purposes of the motion to dismiss.  
15 This complaint does state that L&C, Lewis and Clark, relied  
16 justifiably on Uni-Ter. That is what this complaint states.

17 And really essentially what Uni-Ter is arguing is that  
18 under its, and I don't think there would be any dispute,  
19 self-serving interpretation of the facts, they don't believe  
20 that it's consistent with the other claims. But really what  
21 this complaint says is that there was some wrongdoing on  
22 multiple parts. And absolutely those claims, we believe, it's  
23 our position, can go forward for the reasons that we mentioned  
24 in our briefing which I would incorporate in the argument here.  
25 But the complaint does state that Uni-Ter -- excuse me, that

1 Lewis and Clark justifiably relied on the board -- excuse me,  
2 Uni-Ter.

3           What I want to get to preliminarily is the -- a couple  
4 of things that I think kind of permeate their motion that show  
5 that it's not appropriate for a motion to dismiss. They cite in  
6 their motion and rely pretty much exclusively for the -- for  
7 their conclusions on the facts in the case of Safeco, a Ninth  
8 Circuit unreported decision. That was a case with some pretty  
9 important distinctions to the case here.

10           There had been a trial and I think that that is a key  
11 issue that is presented both in the pleadings and in Uni-Ter's  
12 argument today, they're essentially arguing facts. They are  
13 asking this Court to take into account facts that are not in  
14 that complaint, well outside of the complaint, and make factual  
15 findings that are up to the -- that are within the scope of the  
16 jury's determination.

17           The other thing is the Safeco case involves plaintiffs  
18 who are individuals, so there's no issue regarding imputation.  
19 The motion doesn't really raise that, so we went into that. And  
20 that gets us quickly to the adverse interest exception. Nevada  
21 law does state that this is a narrow exception, absolutely. We  
22 100 percent agree with that. However, there are no -- there are  
23 no magic words that are required for this exception to apply.  
24 It's a result of a factual determinations that are made, which,  
25 again, is improper for Uni-Ter to ask this Court to make the

1 determination on a motion to dismiss.

2           But just going down that road a little ways, Lewis and  
3 Clark would obviously request leave to amend if the Court found  
4 that there were magic words. But I don't -- I don't think that  
5 the case law that they cited, that we cited, as well, that we  
6 brought to the Court's attention requires that. What the case  
7 law says is -- and, again, I think an important distinction is  
8 that Uni-Ter focuses a lot on whether there was a benefit to the  
9 board's actions to the board. That's not the analysis. The  
10 analysis is whether there was a benefit to the company.

11           And we alleged -- plaintiff alleged claims against the  
12 board for gross negligence, the individual directors and  
13 officers, and as the Court rightly pointed out, deepening the  
14 insolvency. And that's critical because that claim basically  
15 says that the -- the corporation, the company was kept alive a  
16 lot longer than it should have been to its significant  
17 detriment.

18           And we actually have case law, we cited the Shacked  
19 (phonetic) case out of the Seventh Circuit that addresses that  
20 specific issue with that specific claim and concludes in many of  
21 the same issues that we're going on in this case loss of  
22 millions of dollars, loss of positive investments and assets.  
23 It states -- the Shacked court stated that these all, quote,  
24 aggravated reserves insolvency in no way can these results be  
25 described as beneficial to reserve.

1           Same thing that we have here. Clearly the board,  
2 according to the complaint, was grossly negligent, they deepen  
3 the insolvency of the company, and that cannot in any way be  
4 said to benefit Lewis and Clark, and, in fact, that's why we're  
5 here, that's why receivership was appointed.

6           In a separate context, and I think this goes to kind  
7 of the common sense aspect of it, and as the Court pointed out,  
8 there are legal distinctions between, you know, the company,  
9 individuals, managers, separate legal entities, and that's why  
10 we have sued the individual directors. And --

11           THE COURT: That brings -- that kind of begs the  
12 question, which I think I directed to Mr. Ogilvie or I heard  
13 from his argument, is can you maintain causes of action for  
14 negligent misrepresentation against Uni-Ter at the same time you  
15 maintain a cause of action against the individual board members  
16 for gross negligence? Do you have to choose a remedy?

17           MR. WIRTHLIN: Your Honor, I don't think that you do  
18 have to choose a remedy, particularly at this point. We're at  
19 the -- we're at the motion to dismiss stage, and I think that  
20 what -- jumping ahead to address that issue, Uni-Ter argued,  
21 well, this is kind of like a situation where you have a motion  
22 or a complaint that states a breach of contract claim and a  
23 complaint that -- and also states a claim for unjust -- or for  
24 good faith -- breach of covenant of good faith and fair dealing.

25           I think a better analogy here is the receiver is



1 coming in. We're finding out what happened. Obviously, that's  
2 the purpose of a complaint, find out -- of a lawsuit, find out  
3 what happened, make those allegations, go forward, let the --  
4 let the jury, or the judge if it's a bench trial, make those  
5 factual determinations. A better analogy, I think, is a  
6 complaint where you have a claim for breach of an oral contract,  
7 and also a claim for breach of -- or rather, I'm sorry, not  
8 breach, but unjust enrichment.

9           Because ultimately, yeah, there may need to be a  
10 decision to be made. But for purposes of that complaint going  
11 forward, the fact of the matter is the Court is required, for  
12 purposes of a motion to dismiss, to take all factual allegations  
13 as true. The fact finder is not. The fact finder, the point of  
14 the fact finder is to figure out what happened.

15           And it's absolutely possible that the jury in this  
16 case says, well, actually, we think the board did justifiably  
17 rely on Uni-Ter, Uni-Ter is liable. It could go the other way,  
18 as well. Again, we -- our position is the adverse interest  
19 exception applies. We think that's a factual determination that  
20 would be inappropriate for Uni-Ter to ask this Court to resolve  
21 on a motion to dismiss.

22           But we think with the adverse interest exception  
23 applying, because the board's knowledge or lack of knowledge  
24 cannot be imputed to the plaintiff, which is a separate legal  
25 entity, that we are allowed to go forward with those claims.

1 It's possible that the jury determines the board justifiably  
2 relied on Uni-Ter. It's possible that they find that they  
3 didn't. But those claims can go forward at this point.

4 And, again, under Nevada law, if that adverse interest  
5 exception applies, and we submit that it does, and that with the  
6 claims that we've pled against the board and against Uni-Ter,  
7 those -- those are not mutually exclusive claims because of that  
8 interest, the adverse interest exception. But even if it was,  
9 that -- that jury determination can be made, and we're allowed  
10 to go forward with those alternative pleading claims.

11 One issue I would like to point to, as well, is the --  
12 the sole actor exception. I think there has been quite a bit  
13 discussed with respect to the distinct legal entities and  
14 factual issues that were raised. And I believe that the  
15 statement was made there's no factual distinction between these  
16 entities and the individual board members.

17 Your Honor, we would submit we would disagree with  
18 that. We would submit that is an issue for trial, an issue of  
19 fact. These individuals wore multiple hats. And that's not  
20 uncommon, necessarily, but it certainly prevents a motion to  
21 dismiss when what we're asserting is a claim that the -- that  
22 Lewis and Clark justifiably relied on these individuals  
23 depending on which hats they were wearing. Very factually  
24 intensive, inappropriate for a motion to dismiss.

25 I wanted to hit a couple of other highlights. Other

1 courts in related context have held, and I think the quotation  
2 is so good, with the Court's indulgence I would read it out of  
3 the Clark case that we cited. Regardless of whether the alleged  
4 wrongdoing was intentional or merely negligent, the knowledge of  
5 officers' and directors' wrongdoing cannot be imputed to the  
6 corporation because those officers and directors' control over  
7 the corporation prevents it from learning of the misconduct that  
8 it's injuring it.

9           And I think from a practical standpoint it's important  
10 to remember Uni-Ter is not saying they didn't do anything wrong.  
11 They're just saying somebody else may have done something wrong,  
12 too, so let us out on the chance the jury decides that, you  
13 know, there was no justifiable reliance.

14           Again, the jury could go either way on that issue.  
15 And they're welcome to argue that to the jury or a motion for  
16 summary judgment if they deem that appropriate. But on a motion  
17 to dismiss, Your Honor, we would submit that is inappropriate.  
18 If the Court has any other questions.

19           THE COURT: I don't.

20           MR. WIRTHLIN: We'll rest on the pleadings.

21           THE COURT: Thank you.

22           And the reply, please.

23           MR. OGILVIE: Your Honor, I think the identification  
24 of this exception to the general rule of agency is -- is  
25 enlightening. And that is the adverse interest exception such

1 that the board or the agent, the board member or the agent had  
2 an interest, interest, that was adverse to the interests of the  
3 corporation. And there isn't any allegation here that such  
4 adverse interests exists.

5           There's only an allegation that the board members  
6 essentially failed to satisfy the business judgment rule. They  
7 -- there's no allegation of self-gain. There's no allegation of  
8 gain to the individual shareholders that those board members  
9 represented. There's simply an allegation that they grossly --  
10 were grossly negligent in the performance of their duties.

11           There was -- there isn't any adverse interest in that  
12 they were stealing money or embezzling or -- or doing something  
13 to benefit a third-party that they somehow had a relationship  
14 with. And that's what the adverse interest rules is intended to  
15 apply to. That is the exception that the Nevada Supreme Court  
16 is referring to to the general rule of agency where information  
17 that is related to an agent is imputed to the -- the  
18 corporation.

19           And that is why the Supreme Court said there are --  
20 that it is a very narrow exception, and that is why the Supreme  
21 Court referenced embezzlement and theft. There had to be more  
22 than they acted in a way that didn't benefit the corporation.  
23 Maybe they did, maybe they didn't. They certainly -- the  
24 allegations certainly are there that the board members acted in  
25 a way that didn't benefit the corporation.

1           But Uni-Ter submits that that is not enough to satisfy  
2 the adverse interest exception because there wasn't some  
3 ulterior motive. There isn't an allegation that there was some  
4 gain by this such that the interests of the individual board  
5 members were adverse to the interest of the corporation. And  
6 Uni-Ter submits that that is required in order to find that  
7 exception.

8           THE COURT: Thank you, Mr. Ogilvie.

9           So the first motion is submitted. Now the motion on  
10 behalf of the individuals, Ms. Ochoa.

11           MS. OCHOA: Good morning, Your Honor. I just wanted  
12 to make sure that I complete the record. There was some  
13 statements about that all the board members were shareholders  
14 and -- and one isn't. Dr. Carol Harter, she is not a  
15 shareholder. I just want to make sure that the Court doesn't  
16 think that I knew something and I didn't disclose it. But  
17 that's -- that's just the facts.

18           Just to make sure that everybody is all on the same  
19 page, this is my motion to dismiss and I'm seeking relief for  
20 the dismissal of the third amended complaint. I know when we  
21 stated this journey it was to dismiss the first amended  
22 complaint, but along the way the plaintiff filed a second  
23 amended complaint.

24           And so we took a look at that and we tried to  
25 supplement the record with what was changed, with in the

1 citations from the motion, the first initial motion, to what  
2 would have been changed in the second amended complaint. And in  
3 doing so, the second -- the supplement, the first supplement  
4 doesn't have every single citation that was in the motion or the  
5 reply. It has only the things that were changed.

6           So if -- so, for example, from the first to the second  
7 amended complaint, the exhibits were not changed, so I did not  
8 reflect that in that supplement. So I just wanted to make sure  
9 the Court is aware of that.

10           And then the third amended complaint was filed, and by  
11 the time the third amended complaint was filed, there was no  
12 changes from what we had previously cited in the record, so  
13 that's kind of where we are today.

14           So as to the meat of the motion to dismiss, it's  
15 really based on two things, that no reasonable person could  
16 interpret plaintiff's allegations to support a claim for gross  
17 negligence, and that the statute of limitations had passed. The  
18 complaint was supposed to be filed by September 2014 based on  
19 the allegations made in the complaint that was filed in December  
20 of 2014.

21           So as to the first, the first issue, I know the  
22 plaintiff claims that negligence is an issue for the jury, but  
23 all of the case law that we -- that we cited in support of a  
24 dismissal of a gross negligence claim was at either a motion to  
25 dismiss stage or before the issue went to the trier of fact. So

1 that does mean that it is within the Judge's province to decide  
2 whether the claims can support gross negligence. And we found  
3 that the -- that the rule is if no reasonable person could find  
4 that there was gross negligence.

5           So, you know, I know the complaint is over 200  
6 paragraphs. It's filled with exhibits. So I don't want to, you  
7 know, go over every single fact that supports that my clients  
8 actually looked at the information, discussed it, asked for more  
9 information, and then ultimately made a decision. I think  
10 that's definitely within the Court's ability to go through all  
11 of that.

12           But I just want the Court to, if they haven't already  
13 decided, think about a few things that were alleged in the  
14 complaint, and that's this ideal that my clients are liable  
15 because they weren't informed, they were misinformed, they did  
16 not timely act, and they took the wrong actions. So under the  
17 case law, my clients cannot be liable for anything other than  
18 being uninformed. You know, this idea that they were  
19 misinformed, they're entitled to rely on what their experts  
20 advise them. So it's --

21           THE COURT: Isn't your argument that if they exercise  
22 any degree of care, a gross negligence cause of action can't --

23           MS. OCHOA: Right.

24           THE COURT: -- be maintained?

25           MS. OCHOA: And on top of that, when you look at the

1 actual facts, it does show that they received information, that  
2 they processed it, they talked about it in these minutes, it's  
3 reflected in these minutes. They asked questions, they  
4 discussed it, and they finally made a decision one way or  
5 another. So that -- that's -- we contend is sufficient to be  
6 more than -- more than they -- they fulfilled their requisite  
7 duty of care.

8           Then the other issue is this idea that my clients  
9 could not justifiably rely on Uni-Ter. When you look at the  
10 facts, this -- this risk retention group was created in 2004.  
11 It was going along just fine, and then in 2010 they were advised  
12 by the Nevada Division of Insurance that they -- they had some  
13 problems.

14           So from 2010 through 2011, they did things. They  
15 tried to -- they tried to increase -- increase commissions for  
16 their insurance agents to bring in more business, to bring in  
17 more policies. They sent out -- they -- they allowed for audits  
18 of the claims to see what was going on. And eventually, and it  
19 wasn't long after that, in September 2012, they were the ones  
20 that asked the Nevada Division of Insurance to put the risk  
21 retention group into rehabilitation.

22           So they did all these kind of acts to help the -- the  
23 plaintiff. So my point is there was no -- there was nothing to  
24 trigger them to say, oh, I shouldn't rely on Uni-Ter. At least  
25 it's not alleged in the complaint.



1           So this gets me to the last issue, which is that the  
2 statute of limitations had -- had lapsed in September of 2014.  
3 And the first time we came around to this case, the allegations  
4 were basically my clients did all this bad after September of  
5 2011. The first amended complaint was expanded so that my  
6 clients did all these bad acts in like 2009, 2010, 2011.

7           So it wasn't really an issue the first time around,  
8 but now it is an issue because under the catchall statute, the  
9 statute of limitations is four years for the plaintiff to have  
10 brought an action. So by the pleadings in the complaint, the  
11 plaintiff claims that in September of 2010 they wrote a letter  
12 to us to tell us that our -- that the risk retention group was  
13 in trouble, and this all stems from acts done in 2009, which was  
14 the inclusion of some multi-operation groups.

15           So according to the math and the discovery rule, that  
16 would mean that the plaintiff was supposed to bring their  
17 complaint by September of 2014. They brought it in December of  
18 2014. We submit that that's untimely and it should be  
19 dismissed.

20           THE COURT: Thank you, Ms. Ochoa.

21           The opposition, please.

22           MR. WIRTHLIN: Thank you, Your Honor. Our first  
23 argument is on the negligence issues. And I'm just going to  
24 quote from the Nevada case law, Nehls v. Leonard, 97 Nev. 325.  
25 Quote, in Nevada issues of negligence and proximate cause are

1 considered issues of fact and not of law and, thus, they are for  
2 the jury to resolve, end quote.

3 I think that, if I remember correctly, and if I'm  
4 wrong I'm sure I'll be -- opposing counsel can correct me. But  
5 I don't believe they cited any binding Nevada case law authority  
6 that -- that shows any kind of exception, particularly here  
7 where gross negligence is alleged.

8 And I want to clarify this. It's my understanding  
9 this motion only relates to the gross negligence. This Court  
10 has already found that deepening the insolvency is a -- is a  
11 valid claim. But after the prior motion to dismiss on the  
12 negligence issue --

13 THE COURT: Well, I think I said it was collateral to  
14 negligence or gross negligence.

15 MR. WIRTHLIN: Correct. Correct, Your Honor. And I'm  
16 sorry.

17 THE COURT: And this motion is directed only as to the  
18 gross negligence.

19 MR. WIRTHLIN: Okay. Thank you, Your Honor.

20 THE COURT: That's the way I understood it.

21 MS. OCHOA: Right.

22 MR. WIRTHLIN: Okay. And I say that because we -- we  
23 went back through and, at what we understood to be our  
24 direction, to go back through and -- and look for those  
25 allegations that, if we could find them, would raise -- rise to

1 the level of gross negligence. And we looked at the case law  
2 and it certainly is a standard that we -- that we had to look at  
3 and amend the complaint.

4 And, frankly, I am glad that we had that direction  
5 from this Court to go do that. We went back through more  
6 thoroughly. Obviously, there are a lot of documents in this  
7 case. There are documents we don't have. But we were able to  
8 find some pretty significant issues with respect to gross  
9 negligence. We have alleged those. I don't want to rely on our  
10 pleadings in the complaint, but in particular those letters.  
11 Particularly that 2011 letter.

12 And I did want to clarify one thing. If I -- if I  
13 heard the individual defendants' counsel correctly to state that  
14 we, Lewis and Clark, had written them a letter, it was -- and  
15 maybe that's -- maybe I misunderstood, it was actually the  
16 Department of Insurance that wrote that letter and -- and sent  
17 it to those individual defendants and said, you know, in  
18 September of 2011, you've got some -- some real problems here.  
19 That was a culmination of a lot that had happened.

20 And in our complaint we give more background back to  
21 2009 on some of the things that had happened, but that doesn't  
22 necessarily mean that that's -- negligence began then. And not  
23 only that, I would like to point out that what we've got here is  
24 negligence that was -- that was kind of taken continual -- on a  
25 continual basis culminating in a receivership being appointed,

1 that didn't happen until 2012.

2           So even under that standard, we would submit that the  
3 discovery rule would apply here and the facts that we allege are  
4 much later than the 2009 background information we provided.  
5 The other thing is I think that before we even get there, Judge  
6 Gonzalez's liquidation order answers the question conclusively.  
7 So I guess I would -- unless the Court has any questions, I rest  
8 on the pleadings.

9           THE COURT: Thank you.

10          And your reply, please.

11          MS. OCHOA: Just a short issue. I didn't really bring  
12 it up in the reply because I didn't think it was that big of a  
13 deal, but, you know, the quote that negligence is only in the  
14 province of the jury is just -- it's just not quite right. It's  
15 been a long time since I've looked at that case law that was  
16 cited. But we all know negligence is made up duty, breach,  
17 causation, damages.

18          Duty is always -- always dismissed, is a basis to  
19 dismiss a negligence claim. And that's absolutely within the  
20 jury's -- the Judge's discretion. So, you know, it's not quite  
21 accurate that negligence is always within the trier of the  
22 facts' ability.

23          THE COURT: Thank you both.

24          All right. Both matters are now under submission. We  
25 have the Uni-Ter motion to dismiss the negligent

1 misrepresentation cause of action and third amended complaint  
2 under 12(b) for failure to state a claim, and then we have the  
3 individual defendants' motion to dismiss the third amended  
4 complaint with regard to gross negligence.

5 I'm going to deny both motions at this time for the  
6 following reasons. I'm governed by 12(b)(5), and that's if the  
7 plaintiff can state a claim for which relief can be granted, I  
8 have to assume all of the facts in the third amended complaint  
9 are true. And so I can't determine the quality of the facts at  
10 this point. I would -- in order to grant the motions that have  
11 been brought, I would have to determine whether or not there was  
12 justifiable reliance by Uni-Ter, and justifiability is a factual  
13 issue.

14 With regard to the board, I'd have to determine  
15 whether or not they exercised the correct degree of care. And I  
16 understand the argument very clearly, that any exercise of care  
17 exempts them from a gross negligence claim. But at this point  
18 at least, only based upon the third amended complaint, they  
19 stated a claim for which relief can be granted.

20 Now -- and that's with caution to the plaintiff. It  
21 may well be after some discovery that that gross negligence  
22 cause of action is going to go away. But at this point you've  
23 stated a claim, so I'm not going to dismiss the complaint, the  
24 third amended complaint with regard to that.

25 And I am very appreciative of the quality of briefs

1 all around because this is a fairly new issue for me. I had to  
2 spend a lot of time to get up to speed on the nuances of the  
3 collective insurance groups. But they've stated a complaint for  
4 which relief can be granted finally.

5           With regard to the statute of limitations argument  
6 raised by the board members, the statute of limitation argument,  
7 the liquidation order for receivership established deadlines and  
8 statutes of limitation, and I find that that supersedes for the  
9 purpose of the receivership. So for that reason, that argument  
10 is rejected.

11           And Mr. Wirthlin to prepare the orders. Make sure  
12 that your opposing counsel can review and approve to the form of  
13 those orders.

14           MR. WIRTHLIN: Certainly, Your Honor. Thank you.

15           THE COURT: And thank you all.

16           MS. OCHOA: Thank you.

17           MR. OGILVIE: Thank you, Your Honor.

18           (Proceedings concluded at 12:22 p.m.)

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**CERTIFICATION**

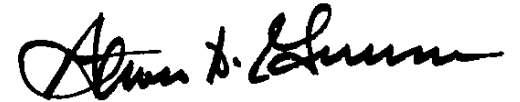
I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

**AFFIRMATION**

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

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\_\_\_\_\_  
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**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

**NOTICE OF ENTRY OF ORDER  
DENYING DEFENDANT UNI-TER  
UNDERWRITING MANAGEMENT  
CORP.'S MOTION TO DISMISS  
NEGLIGENT MISREPRESENTATION  
CLAIM OF THIRD AMENDED  
COMPLAINT**

PLEASE TAKE NOTICE that an Order Denying Defendant Uni-Ter Underwriting  
Management Corp.'s Motion to Dismiss Negligent Misrepresentation Claim of Third Amended  
Complaint was entered by the Court on October 7, 2016.

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A copy of which is attached hereto.  
DATED this 10<sup>th</sup> day of October, 2016.

**FENNEMORE CRAIG, P.C.**

By: /s/ Brenoch Wirthlin  
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BRENOCH WIRTHLIN, ESQ.  
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*Attorneys for Plaintiff Commissioner of  
Insurance For the State of Nevada*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of Fennemore Craig, P.C. and that on October 10,  
3 2016, service of the foregoing **NOTICE OF ENTRY OF ORDER DENYING DEFENDANT**  
4 **UNI-TER UNDERWRITING MANAGEMENT CORP.'S MOTION TO DISMISS**  
5 **NEGLIGENT MISREPRESENTATION CLAIM OF THIRD AMENDED COMPLAINT**  
6 was made on the following counsel of record and/or parties via the Court's electronic filing  
7 system as follows:

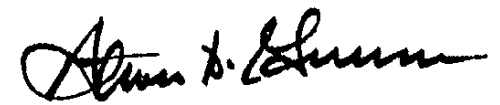
8 George F. Ogilvie III, Esq.  
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*Uni-Ter Underwriting Management Corp.,*  
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*Attorneys for Defendants/Third-Party Plaintiffs*  
*Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut,*  
*Barbara Lumpkin, Jeff Marshall, and Eric Stickels*

21 and by depositing a true and correct of the same via U.S. Mail, postage prepaid addressed as  
22 follows:

23 Jon M. Wilson, Esq.  
24 Broad and Cassel  
25 2 South Biscayne Blvd., 21<sup>st</sup> Floor  
26 Miami, FL 33131  
*Attorneys for Defendants*  
*Uni-Ter Underwriting Management Corp.,*  
*Uni-Ter Claims Services Corp. and U.S. RE Corporation*

27 /s/ Adrina Harris  
28 An employee of Fennemore Craig, P.C.



CLERK OF THE COURT

**ORDR**

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*Attorneys for Plaintiff Commissioner of Insurance*

*For the State of Nevada*

DISTRICT COURT OF NEVADA

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

**ORDER DENYING DEFENDANT UNI-  
TER UNDERWRITING MANAGEMENT  
CORP.'S MOTION TO DISMISS  
NEGLIGENT MISREPRESENTATION  
CLAIM OF THIRD AMENDED  
COMPLAINT**

**Date of Hearing: September 15, 2016**

**Time of Hearing: 10:30 a.m.**

Defendant Uni-Ter Underwriting Management Corp.'s Motion to Dismiss Negligent Misrepresentation Claim of Third Amended Complaint was heard on September 15, 2016. In attendance were George Ogilvie III, Esq. on behalf of U.S. RE Corporation, Uni-Ter Underwriting Management Corp., and Uni-Ter Claims Servicing Corp. and Brenoch Wirthlin, Esq. on behalf of Plaintiff, Commissioner of Insurance for the State of Nevada as Receiver for the Lewis & Clark Risk Retention Group, Inc.

1 The Honorable Nancy Allf presiding, and the Court having heard oral argument, reviewed  
2 the pleadings and papers on file herein including, Plaintiff's opposition and Defendant's reply,  
3 and being fully advised in the premises and for good cause appearing,

4 THE COURT HEREBY ORDERS that Uni-Ter Underwriting Management Corp.'s  
5 Motion to Dismiss Negligent Misrepresentation Claim of Third Amended Complaint is DENIED.

6 DATED this 6 day of September, 2016.

7  
8 Nancy L. Allf  
JUDGE NANCY ALLF DC

9  
10 Submitted by:  
11 FENNEMORE CRAIG, P.C.

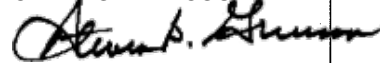
Approved as to Form and Content:  
McDonald Carano Wilson LLP

12  
13 [Signature]  
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Underwriting Management Corp., Uni-Ter  
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Corporation*



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*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

**ROBERT CHUR, STEVE FOGG,  
MARK GARBER, CAROL HARTER,  
ROBERT HURLBUT, BARBARA  
LUMPKIN, JEFF MARSHALL, AND  
ERIC STICKELS' MOTION FOR  
JUDGMENT ON THE PLEADINGS  
PURSUANT TO NRCP 12(c)**

Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara  
Lumpkin, Jeff Marshall, and Eric Stickels by and through their counsel, Lipson Neilson,  
P.C. hereby file their Motion for Judgment on the Pleadings, pursuant to NRCP 12(c).

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///

///


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

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 14<sup>th</sup> day August, 2018.

5 LIPSON NEILSON, P.C.

6 By:

  
7 Joseph P. Garin, Esq. (Bar No. 6653)  
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11 *Attorneys for Defendants/Third-Party*  
12 *Plaintiffs Robert Chur, Steve Fogg,*  
13 *Mark Garber, Carol Harter,*  
14 *Robert Hurlbut, Barbara Lumpkin,*  
15 *Jeff Marshall, and Eric Stickels*

**Lipson Neilson, P.C.**  
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**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 ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, AND ERIC STICKELS' MOTION FOR JUDGMENT ON THE PLEADINGS PURSUANT TO NRCP 12(C) on for hearing before the above-entitled Court, on the 19 day of September, 2018, at the hour of 9:00 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 14<sup>th</sup> day of August, 2018.

LIPSON NEILSON P.C.

By: Angela

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*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**

Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall, and Eric Stickels (collectively, the “Directors”) are former directors of Lewis & Clark, LTC Risk Retention Group, Inc. (“L&C”), a risk retention group for skilled nursing facilities that is now in receivership. Plaintiff is the Commissioner of Insurance for the State of Nevada, as L&C’s Receiver. Plaintiff filed this lawsuit against the Directors for gross negligence and deepening insolvency.

On January 27, 2016, the Directors moved to dismiss Plaintiff’s claims. The Court granted the Directors’ motion, but allowed Plaintiff to file an amended complaint. After Plaintiff filed an amended complaint, the Directors once again moved to dismiss. On September 15, 2016, the Court partially denied the Directors’ motion to dismiss, holding that Nevada’s business judgment rule did not protect against claims of gross negligence (which the Court also held Plaintiff had adequately pled), but that deepening insolvency is not a separate cause of action. The pleadings closed and discovery opened, with one remaining cause of action — a claim against the Directors for gross negligence.

When the Court decided the Directors’ motion to dismiss the amended complaint, the 2003 version of Nevada Revised Statutes (“NRS”) 78.138<sup>1</sup> was in effect and the Supreme Court of Nevada’s 2006 *Shoen* decision (which relied on Delaware case law) was viewed by many as holding that Nevada’s business judgment rule did not apply to claims of gross negligence. See, Plaintiff’s Opposition Brief, filed January 15, 2016.

After the Court decided the Directors’ motion to dismiss the amended complaint, the Nevada Legislature retroactively amended NRS 78.138. This June 2017 amendment makes two things clear. First, directors of a Nevada corporation cannot be personally liable unless they engage in intentional misconduct, fraud or a knowing violation of the law. Second, case law from other jurisdictions, such as the Delaware

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<sup>1</sup> NRS 78.138 is the statutory codification of the “business judgment rule.”



1 case law cited in *Shoen*, cannot supplant or erode the protections of NRS 78.138.

2 The Nevada Legislature has spoken: directors of a Nevada corporation cannot  
3 be personally liable for any conduct short of intentional misconduct, fraud or a knowing  
4 violation of the law. Gross negligence is not intentional misconduct, fraud or a knowing  
5 violation of the law, and the Directors are entitled to judgment on Plaintiff's sole  
6 remaining claim.

## 8 II. PROCEDURAL HISTORY

9 On December 23, 2014, Plaintiff sued the Directors for gross negligence and  
10 deepening insolvency. The Directors moved to dismiss these claims on the bases that  
11 (a) NRS 78.138 required intentional misconduct, fraud or a knowing violation of the law  
12 for personal liability to attach; and (b) deepening insolvency was not a cause of action.  
13 On February 25, 2016, this Court dismissed the gross negligence claim without  
14 prejudice and held that the claim for deepening insolvency was derivative of the claim  
15 for gross negligence and not a separate cause of action.

16 After Plaintiff filed an amended complaint, the Directors once again moved to  
17 dismiss. On September 15, 2016, the Court partially denied Directors' motion to  
18 dismiss, holding that Nevada's business judgment rule did not protect against claims of  
19 gross negligence and that Plaintiff had adequately pleaded a claim for gross negligence.

20 Thereafter, Plaintiff filed a Second Amended Complaint and the operative  
21 complaint, the Third Amended Complaint. On October 21, 2016, the Directors filed their  
22 Answer. The case is set for trial in August 2019.

## 23 III. LEGAL STANDARD

24 Nevada Rule of Civil Procedure Rule 12(c) allows any party to move for  
25 judgment on the pleadings "after the pleadings are closed but within such time as not  
26 to delay the trial." Nev. R. Civ. P. 12(c). Such motions are "designed to provide a  
27 means of disposing of cases when material facts are not in dispute and a judgment on  
28 the merits can be achieved on the content of the pleadings." *Duff v. Lewis*, 114 Nev.

1 564, 568, 958 P.2d 82, 85 (1998) (citing *Bernard v. Rockhill Dev. Co.*, 103 Nev. 132,  
2 135, 734 P.2d 1238, 1241 (1987)).

3 A district court must decide a Rule 12(c) motion based solely on the pleadings.  
4 See *Lovelock Lands v. Lovelock Land & Dev. Co.*, 54 Nev. 1, 7 P.2d 593, 594 (1932).  
5 If matters outside of the pleadings are presented to the court, "the motion shall be  
6 treated as one for summary judgment and disposed of as provided in Rule 56..." Nev.  
7 R. Civ. P. 12(c).

#### 8 IV. MATERIAL FACTS NOT IN DISPUTE

9 1. L&C was a Nevada corporation formed in and around 2003. Third  
10 Amended Complaint, ¶ 30.

11 2. L&C's Articles of Incorporation filed on December 15, 2003 states in  
12 pertinent part that, "[t]he personal liability of the directors of the corporation is hereby  
13 eliminated to the fullest extent permitted by the General Corporation Law of the State  
14 of Nevada, as the same may be amended and supplemented." Articles, attached  
15 hereto as Exhibit A.  
16

#### 17 V. LEGAL ARGUMENT

18 Directors and officers of a Nevada corporation cannot be personally liable for a  
19 breach of fiduciary duty unless the breach involves intentional misconduct, fraud or a  
20 knowing violation of the law. NRS 78.138. Plaintiff does not allege intentional  
21 misconduct, fraud or a knowing violation of the law. Rather, Plaintiff merely alleges the  
22 Directors were grossly negligent in taking or failing to take certain actions as members  
23 of the L&C board. Even if all of Plaintiff's allegations are true (they are not), gross  
24 negligence cannot support a claim for personal liability against the Directors. Therefore,  
25 the Directors are entitled to judgment as a matter of law.

##### 26 1. A Brief Legislative History of NRS 78.138

27 In 2001, Nevada's Legislature decided it wanted to "win business" from  
28 Delaware. To do so, the Legislature provided more protections to directors and officers

1 of Nevada corporations. 2001 Legisl. History for SB 577, pp. 6-8 (Senator James  
2 remarking on Nevada's business laws and offering a substantial additional feature to  
3 make Nevada attractive in limiting liability to breach of fiduciary duty and the breach  
4 arising out of intentional misconduct, fraud or knowing violation of the law) (attached  
5 hereto as Exhibit B).

6 During a May 22, 2001 Committee Meeting, Michael Bonner said he believed  
7 Nevada could be more attractive than Delaware by being more predictable and  
8 enhancing liability protection. *Id.* at pp. 16-17. During a May 25, 2001 Committee  
9 Meeting, the Committee Members of the Senate Committee on Judiciary further  
10 discussed the importance of increasing the protections of directors and officers and also  
11 considered the use of "or" instead of the final version of breach of fiduciary duty "and"  
12 finding of intentional, fraudulent conduct. *Id.* at pp. 131-133. (A lobbyist from the Nevada  
13 Trial Lawyers expressed his concern regarding the use of "or" versus "and.") Ultimately,  
14 the Nevada legislature rejected that consideration and required that personal liability  
15 would only attach when there was a breach of fiduciary duty and intentional or  
16 fraudulent act, giving every potential director or officer a greater sense of predictability.

17 In 2006, the Supreme Court of Nevada decided *Shoen v. SAC Holding Corp.*,  
18 122 Nev. 621, 137 P.3d 1171 (2006). The *Shoen* decision was important for a number  
19 of reasons, but one passage is particularly relevant here: "With regard to the duty of  
20 care, the business judgment rule does not protect the gross negligence of uninformed  
21 directors and officers." *Id.* at 1184. Many interpreted this passage, which cited the  
22 Supreme Court of Delaware's *Aronson* decision for authority, as holding that NRS  
23 78.138 does not protect Nevada directors and officers who were grossly negligent and  
24 breached their fiduciary duties.

25 In June 2017, dissatisfied with the Nevada courts' interpretation and application  
26 of NRS 78.138, the Legislature amended the statute, declaring that:

- 27 1. It is important to the economy of this State, and to domestic corporations,  
28 their directors and officers, and their stockholders, employees, creditors and  
other constituencies, for the laws governing domestic corporations to be clear  
and comprehensible.

- 1 2. The laws of this State govern the incorporation and internal affairs of a
- 2 domestic corporation and the rights, privileges, powers, duties and liabilities, if
- 3 any, of its directors, officers and stockholders.
- 4 3. The plain meaning of the laws enacted by the Legislature in this title,
- 5 including, without limitation, **the fiduciary duties and liability of the**
- 6 **directors and officers of a domestic corporation set forth in NRS 78.138**
- 7 **and 78.139, must not be supplanted or modified by laws or judicial**
- 8 **decisions from any other jurisdiction.**
- 9 4. The directors and officers of a domestic corporation in exercising their duties
- 10 under NRS 78.138 and 78.139, may be informed by the laws and judicial
- 11 decisions of other jurisdiction and the practices observed by business entities
- 12 in any such jurisdiction, but the failure or refusal of a director or officer to
- 13 consider, or to conform the exercise of his or her powers to the laws, judicial
- 14 decisions or practices of another jurisdiction does not constitute or indicate a
- 15 breach of a fiduciary duty. NRS 78.138, attached hereto as Exhibit C.

16 (Emphasis added).

- 17 2. NRS 78.138 precludes monetary claims against directors and officers
- 18 absent intentional/fraudulent acts or a knowing violation of the law.

19 When the language of a statute is plain and its meaning clear, courts must apply

20 the statute as written. *Leven v. Frey*, 123 Nev. 399, 403, 168 P.3d 712, 715 (2007). As

21 amended in 2017, NRS 78.138 could not be clearer:

- 22 1. The fiduciary duties of directors and officers are to exercise their respective
- 23 powers in good faith and with a view to the interests of the corporation.

24 . . .

25 3. Except as otherwise provided in subsection 1 of NRS 78.139, directors

26 and officers, in deciding upon matters of business, are presumed to act in good

27 faith, on an informed basis and with a view to the interests of the corporation. A

28 director or officer is not individually liable for damages as a result of an act or

failure to act in his or her capacity as a director or officer except under

circumstances described in subsection 7.

3. . . .

7. Except as otherwise provided in NRS 35.230, 90.660, 91.250, 452.200,

452.270, 668.045 and 694A.030, or unless the articles of incorporation or an

amendment thereto, **in each case filed on or after October 1, 2003** provided

for greater individual liability, a director or officer is not individually liable to the

corporation or its stockholders or creditors for any damages as a result of any act

or failure to act in his or her capacity as a director or officer unless:

(a) The trier of fact determines that the presumption established by

subsection 3 has been rebutted; **and**

(b) it is proven that:

(1) The director's or officer's act or failure to act constituted a breach of his or her fiduciary duties as a director or officer; **and**

(2) Such breach involved intentional misconduct, fraud or a knowing violation of law.

8. This section applies to all cases, circumstances and matters unless otherwise provided in the articles of incorporation, or an amendment thereto, including, without limitation, any change or potential change in control of the corporation.

(Emphasis added).

In short, NRS 78.138 states that in every case filed after October 1, 2003 (this case was filed in 2014), a Nevada officer or director "is not individually liable ... for a breach of his or her fiduciary duties ... unless ... such breach involved intentional misconduct, fraud or a knowing violation of law." *Id.* The term "gross negligence" is not even mentioned in NRS 78.138.

### 3. NRS 78.138 Applies to Plaintiff's Claim for Gross Negligence

Prior to the 2017 amendment to NRS 78.138, the Directors moved to dismiss Plaintiff's gross negligence claim on the basis that NRS 78.138 requires intentional misconduct, fraud or a knowing violation of the law for personal liability to attach.

The Court declined to dismiss Plaintiff's gross negligence claim, citing to the Supreme Court of Nevada's 2006 *Shoen* decision, which in turn cited Delaware law for the proposition that "the business judgment rule does not protect the gross negligence of uninformed directors." *Id.* at 1184.

Before the June 2017 amendment to NRS 78.138, some debated whether *Shoen* conflicted with the statutory protections afforded under NRS 78.138. With the June 2017 amendment to NRS 78.138, the Nevada Legislature purposefully ended that debate.

Since June 2017, other District courts have also concluded that a Nevada officer or director cannot be personally liable for anything less than fraud. See, e.g., *In re Parametric Sound Corp.*, 2018 WL 1867909 (2018). Similarly, this Court in *In re*

1 *Newport Corp. Shareholder Litigation*, 2018 WL 1475469 (2018), recently applied the  
2 statutory protections of Nevada's business judgment rule as written, and as the  
3 Legislature intended.

4 4. Lewis & Clark's Governing Documents do Not Create a Lower Level of  
5 Liability

6 None of the exceptions to the protections afforded under NRS 78.138 apply here.  
7 NRS 35.230 concerns liability of a corporation's directors when judgment of ouster is  
8 rendered; NRS 90.660 concerns the sale of a security; NRS 91.250 concerns liability of  
9 principals and agents with respect to commodities or investments; NRS 452.220 and  
10 452.270 concerns liability surrounding cemeteries; NRS 668.045 concerns with liability  
11 for bank officers and agents; and NRS 694A.030 has to do with liability for the unfair  
12 use of information. Here, Plaintiff's only claim is that the Directors were grossly  
13 negligent in acting or failing to act as directors of L&C, a risk retention group.

14 Additionally, nothing in L&C's Articles of Incorporation expands director liability.  
15 In fact, the Articles of Incorporation filed on December 15, 2003 do the exact opposite:  
16 "The personal liability of the directors of the corporation is hereby eliminated to the  
17 fullest extent permitted by the General Corporation Law of the State of Nevada, as the  
18 same may be amended and supplemented." Articles, attached hereto as Exhibit A.

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**Lipson Neilson, P.C.**  
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Las Vegas, Nevada 89144  
(702) 382-1500 FAX: (702) 382-1512

**VI. CONCLUSION**

This Court had held that deepening insolvency is not a cause of action and the Nevada Legislature has now confirmed that the Directors cannot be personally liable for allegations of gross negligence. Accordingly, Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall, and Eric Stickels respectfully request the Court grant this motion and enter judgment in their favor.

Dated this 14th day of August, 2018.

LIPSON NEILSON, P.C.

By: 

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Plaintiffs Robert Chur, Steve Fogg,  
Mark Garber, Carol Harter,  
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Jeff Marshall, and Eric Stickels*

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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b) and Administrative Order 14-2, I certify that on the 14<sup>th</sup> day of August, 2018, I electronically transmitted the foregoing **ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, AND ERIC STICKELS' MOTION FOR JUDGMENT ON THE PLEADINGS PURSUANT TO NRCP 12(C)** to the Clerk's Office using the Odyssey E-File & Serve System for filing and transmittal to the following Odyssey E-File & Serve registrants:

**E-Service Master List  
For Case**

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<b>Contact</b>	<b>Email</b>
Terrl Verbrugghen	verbrug@doi.nv.gov

  
\_\_\_\_\_  
Employee of LIPSON NEILSON, P.C.



**EXHIBIT “A”**

**EXHIBIT “A”**



DEAN HELLER  
Secretary of State  
206 North Carson Street  
Carson City, Nevada 89701-4299  
(775) 684 5708  
Website: secretaryofstate.biz

FILED # 031080-2003

DEC 15 2003

IN THE OFFICE OF  
DEAN HELLER, SECRETARY OF STATE

## Articles of Incorporation (PURSUANT TO NRS 78)

Important: Read attached instructions before completing form.

ABOVE SPACE IS FOR OFFICE USE ONLY 156849

<b>1. Name of Corporation:</b>	LEWIS & CLARK LTC RISK RETENTION GROUP INC.		
<b>2. Resident Agent Name and Street Address:</b> <small>(must be a Nevada address where process may be served)</small>	Name: <u>VERNON E. LEVINTY</u> Address: <u>832 WILLOW ST.</u> <u>RENO</u> <u>NEVADA</u> <u>89502</u> Street Address City State Zip Code Optional Mailing Address City State Zip Code		
<b>3. Shares:</b> <small>(number of shares corporation authorized to issue)</small>	Number of shares with par value: <u>1,000,000</u> Par value: \$ <u>1.00</u> Number of shares without par value: _____		
<b>Names &amp; Addresses of Board of Directors/Trustees:</b> <small>(attach additional page if there is more than 3 directors/trustees)</small>	1. <u>JAMES T. LEVINTY</u> Name: <u>832 WILLOW ST.</u> <u>RENO</u> <u>NU</u> <u>89509</u> Street Address City State Zip Code 2. <u>MARK S. GAUBER</u> Name: <u>1077 GARWAY LOOP</u> <u>SPRINGFIELD</u> <u>OR</u> <u>97477</u> Street Address City State Zip Code 3. <u>THOMAS H. GRAY</u> Name: <u>P.O. Box 5128</u> <u>EUGENE</u> <u>WA</u> <u>97406</u> Street Address City State Zip Code		
<b>Purpose:</b> <small>(optional-see instructions)</small>	The purpose of this Corporation shall be: <u>CAPTIVE INSURER</u>		
<b>Names, Address and Signature of Incorporator:</b> <small>(attach additional page if there is more than 1 incorporator)</small>	Name: <u>VERNON E. LEVINTY</u> Address: <u>832 WILLOW ST.</u> <u>RENO</u> <u>NU</u> <u>89502</u> Street Address City State Zip Code		
<b>Certificate of Acceptance of Appointment of Resident Agent:</b>	I hereby accept appointment as Resident Agent for the above named corporation. <u>[Signature]</u> Authorized Signature of R.A. or On Behalf of R.A. Company Date <u>Dec. 15, 2003</u>		

This form must be accompanied by appropriate fees. See attached fee schedule.

Nevada Secretary of State Form 78 ARTICLES 2003  
Revised on: 11/21/03

CONFIDENTIAL

LC-USRE-0214156

APP00620

ARTICLES OF INCORPORATION  
OF  
LEWIS & CLARK LTC RISK RETENTION GROUP, INC.

State of Nevada  
Division of Insurance  
APPROVED

Date December 15, 2003

By [Signature]

We, the persons hereinafter named as incorporators, for the purpose of associating to establish a corporation, under the provisions and subject to the requirements of Title 7, Chapter 78 of Nevada Revised Statutes, and the acts amendatory thereof, and hereinafter sometimes referred to as the General Corporation Law of the State of Nevada, do hereby adopt and make the following Articles of Incorporation:

**FIRST:** The name of the corporation (hereinafter called the corporation) is Lewis & Clark LTC Risk Retention Group, Inc.

**SECOND:** The name of the corporation's resident agent in the State of Nevada is Vernon E. Levery, and the street address of the said resident agent where process may be served on the corporation is Reno Gould House, 832 Willow Street, Reno, Nevada 89502. The mailing address and the street address of the said resident agent are identical.

**THIRD:** The number of shares the corporation is authorized to issue is 1,000,000, all of which are of a par value of \$1.00 dollar each. All of said shares are of one class and are designated as Common Stock.

No holder of any of the shares of any class of the corporation shall be entitled as of right to subscribe for, purchase, or otherwise acquire any shares of any class of the corporation which the corporation proposes to issue or any rights or options which the corporation proposes to grant for the purchase of shares of any class of the corporation or for the purchase of any shares, bonds, securities, or obligations of the corporation which are convertible into or exchangeable for, or which carry any rights, to subscribe for, purchase, or otherwise acquire shares of any class of the corporation; and any and all of such shares, bonds, securities, or obligations of the corporation, whether now or hereafter authorized or created, may be issued, or may be reissued or transferred if the same have been reacquired and have treasury status, and any and all of such rights and options may be granted by the Board of Directors to such persons, firms, corporations, and associations, and for such lawful consideration, and on such terms, as the Board of Directors in its discretion may determine, without first offering the same, or any thereof, to any said holder.

**FOURTH:** The governing board of the corporation shall be styled as a "Board of Directors," and any member of said Board shall be styled as a "Director."

The number of members constituting the first Board of Directors of the corporation is six; and the name and the post office box or street address, either residence or business, of each of said members are as follows:

NAME

James T. Leverty

Mark S. Garber

Thomas H. Gray

Karen S. Hyatt

M. Kathrine Julin

Jeff C. Marshall

ADDRESS

Reno Gould House  
832 Willow Street  
Reno, NV 89502

1077 Gateway Loop  
Suite A  
Springfield, OR 98477

P.O. Box 5128  
Everett, WA 98206

5102 Scenic Drive  
Yakima, WA 98908

16088 N.E. 85th St.  
Redmond, WA 98052

7330 N.E. Bothell Way  
Kenmore, WA 98028

The number of directors of the corporation may be increased or decreased in the manner provided in the Bylaws of the corporation; provided, that the number of directors shall never be less than one. In the interim between elections of directors by stockholders entitled to vote, all vacancies, including vacancies caused by an increase in the number of directors and including vacancies resulting from the removal of directors by the stockholders entitled to vote which are not filled by said stockholders, may be filled by the remaining directors, though less than a quorum.

**FIFTH:** The names and the post office boxes or street addresses, either residence or business, of the incorporators signing these Articles of Incorporation are as follows:

NAME

Jeff C. Marshall

Vernon E. Leverty

William Ginn

ADDRESS

7330 N.E. Bothell Way  
Kenmore, WA 98028

Reno Gould House  
832 Willow St.  
Reno, Nevada 89502

Reno Gould House  
832 Willow St.  
Reno, Nevada 89502

**SIXTH:** The corporation shall have perpetual existence.

**SEVENTH:** The personal liability of the directors of the corporation is hereby eliminated to the fullest extent permitted by the General Corporation Law of the State of Nevada, as the same may be amended and supplemented.

**EIGHTH:** The corporation shall, to the fullest extent permitted by the General Corporation Law of the State of Nevada, as the same may be amended and supplemented, indemnify any and all persons whom it shall have power to indemnify under said Law from and against any and all of the expenses, liabilities, or other matters referred to in or covered by said Law, and the indemnification provided for herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any Bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of such a person.

**NINTH:** The nature of the business of the corporation and the objects or the purposes to be transacted, promoted, or carried on by it are as follows:

To engage in every aspect of the casualty insurance business and risk management business as it relates to long term care facilities, to the extent permitted and in accordance with the Captive Laws of the State of Nevada and The Federal Risk Retention Act of 1986, as amended from time to time.

To such extent as a corporation organized under the General Corporation Law of the State of Nevada may now or hereafter lawfully do, to do, either as principal or agent and either alone or in connection with other corporations, firms, or individuals, all and everything necessary, suitable, convenient, or proper for, or in connection with, or incident to, the accomplishment of any of the purposes or the attainment of any one or more of the objects herein enumerated, or designed directly or indirectly to promote the interests of the corporation or to enhance the value of its properties; and in general to do any and all things and exercise any and all powers, rights, and privileges which a corporation may now or hereafter be organized to do or to exercise under the General Corporation Law of the State of Nevada or under any act amendatory thereof, supplemental thereto, or substituted therefor.

The foregoing provisions of this Article shall be construed both as purposes and powers and each as an independent purpose and power. The foregoing enumeration of specific purposes and powers shall not be held to limit or restrict in any manner the purposes and powers of the corporation, and the purposes and powers herein specified shall, except when otherwise provided in this Article, be in no wise limited or restricted by reference to, or inference from, the terms of any provision of this or any other Article of these Articles of Incorporation; provided, that the corporation shall not carry on any business or exercise any power in any state, territory, or country which under the laws thereof the corporation may not lawfully carry on or exercise.

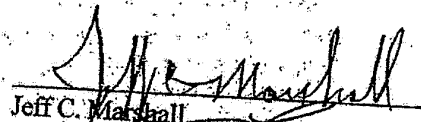
**TENTH:** The corporation reserves the right to amend, alter, change, or repeal any provision contained in these Articles of Incorporation in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

IN WITNESS WHEREOF, we do hereby execute these Articles of Incorporation on the date indicated below.

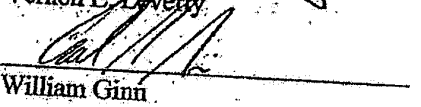
Dated: December 5, 2003

Dated: December 7, 2003

Dated: December 7, 2003

  
Jeff C. Marshall

  
Vernon E. Leverty

  
William Ginn

STATE OF Washington  
COUNTY OF King ) SS:

On this 5th of December, 2003, personally appeared before me, a Notary Public in and for the State and County aforesaid, Jeff C. Marshall, known to me to be the person described in and who executed the foregoing Articles of Incorporation, and who acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned..

WITNESS my hand and official seal, the day and year first above written.

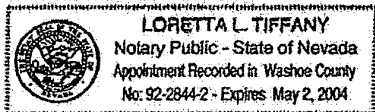
  
Notary Public

(Notarial Seal)

STATE OF )  
 ) SS:  
COUNTY OF )

On this 5<sup>th</sup> day of Dec, 2003, personally appeared before me, a Notary Public in and for the State and County aforesaid, Vernon E. Levery, known to me to be the person described in and who executed the foregoing Articles of Incorporation, and who acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

WITNESS my hand and official seal, the day and year first above written.



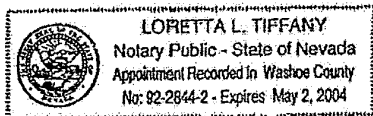
*Loretta L. Tiffany*  
Notary Public

(Notarial Seal)

STATE OF )  
 ) SS:  
COUNTY OF )

On this 8<sup>th</sup> day of Dec, 2003, personally appeared before me, a Notary Public in and for the State and County aforesaid, William Ginn, known to me to be the person described in and who executed the foregoing Articles of Incorporation, and who acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

WITNESS my hand and official seal, the day and year first above written.



*Loretta L. Tiffany*  
Notary Public

(Notarial Seal)

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**EXHIBIT “B”**

**EXHIBIT “B”**



# SB 577 - 2001

**Introduced on May 24, 2001**

By James, Raggio, O'Donnell, Amodei, Rawson, Jacobsen, McGinness,

*Revises statutory liability of corporate stockholders, directors and officers and increases fees for filing certain documents with secretary of state. (BDR 7-1547)*

## **Fiscal Note**

Effect On Local Government: *No.*

Effect on the State: *No.*

<b>Hearings</b>	Senate Judiciary	<u>May-22-2001</u>	Discussed as BDR
	Senate Judiciary	<u>May-24-2001</u>	Discussed as BDR
	Senate Judiciary	<u>May-25-2001</u>	Amend, and do pass as amended
	Senate Finance	<u>May-26-2001</u>	Mentioned No Jurisdiction
	Senate Judiciary	<u>May-26-2001</u>	Rescind
	Senate Judiciary	<u>May-26-2001</u>	Amend, and do pass as amended
	Assembly Judiciary	<u>May-30-2001</u>	No Action
	Assembly Ways and Means	<u>May-31-2001</u>	Mentioned no jurisdiction
	Assembly Judiciary	<u>Jun-01-2001</u>	Amend, and do pass as amended
	Senate Judiciary	<u>Jun-03-2001</u>	Do not concur

## **Bill History**

May 24, 2001 Read first time. Referred to Committee on Judiciary. To printer.  
Waiver granted effective: May 11, 2001

May 25, 2001 From printer. To committee.

✓✓ May 26, 2001 From committee: Amend, and do pass as amended. Declared an emergency measure under the Constitution. Read third time. Amended. (Amend. No. 1079). To printer. From printer. To engrossment. Engrossed, First reprint. Placed on General File. Read third time. Passed, as amended. Title approved, as amended. (Yeas: 18, Nays: 1, Excused: 2). To Assembly.

May 28, 2001 In Assembly. Read first time. Referred to Committee on Judiciary. To committee.

✓ June 02, 2001 From committee: Amend, and do pass as amended. Placed on Second Reading File. Read second time. Amended. (Amend. No. 1172). To printer.

✓✓ June 03, 2001 From printer. To re-engrossment. Re-engrossed. Second reprint. ✓ Read third time. Passed, as amended. Title approved, as amended. (Yeas: 40, Nays: None, Excused: 2). To Senate. In Senate. Assembly Amendment No. 1172 not concurred in. To Assembly.

✓ June 04, 2001 In Assembly. Assembly Amendment No. 1172 not receded from. Conference requested. First Conference Committee appointed by Assembly. To Senate. In Senate. First Conference Committee appointed by Senate. To committee. From committee: Concur in Assembly Amendment No. 1172 and further amend. First Conference report adopted by Senate. First Conference report adopted by Assembly. ✓

June 05, 2001 To printer.

June 11, 2001 From printer. To re-engrossment. Re-engrossed. Third reprint. To enrollment.

June 12, 2001 Enrolled and delivered to Governor.

June 15, 2001 Approved by the Governor. Chapter 601.

Sections 1, 2, 3, 8, 9, 47, 59, 60, 61, 62 and 63 effective June 15, 2001. Sections 5, 6, 12, 13 to 19, inclusive, 20, 21, 22, 25 to 31, inclusive, 35 to 39, inclusive, 41 to 45, inclusive, and 47 to 53, inclusive, effective (a) June 15, 2001 for the purpose of adopting regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of this act; and (b) On August 1, 2001, for all other purposes. Sections 1.5, 4, 7, 8.5, 10, 11, 14, 19.5, 23, 24, 32, 33, 34, 40, 46 and 54 to 58, inclusive, effective: (a) June 15, 2001 for the purpose of adopting regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of this act; and (b) At 12:01 a.m. August 1, 2001, for all other purposes.