

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF
NEVADA, IN AND FOR THE
COUNTY OF CLARK, AND THE
HONORABLE NANCY L. ALLF,
DISTRICT JUDGE, DEPARTMENT
NO. XXVII,

Respondents,

ROBERT CHUR, STEVE FOGG,
MARK GARBER, CAROL HARTER,
ROBERT HURLBUT, BARBARA
LUMPKIN, JEFF MARSHALL, ERIC
STICKELS, UNI-TER UNDER-
WRITING MANAGEMENT CORP.,
UNI-TER CLAIMS SERVICES
CORP., and U.S. RE CORPORATION

Real Parties
in Interest.

) Supreme Court No.

) Electronically Filed
) Dist. Ct. Case. No. Sep 29 2020 10:30 a.m.
) Elizabeth A. Brown
) Clerk of Supreme Court

) **APPENDIX TO PETITION**
) **FOR A WRIT OF MANDAMUS**
) **VOLUME 1 OF 10**

Chronological Index

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3	Opposition to Motion to Dismiss, filed 1/15/2016	1	PA000147-PA000162
4	Transcript re: Directors' Motion to Dismiss, hearing held on 1/27/2016	1	PA000163-PA000171
5	Notice of Entry of Order Granting in Part and Denying in Part Motion to Dismiss, filed 2/26/2016	1	PA000172-PA000177
6	First Amended Complaint, filed 4/1/2016	1	PA000178-PA000696
7	Motion to Dismiss First Amended Complaint, filed 4/18/2016	2	PA000697-PA000723
8	Decision and Order, filed 5/4/2016	2	PA000723-PA000732
9	Opposition to Motion to Dismiss First Amended Complaint, filed 5/5/2016	2	PA000733-PA000820
10	Reply to Motion to Dismiss First Amended Complaint, filed 5/19/2016	2	PA000821-PA000831
11	Second Amended Complaint, filed 6/13/2016	2	PA000832-PA001353
12	Supplemental Motion to Dismiss First Amended Complaint, filed 7/18/2016	2	PA001354-PA001358
13	Third Amended Complaint, filed 8/5/2016	2, 3	PA001359-PA001887

14	U.S. Re Corporation's Answer to Third Amended Complaint, filed 8/12/2016	3	PA001888-PA001903
15	Uni-Ter Claims Services Corp.'s Answer to Third Amended Complaint, filed 8/12/2016	3	PA001904-PA001919
16	Second Supplement to Motion to Dismiss First Amended Complaint, filed 9/2/2016	3	PA001920-PA001923
17	Notice of Entry of Order Denying Motion to Dismiss First Amended Complaint, filed 10/11/2019	3	PA001924-PA001928
18	Answer to Third Amended Complaint [Directors'], filed 10/21/2016	3	PA001929-PA001952
19	Motion for Judgment on the Pleadings, filed 8/14/2018	3, 4	PA001953-PA002232
20	Opposition to Motion for Judgment on the Pleadings, filed 9/19/2018	4, 5	PA002233-PA002584
21	Reply to Motion for Judgment on the Pleadings, filed 10/4/2018	6	PA002585-PA002700
22	Transcript re: hearing held on 10/11/2018 re: all pending motions	6	PA002701-PA002722
23	Order Denying Motion for Judgment on the Pleadings, filed 11/2/2018	6	PA002723-PA002725
24	Motion for Reconsideration, filed 11/29/2018	6	PA002726-PA002744
25	Opposition to Motion for Reconsideration, filed 12/27/2018	6	PA002745-PA002758
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50	Opposition to Motion for Leave to File Fourth Amended Complaint [Unit-Ter], filed 7/17/2020	8	PA003045-PA003072
51	Reply to Motion for Leave to file Fourth Amended Complaint, filed 7/21/2020	8	PA003073-PA003245
52	Transcript re: hearing held on 7/23/2020 re: all pending motions	8	PA003246-PA003273
53	Answer to Third Amended Complaint [U.S. Re Corporation], filed 8/7/2020	9	PA003274-PA003289
54	Amended Answer to Third Amended Complaint [Uni-Ter Underwriting Management Corp.], filed 8/7/2020	9	PA003290-PA003306
55	Amended Answer to Third Amended Complaint [Uni-Ter Claims Services Corp.], filed 8/7/2020	9	PA003307-PA003323
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25	Opposition to Motion for Reconsideration, filed 12/27/2018	6	PA002745-PA002758
62	Opposition to Motion for Stay, filed 9/1/2020	10	PA003626-PA003630
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66	Opposition to Motion to Certify Judgment as Final [Uni-Ter], filed 9/8/2020	10	PA003663-PA003675
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35	Order Granting Motion for Stay, filed 4/4/2019	7	PA002866-PA002868
21	Reply to Motion for Judgment on the Pleadings, filed 10/4/2018	6	PA002585-PA002700
51	Reply to Motion for Leave to file Fourth Amended Complaint, filed 7/21/2020	8	PA003073-PA003245
59	Reply to Motion for Partial Reconsideration, filed 8/25/2020	10	PA003516-PA003525
26	Reply to Motion for Reconsideration, filed 1/4/2019	6	PA002759-PA002772
33	Reply to Motion for Stay Pending Petition, filed 3/13/2019	7	PA002857-PA002863
10	Reply to Motion to Dismiss First Amended Complaint, filed 5/19/2016	2	PA000821-PA000831
38	Response to Motion to Lift Stay, filed 7/10/2019	7	PA002893-PA002897
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12	Supplemental Motion to Dismiss First Amended Complaint, filed 7/18/2016	2	PA001354-PA001358
13	Third Amended Complaint, filed 8/5/2016	2, 3	PA001359-PA001887

4	Transcript re: Directors' Motion to Dismiss, hearing held on 1/27/2016	1	PA000163-PA000171
22	Transcript re: hearing held on 10/11/2018 re: all pending motions	6	PA002701-PA002722
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44	Transcript re: hearing held on 4/10/2020 re: Motion for Clarification	7	PA002941-PA002954
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52	Transcript re: hearing held on 7/23/2020 re: all pending motions	8	PA003246-PA003273
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15	Uni-Ter Claims Services Corp.'s Answer to Third Amended Complaint, filed 8/12/2016	3	PA001904-PA001919

CERTIFICATE OF SERVICE

I certify that I am an employee of HUTCHISON & STEFFEN, LLC and that on this date **APPENDIX TO PETITION FOR A WRIT OF MANDAMUS VOLUME 1 OF 10** was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows:

George F. Ogilvie III, Esq. (3352)
McDonald Carano LLP
2300 West Sahara Ave., Ste. 1200
Las Vegas, NV 89102

Attorney for Uni-Ter Defendants

Angela T. Nakamura Ochoa, Esq.
(10164)
Lipson Neilson
9555 Hillwood Dr., 2nd Floor
Las Vegas, NV 89134

Attorney for Director Defendants

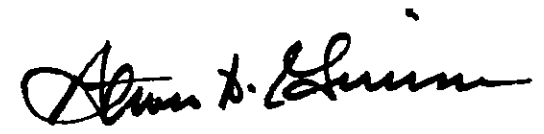
Further, a copy was mailed via U.S. Mail to the following:

The Honorable Nancy Allf
Eighth Judicial District Court
Regional Justice Center
200 Lewis Avenue
Department XXVII
Las Vegas, Nevada 89155

DATED this 28th day of September, 2020.

/s/ Kaylee Conradi

An employee of Hutchison & Steffen, PLLC



CLERK OF THE COURT

COMP
JAMES L. WADHAMS, ESQ.
Nevada Bar No. 1115
KARL L. NIELSON, ESQ.
Nevada Bar No. 5082
BRENOCH WIRTHLIN, ESQ.
Nevada Bar No. 10282
FENNEMORE CRAIG JONES VARGAS
300 South Fourth Street, Suite 1400
Las Vegas, Nevada 89101
Telephone: (702) 692-8000
Facsimile: (702) 692-8099
knilson@fclaw.com; bwirthlin@fclaw.com
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.:

XXVI I

COMPLAINT

[Request for Exemption to be Filed]
[Damages in Excess of \$50,000]

Plaintiff, the Court-appointed receiver ("Plaintiff") of Lewis & Clark LTC Risk Retention Group, Inc. ("L&C"), brings this action against former officers and directors of L&C as well as against L&C's underwriting manager and reinsurance broker and hereby complains and alleges as follows:

1 **PARTIES, JURISDICTION AND VENUE**

2 1. L&C was a Nevada domiciled risk retention group formed in 2004. Between 2004
3 and February 28, 2013, L&C provided general and professional liability coverage to long term
4 care facilities and home health providers.

5 2. The Nevada Division of Insurance (“DOI”) filed a Receivership Action related to
6 L&C in November, 2012, commencing case number A-12-672047-B in the Eighth Judicial
7 District Court of Nevada, in and for the County of Clark (“Receivership Action”). In the
8 Receivership Action, the court entered an Order of Liquidation (“Liquidation Order”) on
9 February 28, 2013. A copy of the Liquidation Order is attached hereto as **Exhibit 1**. In the
10 Liquidation Order, Plaintiff was appointed as the Receiver (“Receiver”) of L&C. *Id.* The express
11 powers granted to Receiver in the Order include the power to “[p]rosecute any action which may
12 exist on behalf of the policyholders, members or shareholders of L&C against any officer of L&C
13 or any other person[.]” *See* Liquidation Order, Exhibit 1, at ¶6(g).

14 3. On information and belief, defendant Robert Chur (“Chur”) was a director of L&C
15 at all relevant times including as of the time the Receivership Action was filed.

16 4. On information and belief, Chur resides in Williamsville, New York.

17 5. On information and belief, Chur was also President of ElderWood Senior Care at
18 relevant times.

19 6. On information and belief, defendant Steve Fogg (“Fogg”) was a director of L&C
20 at all relevant times including as of the time the Receivership Action was filed.

21 7. On information and belief, Fogg resides in Oregon.

22 8. On information and belief, Fogg was also Chief Financial Officer of Marquis
23 Companies at relevant times.

24 9. On information and belief, defendant Mark Garber (“Garber”) was a director of
25 L&C at all relevant times including as of the time the Receivership Action was filed.

26 10. On information and belief, Garber resides in Oregon.

27 11. Garber was also Chief Financial Officer of Pinnacle Healthcare, Inc. (“Pinnacle”)
28 at relevant times.

1 12. On information and belief, defendant Carol Harter (“Harter”) was a director of
2 L&C at all relevant times including as of the time the Receivership Action was filed.

3 13. On information and belief, Harter resides in Las Vegas, Nevada.

4 14. On information and belief, Harter was also a professor at University of Nevada,
5 Las Vegas at relevant times.

6 15. On information and belief, defendant Robert Hurlbut (“Hurlbut”) was a director of
7 L&C at all relevant times including as of the time the Receivership Action was filed.

8 16. On information and belief, Hurlbut resides in New York.

9 17. On information and belief, defendant Barbara Lumpkin (“Lumpkin”) was a
10 director of L&C at all relevant times including as of the time the Receivership Action was filed.

11 18. On information and belief, Lumpkin resides in Florida.

12 19. On information and belief, Lumpkin was also the Associate Executive Director of
13 the Florida Nurses Association at relevant times.

14 20. On information and belief, defendant Jeff Marshall (“Marshall”) was the President
15 and CEO of L&C at all relevant times including as of the time the Receivership Action was filed.

16 21. On information and belief, Marshall resides in Washington.

17 22. On information and belief, Marshall was also President and CEO of Eagle
18 Healthcare, Inc. (“Eagle Healthcare”) at relevant times.

19 23. On information and belief, defendant Eric Stickels (“Stickels”) was the Secretary
20 and Treasurer of L&C at all relevant times including as of the time the Receivership Action was
21 filed.

22 24. On information and belief, Stickels resides in New York.

23 25. On information and belief, Stickels was also Chief Financial Officer of Oneida
24 Savings Bank (“Oneida”) at relevant times.

25 26. On information and belief, U.S. RE Corporation (“U.S. RE”) is a New York
26 corporation and is an international financial services firm with interests in reinsurance brokerage,
27 investment banking, and program business, as well as holdings in the insurance industry.

28 27. On information and belief, defendant Uni-Ter Underwriting Management

Corporation (“Uni-Ter UMC” or “Uni-Ter”) is a Georgia corporation and is a wholly owned subsidiary of U.S. RE Corporation.

28. On information and belief, Uni-Ter Claims Services Corp. (“Uni-Ter CS”) is a Georgia corporation and is a wholly owned subsidiary of Uni-Ter UMC.

29. On information and belief, Defendants DOE INDIVIDUALS 1 through 50 and ROE COMPANIES 51 through 100 are individuals or business entities currently unknown to Plaintiff who claim some right, title, interest or lien in the subject matter of this action. When the names of said DOE INDIVIDUALS and ROE COMPANIES have been ascertained, Plaintiff will request leave to substitute their true names and capacities and join them in this action.

GENERAL ALLEGATIONS

A. Introduction

30. L&C was a Nevada corporation formed in or around 2003. L& C was organized as a risk retention group to write Professional and General Liability coverage for long-term care facilities in the Pacific Northwest.

31. L&C expanded its area of operation over the years and, at the time of Receivership Action in 2012, wrote coverage for long term care facilities in 46 states, although New York, California, Oregon, and Washington accounted for a majority of the premiums.

32. The individual defendants include the directors and officers of L&C at the relevant times who, among other things, were grossly negligent in performing their duties as directors and officers of L&C which resulted the Receivership Action being filed.

33. Defendants Uni-Ter UMC and Uni-Ter CS were retained as a manager of L&C. Defendant U.S. RE was retained to provide reinsurance to L&C.

B. Acquisitions and Growth of L&C

34. During calendar year 2005, L&C acquired Henry Hudson LTC Risk Retention Group, Inc. (“Henry Hudson”) which wrote exclusively in New York. L&C assumed all outstanding liabilities of Henry Hudson.

35. L&C acquired Sophia Palmer Nurses Risk Retention Group (“Sophia Palmer”) in 2009. Sophia Palmer wrote general and professional liability policies to nurses mostly in Florida.

1 L&C assumed all outstanding liabilities of Sophia Palmer.

2 36. By the time it was placed in receivership, L&C had issued approximately 25,254
3 shares of common stock. Its directors and officers held approximately 11,720 shares. The largest
4 shareholders were Pinnacle with approximately 3663 shares and Eagle Healthcare with
5 approximately 4041 shares.

6 37. L&C was managed by Uni-Ter UMC at all times. Uni-Ter UMC also did other
7 work including private offering work on behalf of L&C such as sending out the offering
8 memoranda and offering documents on behalf of the company.

9 **C. Agreements with the Uni-Ter Entities and Brokers**

10 38. The Uni-Ter entities hold themselves out as a leading provider of liability
11 insurance to the healthcare industry.

12 39. Uni-Ter UMC has created at least five Risk Retention Groups which include L&C,
13 Ponce de Leon LTC RRG, Inc., and J.M. Woodworth RRG, Inc.

14 40. As a Managing General Underwriter, Uni-Ter's services to L&C included
15 administration, underwriting, risk management, claims, and regulatory compliance.

16 **(1) Management Agreements**

17 41. Immediately upon formation of L&C by Uni-Ter UMC, L&C entered into
18 management agreements with Uni-Ter UMC. In 2011, Uni-Ter entered into a new management
19 agreement with Uni-Ter UMC and Uni-Ter CS.

20 a. **2004 Management Agreement**

21 42. L&C and Uni-Ter UMC entered into a Management Agreement dated January 1,
22 2004 ("2004 Management Agreement") for a period of seven years. A copy of the 2004
23 Management Agreement is attached hereto as **Exhibit 2**.

24 43. In the agreement, L&C appointed Uni-Ter UMC as its exclusive underwriting,
25 administrative, accounting, risk management, and claims manager for the lines of business and
26 territories set forth in Exhibit A to that agreement.

27 44. The 2004 Management Agreement states that Uni-Ter UMC would "serve L&C in
28 a fiduciary capacity for all legal duties." See Exhibit 2 hereto.

1 45. Uni-Ter UMC's duties under the 2004 Management Agreement expressly included
2 the following: (i) Soliciting of risks and class of risks that meet L&C's underwriting and pricing
3 standards, appointing qualified brokers and agents to sell the insurance, (ii) binding of risks, (iii)
4 issuance, renewal, and cancellation of policies, (iv) collection of premiums, (v) handling of
5 claims, (vi) keeping accurate records and having audits done, (vii) maintaining electronic files,
6 (viii) providing the usual and customary services to insureds, (ix) ensuring compliance with state
7 and federal regulations, (x) determining and setting appropriate premium rates, (xi) compiling and
8 providing the needed statistical reports to L&C, (xii) holding all of L&C's assets in investment
9 custodian accounts as a fiduciary, (xiii) determining and obtaining appropriate reinsurance
10 authorized by L&C, (xiv) safeguarding and maintaining L&C property, and (xv) accounting to
11 L&C for certain financial and insurance information on a monthly basis (including operating
12 statement, balance sheet, policies written for the month, claims incurred for the month, AR
13 summary, and summary of all claims, reserves, and losses. *See* 2004 Management Agreement,
14 Exhibit 2, at Article III.

15 46. Uni-Ter's duties also specifically included "[t]o arrange for or perform risk
16 management services for the benefit of the insureds of L&C. Such risk management shall have
17 the primary goal of reducing the frequency of medical incidents that give rise to policy claims.
18 Specific risk management duties are set forth in Exhibit C." *Id.* Art. III(R).

19 47. Uni-Ter's duties also included filing quarterly and annual financial statements with
20 the Nevada DOI and other states requiring the same. *Id.* Art. III(H)(2).

21 48. The 2004 Management Agreement also included Exhibit B entitled Claims
22 Management Authority which stated that Uni-Ter UMC "shall handle all aspects of claim
23 processing . . . for all claims and allocated loss adjustment expenses subject to this Agreement."
24 The Exhibit then lists specific claims handling duties of Uni-Ter including monthly reporting of
25 new claims, open reserves, paid claims, and ending reserve balance for both indemnity and
26 expense activity. *See* Exhibit 2 hereto.

27 49. Regarding compensation, Uni-Ter was paid in three components.

28 (i) A management fee of 22% of gross written premiums net of cancellations

1 and non renewals up to \$5 million, 20% between \$5 million and \$15
2 million, and 17.5% above \$15 million. Management fees were to be paid
3 monthly.

4 (ii) Claims handling fees of \$250 per file setup for each claim or investigation,
5 \$95 per hour for claim adjuster/nurse professional time, and actual travel
6 expenses.

7 (iii) A profit sharing bonus on a sliding scale as a percent of earned premiums
8 based on loss ratio for each calendar year. The profit sharing bonus was to
9 be paid no later than March 1 of the year following the fifth year after the
10 year at issue.

11 *See id.*

12 50. The 2004 Management Agreement included amendments that modified these
13 payment terms. *Id.*

14 51. The Second Amendment to the 2004 Management Agreement states that for all
15 services under the 2004 Management Agreement other than claims handling, the management fee
16 will be 12% of annual gross written premiums net of cancellations and non-renewals plus the
17 amount of agency commissions (at rates approved by L&C) payable to retail and wholesale
18 agents appointed by Uni-Ter. *Id.*

19 52. Various amendments raised the hourly rate for claim adjuster/professional time.
20 *Id.*

21 53. The Fifth Amendment to the 2004 Management Agreement modified the profit
22 sharing bonus provision to be paid on March 1 of the year following the fourth year after the year
23 at issue. *Id.*

24 54. Following L&C's acquisition in 2009 of the Sophia Palmer nurse/nurse
25 practitioner book of business in Florida, the Seventh Amendment stated that the existing profit
26 sharing terms were applicable to L&C's long term care facility/home health care book of
27 business, but that regarding L&C's nurse/nurse practitioner book of business produced by agents,
28 the profit sharing bonus (called "commissions") were to be paid at a rate of 37.5% of the annual

1 gross written premiums net of cancellations and non-renewals. For nurse/nurse practitioner
2 business produced by Uni-Ter UMC, the commission rate was to be 30.0%.

3 55. The Eighth Amendment to the 2004 Management Agreement stated that
4 management fees were to be paid to Uni-Ter UMC on a continuing basis as premiums are
5 collected or adjusted (as opposed to monthly previously). *Id.*

6 b. 2011 Management Agreement

7 56. At the expiration of the 2004 Management Agreement, L&C and Uni-Ter UMC
8 (and Uni-Ter's subsidiary Uni-Ter CS) entered into a similar Management Agreement on January
9 1, 2011 ("2011 Management Agreement") for a period of five years. A copy of the 2011
10 Management Agreement is attached hereto as **Exhibit 3**.

11 57. The 2011 Management Agreement was in place when the Order of Liquidation
12 was entered.

13 58. The 2011 Management Agreement states that Uni-Ter UMC and Uni-Ter CS as
14 Manager would "serve L&C in a fiduciary capacity for all legal duties." It sets forth similar
15 duties for Uni-Ter as under the 2004 agreement. The management fee and claims handling fees
16 portion of the compensation are the same as the amended compensation under the 2004
17 agreement.

18 59. The 2011 Management Agreements included the following revisions to the 2004
19 Management Agreement:

- 20 (i) The accounting reporting to L&C is to be done on a quarterly basis instead
21 of monthly. Art. III(H).
- 22 (ii) Exhibit A was revised regarding the territory to include all of the U.S.
23 except for Hawaii and Alaska and excluding long term care and home
24 healthcare in Florida.
- 25 (iii) The limitations of Uni-Ter's authority in Article III(Y) are revised to delete
26 the limitations set forth in items 2, 6, and 9 of the 2004 agreement. Uni-
27 Ter's new allowed duties (i.e., no longer a limitation) included that it had
28 full authority to settle claims on L&C's behalf or commit L&C to pay

1 claims.

2 (iv) The profit sharing bonus provision was revised to apply from 2007 forward
3 with 2006 being the last year under the 2004 Management Agreement. For
4 2007 onward, the profit sharing bonus was to be 20% of L&C's Profit as
5 defined to be pre-tax net income as adjusted for the applicable year's loss
6 ratio, ALAE ratio, and reinsurance payables and receivables through
7 December 31 of the fourth year following the applicable year.

8 60. The First Amendment to the 2011 Management Agreement revised the
9 management fee for calendar year 2011 to be at a rate of 10% instead of 12% and stated that
10 continuation of the 2% differential for subsequent periods is subject to mutual agreement of the
11 parties. A handwritten notation on the amendment states that "This was revised on February 7th,
12 2011."

13 61. The Second Amendment is dated November 15, 2011 in conjunction with
14 additional capital contributions at that time. It states that for so long as any amounts are unpaid
15 on the surplus debentures of L&C issued in 2011 and 2012, the profit sharing bonus payable to
16 Uni-Ter UMC shall accrue but not be paid.

17 62. The Third Amendment done on December 31, 2011 states that no profit sharing
18 bonus would accrue or be paid regarding the 2008 calendar year.

19 63. Milliman, Inc. ("Milliman"), an actuarial firm, provided Rate and Loss Reserve
20 analysis to Uni-Ter ("Milliman Reports"). Milliman was engaged by Uni-Ter, and not L&C, in
21 the work that it did. Milliman did premium rate and professional liability and general liability
22 rate analysis for Uni-Ter. Milliman also did loss reserve analysis for Uni-Ter.

23 (2) U.S. RE Agreement

24 64. In a Broker of Record Letter Agreement between L&C and U.S. RE, L&C
25 appointed U.S. RE as its exclusive reinsurance intermediary/broker for a period of seven years
26 and granted U.S. RE full and complete authority to negotiate the placement of reinsurance on all
27 classes of insurance with unspecified limits of coverage as requested by any underwriter of L&C,
28 *i.e.*, Uni-Ter ("U.S. RE Agreement"). A copy of the U.S. RE Agreement is attached hereto as

Exhibit 4.

65. The U.S. RE Agreement states that U.S. RE will handle all funds collected for L&C in a fiduciary capacity. *See* Exhibit 4.

66. In each of the eleven (11) ceded reinsurance agreements between L&C and its reinsurers, U.S. RE is listed as the reinsurance intermediary in each agreement via an intermediary clause in the reinsurance agreements.

(3) Reinsurance Contracts

67. U.S. RE, acting as L&C's intermediary broker, procured the following general reinsurance treaties. Certain terms of such treaties are noted below the treaty name.

- (i) April 1, 2004 to December 31, 2004 Treaty (Commuted).
- (ii) January 1, 2005-December 31, 2006 Treaty.
 - Applicable to \$750,000 excess of \$250,000 per claim
 - Aggregate limit is lesser of \$3,500,000 or 225% of ceded premium.
 - Ceded premium is 25% of gross net written premium income (GNWPI)
- (iii) January 1, 2007-December 31, 2007 Treaty (Commuted in early 2008)
 - Applicable to \$750,000 excess of \$250,000 per claim
 - Deductible is 22% of GNWPI.
 - Aggregate limit is 300% of ceded premium.
 - Ceded premium is 20% of GNWPI.
- (iv) July 1, 2005-December 31, 2006 Treaty.
 - Applicable to \$1,000,000 excess of \$1,000,000 per claim
 - Aggregate limit is \$3,000,000 or 300% of ceded premium.
 - Ceded premium is 100% of gross premiums for policies with limits greater than \$1,000,000 per claim.
- (v) January 1, 2008-March 31, 2009 Treaty.
 - Applicable to \$650,000 excess of \$350,000 per claim
 - Deductible is greater of 13% of GNWPI or \$1,274,000.
 - Aggregate limit is 300% of ceded premium.
 - Ceded premium is 17.08% of GNWPI for all policies subject to a minimum of \$1,575,000.
- (vi) April 1, 2009-March 31, 2010 Treaty.
 - Applicable to \$650,000 excess of \$350,000 per claim
 - Deductible is greater of 11% of GNWPI or \$1,100,000.
 - Aggregate limit is 300% of ceded premium.

- 1 - Ceded premium is 17.93% of GNWPI for all policies
2 subject to a minimum of \$1,613,700.
- 3 (vii) April 1, 2010-May 31, 2011 Treaty.
4 - Applicable to \$650,000 excess of \$350,000 per claim
5 - Deductible is greater of 11% of GNWPI or \$1,220,000.
6 - Aggregate limit is 300% of ceded premium.
7 - Ceded premium is 17.00% of GNWPI for all policies
8 subject to a minimum of \$1,890,000.
- 9 (viii) December 1, 2009-May 31, 2011 Treaty.
10 - L&C cedes 75% of losses in reinsured layer and retains 25%
11 - Applicable to \$1,000,000 excess of \$1,000,000 per claim
12 - Aggregate limit is greater of \$3,000,000 or 300% of ceded
13 premium.
14 - Ceded premium is 100% of net excess premiums (gross
15 premiums less 20%) for policies with limits greater than
16 \$1,000,000 per claim
- 17 (ix) June 1, 2011-May 31, 2012 Treaty.
18 - Applicable to \$650,000 excess of \$350,000 per claim
19 - Deductible is greater of 18.5% of GNWPI or \$1,300,000.
20 - Aggregate limit is 300% of ceded premium.
21 - Ceded premium is 17.00% of GNWPI for all policies
22 subject to a minimum of \$1,190,000.
- 23 (x) June 1, 2011-May 31, 2012 Treaty.
24 - L&C cedes 75% of losses in reinsured layer and retains 25%
25 - Applicable to \$1,000,000 excess of \$1,000,000 per claim
26 - Aggregate limit is \$1,500,000
27 - Ceded premium is 100% of net excess premiums (gross
28 premiums less 20%) for policies with limits greater than
\$1,000,000 per claim
- (xi) June 1, 2012-May 31, 2013 Treaty.
- Applicable to \$650,000 excess of \$350,00 per claim
Aggregate limit is 300% of ceded premium.

C. *L&C Board Meeting Minutes*

68. On information and belief, the Defendants who were directors and officers of L&C met generally once per quarter starting in late 2004 and continuing to September 2012 related to L&C. Minutes of said meetings were kept by L&C ("Minutes").¹

¹ L&C's Minutes are too voluminous to attach and may evidence and/or pertain to certain facts or breaches alleged herein.

1 69. On information and belief, because Uni-Ter UMC was managing all of the
2 business aspects of L&C's business, Mr. Sanford Elsass ("Elsass"), President of Uni-Ter UMC
3 and an officer of U.S. RE at all relevant times, attended all of the L&C Board meetings in person
4 except for the last two. On information and belief, Elsass and other Uni-Ter employees gave
5 most of the reports about the company to the Board members.

6 70. On information and belief, many of the approvals and actions of the Board were
7 done at the recommendation of Mr. Elsass.

8 71. On information and belief, the Minutes also do not mention the monthly reports
9 that Uni-Ter UMC was supposed to provide to L&C in the 2004 Management Agreement or the
10 quarterly reports that Uni-Ter UMC was supposed to provide to L&C in the 2011 Management
11 Agreement. The Minutes do reference annual and quarterly financial results and there are
12 discussions of the claims and underwriting activities for each quarter, but no mention of the
13 reports required by the 2004 and 2011 Management Agreements.

14 72. Item 13 in the March 9, 2005 Minutes states that the Board requested that Uni-Ter
15 provide financial information to the Board monthly. On information and belief, Uni-Ter already
16 had the obligation to provide the information listed in the 2004 Management Agreement to the
17 Board monthly.

18 73. Item 10 from the August 12, 2005 Minutes which state that the Board is unhappy
19 with the work of Uni-Ter. The Minutes state that the Board was concerned regarding the lack of
20 completion by Uni-Ter regarding marketing plans presented at the March 2005 meeting,
21 including non-receipt of periodic marketing reports, lack of contract with state associations and
22 potential new agents, and generally, a lack of production of new business during 2005.

23 74. One of the resolutions in L&C's first set of Minutes of December 22, 2003 approves the
24 engagement between L&C and U.S. RE to engage U.S. RE as the exclusive reinsurance broker and
25 consultant for L&C. The resolution states that confirmation was received from Elsass as an officer of U.S.
26 RE that U.S. RE would use its best efforts to obtain competitive rates and terms.

27 75. On information and belief, Uni-Ter undertook the fiduciary duty of determining
28 and establishing the appropriate loss reserves for the company. Item 3 in the September 14, 2005

1 Minutes says that Elsass reported on establishing the appropriate loss reserves for the company.

2 76. On information and belief, the Board's Audit Committee ("Audit Committee")
3 was established at the February 10, 2006 meeting of the Board. On information and belief, the
4 relevant Minutes contain no discussion of why this was not done previously or why it was needed
5 at that juncture.

6 77. On information and belief, the Audit Committee generally reviewed and approved
7 L&C's financial audits. On information and belief, there are no entries stating that the Audit
8 Committee performed any auditing functions other than review of financial audits.

9 78. The May 30, 2006 Minutes state that L&C's D&O insurance was renewed, but that
10 L&C's E&O insurance was not renewed.

11 79. On information and belief, L&C subsequently obtained E&O insurance.

12 80. Item 3 of the October 30, 2006 Minutes states that the Board directed Donna
13 Dalton of Uni-Ter and L&C's counsel to comment to the Nevada DOI regarding issues including
14 loss reserves and Risk Retention Act requirements.

15 81. Item 9 of the March 23, 2007 Minutes references the Nevada DOI triennial
16 examination report for 2003 to 2005, but does not state any findings related to the report or what
17 corrective actions, if any, the Board would take.

18 82. The October 12, 2007 Minutes reference an incurred but not reported ("IBNR")
19 reduction of \$934,000 but do not explain it or why the reduction occurred. The October 12, 2007
20 Minutes also state that L&C was beginning to offer occurrence policies subject to required
21 regulatory filings, but do not discuss the required regulatory filings.

22 83. The January 10, 2008 Minutes state that there will be commutation of the 2007
23 reinsurance with Imagine RE, and note the change that Uni-Ter will begin a retail policy sales
24 agency to improve on the disappointing efforts by the "current agency network." The entry notes
25 that Uni-Ter will be paid commissions on L&C's retail policy business at 10% of gross written
26 premiums rather than 15% of gross written premiums. The Minutes do not say which contract
27 Uni-Ter would provide such services under. The 2004 Management Agreement required
28 solicitation services by Uni-Ter. This same item mentions that Uni-Ter requested an

1 advancement of half of L&C's 2008 annual budget for Uni-Ter for "this effort" with such
2 advancement repayable from commissions earned by Uni-Ter.

3 84. Item 13 in the April 24, 2008 Minutes references insolvency gap coverage of \$1
4 million. Then, item 11 of the December 2, 2009 Minutes notes a renewal of insolvency gap
5 coverage in the amount of \$2 million.

6 85. Item 4 in the December 10, 2008 Minutes notes that, based on a request from the
7 Nevada DOI, the Board ratified clarification amendments to the Oneida surplus notes.

8 86. Item 6 of the December 2, 2009 Minutes notes a report on the current triennial
9 examination by the Nevada DOI but does not state any more regarding said examination.

10 87. Item 5 of the May 21, 2010 Minutes references the Board's review of results of the
11 Nevada DOI triennial examination and approval of responses to the DOI. The Minutes do not
12 explain or discuss the responses or any corrective actions that the Board may take. Those
13 Minutes also approved the 2009 annual audited statements and report prepared by Johnson
14 Lambert & Co. as well as the 2009 Milliman Report and calculation of "Profit Sharing bonuses."

15 88. The November 2010 Minutes contain discussion of renewal of L&C's
16 Management Agreement with Uni-Ter subject to noted revisions including a requirement of
17 clarification of significant claims notice to the Board with settlement authority remaining with
18 Uni-Ter.

19 89. The May 4-5, 2011 Minutes approved the 2010 annual audited statements and
20 report prepared by L&C's auditors, Johnson Lambert & Co.

21 90. The September 21, 2011 Minutes contain in Item 7 a statement that the Board
22 reviewed and approved a new underwriting philosophy. The Minutes do not say what the new
23 underwriting philosophy was. However, a document dated 8/31/11 and entitled "Long Term Care
24 Underwriting Philosophy & Strategic Direction" was part of the directors' package for that
25 meeting. The document lists specific requirements related to consideration of long term care
26 facilities for coverage.

27 91. On October 5, 2011 the Board held a special meeting and approved capital
28 contributions by shareholders Oneida, Eagle Healthcare, Pinnacle, Marquis, Elderwood, Rohm,

1 and Uni-Ter in exchange for surplus notes. The Minutes also noted that depending on the fourth
2 quarter, the same parties other than Oneida would commit to an additional amount of \$550,000 in
3 the fourth quarter of 2011 and first quarter of 2012 as the stated proportions (with Uni-Ter having
4 20/55 or 4/11 responsibility). The Minutes also noted approval of the new underwriting
5 philosophy. Finally, the Board requested more frequent financial reports by Uni-Ter, preferably
6 monthly.

7 92. Even with the bad financial news in early October, 2011, the Board did not meet
8 again until December 20, 2011, over two and a half months later. At that meeting, Uni-Ter
9 reported that claims reserves may have increased by \$5 million from the November 2011 figures,
10 i.e., in one month.

11 93. On information or belief, in or around the latter part of 2011, William Fishlinger
12 (“Fishlinger”) was retained to provide claims review for L&C. Item 3 in the December 28, 2011
13 Minutes states that the Board was advised regarding the schedule for Fishlinger’s claims review
14 commencing in the first full week of January 2012. Item 4 of those Minutes states that Uni-Ter’s
15 pro forma December 31, 2011 financials indicate that L&C is neither impaired nor insolvent and
16 pending receipt of the Fishlinger review, Uni-Ter should process the current renewals. The
17 Minutes also note that the Board’s claims committee should have a conference call with
18 Fishlinger about his work and conclusions before the work is done to finalize his written report.

19 94. At the January 16, 2012 meeting, the Board was told that capital and surplus was
20 \$1,979,730 as of December 31, 2011. Thus, L&C’s surplus dropped over \$2.5 million in one
21 year.

22 95. On information and belief, the Minutes do not reflect any discussion of how that
23 relates to the approximate \$5 million additional loss reserves noted at the December 20, 2011
24 meeting.

25 96. On information and belief, L&C’s Nevada counsel was instructed to contact
26 Nevada DOI regarding “current inquiry.” The Minutes do not say what the current inquiry was.

27 97. The January 26, 2012 Minutes state in Item 2 that L&C’s Nevada counsel reported
28 on her conversations with the Nevada DOI. The Minutes do not include the substance of those

1 discussions. Item 3 states that the Board deferred approval of commutation of reinsurance for
2 years 2005, 2006, 2008, and 2009 pending receipt from Uni-Ter of a report regarding outstanding
3 claims for such periods. Item 5 states that the Board met in executive session to discuss issues
4 involving potential additional capital.

5 98. At the February 2, 2012 meeting, the Board approved \$480,000 additional capital
6 contributions in exchange for subordinated surplus notes on the same terms used in the fall of
7 2011. On information and belief, Elsass reported to the Board “regarding recent favorable claims
8 activity.” The Minutes do not say what the alleged favorable claims activity was.

9 99. Notwithstanding the financial issues, the Board did not meet again until April 30,
10 2012, almost three (3) months later. At the April 30, 2012 meeting, Item 1 provides that L&C’s
11 submissions to the Nevada DOI were approved, but do not explain what the submissions were.

12 100. There is no mention in the April 30, 2012 Minutes of the Milliman Report from
13 April 12, 2012 stating that, as of the end of 2011, the company’s loss reserves were \$1.4 million
14 under what they need to be when using the mid-range number.

15 101. Item 5 of the May 14, 2012 Minutes state that a Nevada DOI examination was
16 scheduled, but do not explain this matter further.

17 102. On information and belief, the Board did not meet for another two and a half (2
18 ½) months regarding the financial conditions of L&C. The Board met telephonically on June 6,
19 2012, but the only business noted was the approval of reinsurance. There is no entry regarding a
20 discussion of the financial status of L&C.

21 103. At the July 25, 2012 meeting, Uni-Ter and U.S. RE presented a report of second
22 quarter financial results in which a significant increase in loss reserves was reported. The Board
23 then discussed possible courses of action. The Board requested that Uni-Ter contact Fishlinger to
24 conduct an independent roll forward of its last claims reserve review preferably by August 7,
25 2012. The Board also resolved that the preliminary second quarter results not be filed until the
26 Fishlinger review is done and that the results should be approved by the Board before filing.
27 Finally, the Minutes noted that no new business should be written by L&C and no capital raised
28 until further notice, but that renewals may be processed until notice otherwise.

1 104. The August 15, 2012 was the last meeting Elsass and Uni-Ter or U.S. RE attended.
2 At that meeting, the Board discussed the filing with the Nevada DOI of financial information with
3 notice of further deterioration of L&C's finances.

4 105. At the August 22, 2012 meeting, L&C's counsel reported on recent discussions
5 with Uni-Ter and U.S. RE. Uni-Ter personnel were not present at the meeting.

6 106. At the September 24, 2012 meeting, the Board resolved that "a request be made to
7 the Nevada Division [sic] of Insurance that the Corporation be placed in rehabilitation, in view of
8 the fact that the Corporation is or may be insolvent."

9 **D. Information Available to the Officers and Directors**

10 107. On information and belief, substantial financial information regarding L&C was
11 available to the officers and directors of L&C.

12 108. On information and belief, among this available information was the Annual
13 Statement of L&C for the year ending December 31, 2006, which was submitted to the Nevada
14 DOI contains L&C's financial statement for 2006. The Notes to Financial Statements (pages 14-
15 14.3) include the reinsurance in place (note 23) as well as the change of incurred losses and LAE
16 (note 25). The Quarterly Statement for L&C for the first quarter of 2007 has similar notes.

17 109. Sophia Palmer 2007 board Minutes were very similar to L&C board Minutes. On
18 information and belief, Uni-Ter was the underwriter for Sophia Palmer as well.

19 110. L&C's Internal Unaudited Financial Statements as of December 31, 2007 states
20 that unpaid losses and loss expenses were \$578,000 in 2004, \$1,142,000 in 2005, \$2,636,000 in
21 2006, and \$3,013,000 in 2007. This is a growth of over 500% in only four (4) years.

22 111. On information and belief, Uni-Ter's management fees grew from nothing in
23 2004, to \$120,000 in 2005, to \$126,000 in 2006, to \$760,000 in 2007. Between 2005 and 2007,
24 this is a growth of 633% in three years.

25 112. On information and belief, the information provided to the directors of L&C for
26 the April 2008 and May 2010 Board meetings included the following financial information for
27 L&C across the years of 2004 to 2009:

28 ///

Policy Year	Written Premium	Earned Premium	Paid Losses	Reserves	Totals Incurred	Loss Ratio
2004	\$1,344,358	\$1,344,358	\$223,232	\$---	\$208,232	15.49%
2005	\$3,124,474	\$3,124,474	\$745,466	\$80,720	\$782,438	24.23%
2006	\$5,821,739	\$5,821,739	\$1,311,965	\$477,775	\$1,751,740	30.64%
2007	\$5,958,904	\$4,184,641	\$1,555,249	\$1,621,520	\$3,111,769	52.38%
2008	\$8,340,000	\$5,203,834	\$1,211,943	\$3,941,000	\$1,687,006	34.77%
2009	\$10,705,229	\$7,792,504	\$1,545,000	\$6,255,488	\$3,947,463	50.66% with Sophia Palmer being 80.96%

113. Further, L&C's Summary Balance Sheet as of December 31, 2008 states that while unpaid losses and loss expenses grew from \$3,013,000 to \$3,941,000 between 2007 and 2008, Uni-Ter's management fees went from \$760,312 in 2007 to \$1,372,915 in 2008.

114. L&C's Internal Unaudited Financial Statements as of December 31, 2009 state that unpaid losses and loss expenses jumped to \$6,255,488 in 2009 from \$3,941,000 in 2008. Uni-Ter's management fees jumped to \$1,717,482 for 2009 from \$1,372,915 in 2008.

115. The 2009 Milliman Report states that the existing risk factors, "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." The Milliman Report concludes that L&C's actual net outstanding losses and loss adjustment expense ("LAE") exceed L&C's reserves for unpaid losses (\$5,021,810) and unpaid LAE (\$1,233,678) by an amount of more than 5% of L&C's statutory surplus shown on the annual statement, which was \$4,031,349. The Milliman Report also states that this materiality standard was selected based on the fact that his opinion was prepared for regulatory review.

116. On information and belief, the information provided to the directors of L&C for the May 2010 Board meeting state that Sophia Palmer merged with L&C as of December 3, 2009, and that the written premiums were \$8,340,000 for 2008 and \$10,705,000 for 2009.

117. On information and belief, in or around October 2010, Elsass, Larry Shatoff at U.S. RE, Donna Dalton, John Klaus at Uni-Ter, Curtis Sitterson at Stearns Weaver, and Jim Murphy at the accounting firm Johnson Lambert & Co., through email correspondence, made the decision to record the twenty-five percent (25%) refund payment, in the amount of \$569,600,

1 from the commutation of the January 1, 2008 to April 1, 2009 reinsurance treaty.

2 118. On information and belief, Mr. Shatoff stated in said email correspondence that the
3 April 1, 2004 to December 31, 2004 treaty was commuted, the January 1, 2007 to December 31,
4 2007 treaty was commuted, and the January 1, 2005 to December 31, 2006 treaty was “swing
5 rated” and had been adjusted to the minimum premium. Regarding the January 1, 2008 to April
6 1, 2009 reinsurance treaty, Mr. Shatoff said that it covers all claims reported on occurrence
7 policies up to April 1, 2012. Mr. Shatoff further stated that L&C was subject to a 13% aggregate
8 deductible for an amount of \$1,690,673, and that L&C had paid reinsurance premiums of
9 \$2,278,400, which at a 25% refund rate would result in a refund of \$569,600 if no claims were
10 paid by the reinsurers. Further, Mr. Shatoff’s communications state that there had been no losses
11 reported under that treaty. Mr. Shatoff noted that L&C could commute at any time before
12 January 1, 2013 to obtain the “profit commission” - how he referred to the 25% refund.

13 119. On information and belief, Mr. Shatoff encouraged L&C to commute that treaty to
14 ensure that seventy-five percent (75%) of premiums paid could be confirmed as received by the
15 reinsurers with confirmation that no claims or losses would be paid by them.

16 120. On information and belief Elsass directed that the refund for the commutation of
17 the January 1, 2008 to April 1, 2009 reinsurance treaty be recorded at that time in the third quarter
18 of 2010.

19 121. On information and belief, Mr. Shatoff noted that it would be too soon to record
20 any “profit commission” on the April 1, 2009 to April 1, 2010 treaty because the premium for
21 those policies would not be fully earned until April 1, 2011.

22 122. The Milliman Report stated that L&C reserves were \$600,000 - \$628,000 above
23 the Medium Estimate, but about \$650,000 below the High Estimate. That report also noted that
24 L&C started to write occurrence policies in the fourth quarter of 2008.

25 123. On information and belief, more than half of the policies written by Sophia Palmer
26 were occurrence policies.

27 124. The Milliman Report stated that the loss development for occurrence policies is
28 relatively immature at the current evaluation and that caused uncertainty in the loss estimates.

1 125. Further, the 2010 Milliman Report opined that the existing risk factors “coupled
2 with the variability that is inherent in any estimate of unpaid loss and loss adjustment expense
3 obligations, could result in material adverse deviation from the carried net reserve amounts.” He
4 concluded that based on the calculation shown in Exhibit B that shows that L&C’s actual net
5 outstanding losses and LAE exceed L&C’s reserves for unpaid losses (\$7,353,289) and unpaid
6 LAE (\$1,798,188) by an amount of more than five percent (5%) of L&C’s statutory surplus
7 shown on the annual statement, which was \$4,579,710. The 2010 Milliman Report states that this
8 materiality standard was selected based on the fact that his opinion was prepared for regulatory
9 review.

10 126. On information and belief, the financial information provided to the directors of
11 L&C for the September 2011 Board Meeting included a report from Brian Stiefel, President of
12 Praxis Claims Consulting, dated September 15, 2011 (“Praxis Report”). The Praxis Report
13 provides that Uni-Ter has adopted a new reserve philosophy, is revising its litigation management
14 guidelines to reflect a more aggressive approach to the litigation process, and that standardizing
15 the claims documentation, evaluation, and reporting process is recommended. The Praxis Report
16 does not evaluate the level of L&C’s loss reserves.

17 127. On information and belief, the information provided to the directors for the
18 September 2011 Board meeting also contains a power point presentation from Milliman which
19 shows that L&C steadily decreased its reinsurance deductible across the years 2008 to 2011,
20 demonstrating that L&C’s reinsurance deductible was set too high, especially in years 2009 and
21 2010.

22 128. On information and belief, in or around December 19, 2011, Milliman provided a
23 preliminary draft of certain schedules to its actuarial reports (“2011 Milliman Schedules”). The
24 Schedules provide that as of November 30, 2011, L&C’s Incurred Loss & ALAE for years 2004
25 through November 2011 was \$17,858,866. That same exhibit states that Paid Loss & ALAE for
26 those same dates was a total of \$11,208,076. The exhibit states that L&C’s Paid Loss & ALAE
27 was \$2,230,000 million for 2009 and \$2,440,000 million for 2010 but only \$198,711 for 2011
28 through November.

129. L&C's Annual Statement for the year ending December 31, 2011 ("2011 Annual Statement"), attached as **Exhibit 5**, stated a drastic increase in incurred losses and LAE and a significant drop in shareholder's surplus. Pursuant to that statement, reserves for losses and LAE increased from a total of \$9,181,477 at the end of 2010 to \$14,026,020 at the end of 2011, almost a \$5 million increase. Note 24 to L&C's 2011 Financial Statements (which is presented below) stated that unpaid losses and LAE increased from \$9,153,000 at the beginning of 2011 to \$14,843,000 at the end of 2011, a \$5,700,000 increase. Meanwhile, the company's policyholder's surplus amount decreased from \$4,579,710 at the end of 2010 to \$3,625,317 at the end of 2011.

130. Note 24 to L&C's 2011 Financial Statements stated as follows:

Balance-January 1, 2011	\$9,153,000
Incurred related to:	
Current year	7,418,000
2010	3,039,000
2009	2,284,000
2008	747,000
2007	162,000
2006	375,000
2005	(359,000)
2004	(1,000)
Total Incurred:	13,665,000
Paid related to:	
Current year	1,878,000
2010	3,571,000
2009	1,545,000
2008	222,000
2007	630,000
2006	131,000
2005	(1,000)
2004	(1,000)
Total Paid:	7,975,000
Balance-December 31, 2011 (emphasis added)	\$ 14,843,000

See, Exhibit 5.

131. On information and belief, notwithstanding this information, the Board represented in Note 14 at page 14.2 that "The Company's management is not aware of any ongoing litigation

1 which would, individually or collectively, result in judgments for amounts, after considering the
2 established loss reserves, that would be material to the Company's financial condition or results
3 of operations." *Id.*

4 132. On February 2, 2012, Milliman provided a preliminary draft of certain schedules
5 to its actuarial reports ("2012 Milliman Schedules"). Exhibit 1 Page 2 states that, as of December
6 30, 2011, L&C's Discounted Net Loss & LAE Reserve (after Ceded Loss and LAE Reserve) was
7 Low Estimate of \$13,019,000, Central Estimate of \$14,973,000, and High Estimate of
8 \$18,635,000. Exhibit 3 of that document shows that Incurred Loss and ALAE had grown
9 substantially from 2005 (\$373,816) to 2010 (\$9,068,552) while showing estimated reserves only
10 growing to \$4,048,241. It also shows that for 2011, Ultimate Loss & ALAE was \$7,620,000 and
11 Incurred Loss & ALAE was \$5,744,385, but estimate reserves was only \$5,938,479, which is
12 over \$1.6 million less than the Ultimate Loss & ALAE.

13 133. The 2011 Milliman Report, in the section entitled "Risk of Material Adverse
14 Deviation", provides that "[t]he Company's carried reserves are within a reasonable range,
15 however other points within the reasonable range would cause surplus to be below zero.
16 Therefore I believe that there are significant risks and uncertainties that could result in material
17 adverse deviation in the loss and loss adjustment expense reserves, possibly by amounts
18 exceeding surplus." The report again provides that the current risk factors, "coupled with the
19 variability that is inherent in any estimate of unpaid loss and loss adjustment expense obligations,
20 could result in material adverse deviation from the carried net reserve amounts." The report
21 concluded that based on the calculation shown in Exhibit B that shows that L&C's actual net
22 outstanding losses and LAE exceed L&C's reserves for unpaid losses (\$11,766,924) and unpaid
23 LAE (\$2,259,096) by an amount of more than five percent (5%) of L&C's statutory surplus
24 shown on the annual statement, which was \$3,625,316. The report states that this materiality
25 standard was selected based on the fact that his opinion was prepared for regulatory review.

26 134. L&C's "NAIC Property and Casualty Financial Ratio Results for 2011" painted a
27 very bleak picture of the L&C. It has a date stamp of 2/23/2012. It states that Direct Premiums
28 Written in 2011 totaled \$10,224,774. It states that Net Premiums Written for 2011 were

1 \$8,997,524 which was a 25% drop from Net Premiums Written in 2010 of \$11,946,738. It states
2 that Losses and LAE incurred for 2011 totaled \$12,759,779 when Losses and LAE incurred for
3 2010 totaled \$8,183,816, about \$4.6 million less. It states that surplus for 2011 was \$3,625,316
4 when the surplus for 2010 was \$4,579,709, almost a million drop. Finally, it states that L&C's
5 estimated current reserve deficiency was -\$752,997.5.

6 135. A spreadsheet entitled "Inforce (sic) Policies as of 2.23.2012" lists such policies.
7 It states at the bottom that the total premium amount for such in force policies was \$6,825,864.

8 136. A spreadsheet document dated February 2012 and entitled "L&C Loss Ratio
9 Report" shows a substantial reduction of loss payments for 2011. The document states that the
10 information is through 02/29/2012, but says that earned premium for 2011 dropped to \$5,209,362
11 from \$12,798,406 in 2010 and \$11,776,406 in 2009. It also shows that earned premium was only
12 \$240,573 through February which, extrapolated through December, would be only \$1,443,438.
13 Meanwhile, total incurred losses for 2011 were only \$1,573,965 even though total incurred losses
14 were almost \$9.5 million in 2010 and almost \$8 million in 2009.

15 137. On information and belief, the loss ratios shown for 2006 through 2010 were
16 78.92%, 65.33%, 67.83%, and 73.59%, respectively. The loss ratio chart in the April 2008 Board
17 meeting directors' package states that the 2006 loss ratio was only 25.25% and the 2007 loss ratio
18 was stated to be only 22.41%. The loss ratio for 2011 was only 30.21%. Paid losses in all of
19 2011 were only \$264,000 even though those were almost \$5 million in 2010, \$5.4 million in
20 2009, and over \$3.5 million in 2008.

21 138. L&C's Summary Balance Sheet as of February 29, 2012 states that unpaid losses
22 and loss expenses were \$14,026,019 at the end of 2011 and grew to \$14,607,812 as of the end of
23 February 2012. Uni-Ter's management fees for 2011 were only \$87,617.

24 139. L&C's Comparative Summary Balance Sheet dated through March 2012 shows
25 the growth of L&C's losses and Uni-Ter's fees. Unpaid losses and LAE was \$3,624,000 as of
26 March 2008, \$4,325,000 as of March 2009, \$7,313,000 as of March 2010, \$9,953,000 as of
27 March 2011, and \$12,381,985 as of March 2012. Uni-Ter's management fees were \$728,000 as
28 of March 2008, \$1,329,000 as of March 2009, \$1,607,000 as of March 2010, \$830,000 as of

March 2011, and \$104,000 as of March 2012.

140. The 2012 Milliman Report states that L&C reserves of \$16,333,000 were \$1,367,000 below the Central Estimate of what L&C's loss reserves should be. The report states that L&C's reserves were over \$7 million below the High Estimate of what L&C's reserves should be. There is no mention of the report in the Board Minutes. The report states as follows:

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. . . .* (emphasis added)

Finally, the report states in Table 3 on page 12 that the continuing Ultimate Loss & ALAE as of the report at end of 2010 was \$13,863,000 but the Ultimate Loss & ALAE as of the report at the end of 2011 was \$19,229,000 for a \$5.5 million increase.

141. In the D&O policy application submitted by Uni-Ter on behalf of L&C on or about May 23, 2012, Uni-Ter stated in the supplement that "[t]o improve the financial stability of [L&C], UUMC has reviewed the entire book of business and intends to only renew accounts that have maintained a favorable historical loss ratio. This may result in a 35-40% reduction in its premium volume." The underwriting philosophy change completed in late 2011, while stating limitations for loss ratios in soft and hard market facilities, does not state that the policy would apply to renewals and also does not discuss the loss of such a large premium amount. This reduction would apply to the \$6,825,864 total premiums of inforce policies as of February 2012. With no new policies, that would result in total premiums for 2012 in the range of \$4,095,518 to \$4,436,800.

142. The following chart shows relevant information from L&C's Audited Financial Statements for the periods indicated.

	2009	2010	2011	March 2012	June 2012
Losses and LAE	\$6,255,488 (this was \$3,941,000 for 2008)	\$9,161,477	\$14,026,020	\$12,381,985	\$11,594,038
Premiums	\$10,864,100	\$12,514,066	\$11,498,294	\$1,957,716	\$3,753,489

earned	with \$4,149,333 being new for that year.			(compared to \$2,776,612 for March 2011)	(compared to \$6,720,334 for June 2011)
Ceded reinsurance premiums payable	\$1,969,682	\$2,050,400	\$750,084	\$26,523	\$624,029
Amount recoverable from reinsurance		\$2,819,800	\$3,039,002	\$3,039,002 with \$1.553M from AR and \$1.087 from other amounts receivable	\$1,530,415
Management fees payable	\$1,717,482	\$1,084,400	\$87,617	\$104,690	\$63,164
Total liabilities	\$13,887,255	\$15,625,439	\$21,840,572	\$19,777,205	\$16,397,861
Cash and invested assets		\$13,942,322	\$13,514,557	\$13,064,932	\$9,525,379
Shareholders' equity, i.e., surplus	\$4,031,351	\$4,579,710	\$3,625,317	\$3,713,503 (versus \$3,760,925 for March 2011)	\$1,675,694 (versus \$2,732,826 for June 2011)

143. On information and belief, as of July 31, 2012, L&C's Gross Losses and LAE was \$14,786,000. As of the end of September 2012, losses and LAE totaled \$13,609,401 and surplus was negative \$1,490,085. Cash and invested assets had dropped to \$6.6 million.

E. *Insufficient Action by the Board*

144. On information and belief, beginning in the 3rd quarter of 2011, adverse development on claims incurred during 2009 began to appear in the financial operations of L&C. As a result, Uni-ter (captive manager) began to get more involved in claims and reserves. In a unilateral decision, Uni-ter brought in Praxis Claims Consulting to assist with improving the reserve setting process. On information and belief, the engagement involved reviewing various open claims files. The owner of Praxis, Brian Stiefel took a lead role in setting reserves for L&C with Uni-ter. As a result of this engagement, a strengthening of reserves was recommended and booked in the amount of approximately \$2.2 million.

145. On information and belief, due to the strengthening entry, and the resulting downturn in the financial condition of L&C, additional capital of \$2,220,000 was raised in the

1 form of surplus notes.

2 146. On information and belief, in the October 5, 2011 Action by Unanimous Consent
3 of the Board of Directors (“Action”), surplus note contributions were agreed to be paid by
4 November 15, 2011.

5	○ Oneida Bank	\$750,000
6	○ Eagle Healthcare	\$220,000
	○ Pinnacle Healthcare	\$220,000
7	○ Marquis Companies	\$220,000
	○ Elderwood Senior Care	\$220,000
8	○ Rohm Services	\$220,000
9	○ Uni-ter	\$300,000

10 147. On information and belief, the Action indicated that an additional \$550,000 in
11 capital could be raised in additional surplus notes, “depending upon the requirements of the
12 business in the fourth quarter, 2011, as approved by the Board”. The following commitments
13 were funded in the form of Surplus Notes on February 7, 2012:

14	○ Eagle Healthcare	\$70,000
15	○ Pinnacle Healthcare	\$70,000
	○ Marquis Companies	\$70,000
16	○ Elderwood Senior Care	\$70,000
	○ Rohm Services	\$70,000
17	○ Uni-ter	\$200,000

18 148. On information and belief, with the exception of Oneida Bank, where L&C’s
19 investments are held in custody, and Uni-ter, the captive manager, all other Surplus Note holders
20 were facilities insured by L&C and whose management is a representative on the Board of
21 Directors of L&C.

22 149. On information and belief, Stickels is the President of Oneida Bank.

23 150. On information and belief, prior to the second commitment coming due in the first
24 quarter of 2012, the Board determined that they wanted a second review to confirm the
25 conclusion of the reserve strengthening in late 2011. Fishlinger was hired to conduct an
26 independent analysis of the same claims reviewed by Praxis.

27 151. On information and belief, using the low end of the ranges of reserves established
28 by Praxis, Fishlinger concluded a low end of strengthening could be approximately a million

1 dollars less than determined by Praxis. Although the Board had requested that Fishlinger conduct
2 its review independently, ultimately it used the work of Praxis in coming to a similar conclusion
3 on the reserve strengthening needed. Based on these two reviews, the additional capitalization of
4 \$480,000 was determined to be adequate by the Board.

5 152. On information and belief, at the end of the second quarter of 2012, the Board
6 assumed that the reserving methodology established under Praxis had continued to be deployed.
7 The Board determined that a follow up review was necessary. Praxis completed their review in
8 July of 2012, involving review of the same estimated 150 claims reviewed at year end 2011.
9 Praxis recommended stepping up of reserves in the cases previously reviewed and indicated that
10 trouble getting case reserve information from attorneys had been one cause of the continued
11 adverse development of these claims. Praxis concluded an additional \$2 million in strengthening
12 was required at July 2012.

13 153. On information and belief, Fishlinger was also brought in for a second review,
14 which ultimately concluded some differences on the low and high end of the ranges for these
15 cases, but ultimately recommended similar cumulative reserve strengthening. An additional party
16 also reviewed the case reserves, the London Based reinsurance broker ("London Broker") for
17 U.S. RE, the reinsurance broker for L&C. The Board and Uni-ter thought that they would have a
18 vested interest in picking accurate reserves because of the reinsurance that the London broker had
19 placed for L&C with various reinsurers. On information and belief, the London Broker
20 determined that it would be comfortable in the low end of the ranges for many of the cases.

21 154. On information and belief Milliman, L&C's opining actuary, booked its estimate
22 of reserves at 6/30 and 12/31 of each year, based on its own analysis. During its June 30, 2012
23 analysis, Millman [sic] determined that L&C would most likely need to increase premium rates
24 by 12-20% on its current book of business to remain a viable entity. On information and belief
25 this does not include capital needed to raise the current level to minimum requirements. Milliman
26 also estimated that \$6,000,000 - \$6,500,000 million in capital would need to be raised in order to
27 result in \$3.6 million of unimpaired capital.

28 ///

1 **IV. Claims**

2 155. The allegations set forth above are incorporated into the claims set forth herein as
3 is fully set forth for each claim.

4 **FIRST CLAIM FOR RELIEF**

5 **(Gross Negligence of the Former Officers and Directors of L&C)**

6 156. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through
7 155, as though fully set forth herein.

8 157. Under Nevada law, directors and officers must act on an informed basis and are
9 grossly negligent if they fail to do so.

10 158. As of the end of 2011, there was more than ample information that, in
11 combination, clearly showed that L&C's financial condition was in dangerous peril.

12 159. This information available in late 2011 included rapid and drastic increase in loss
13 reserves, reports of inadequate reserves requiring repeated capital infusions in late 2011 and early
14 2012, high loss ratios, drastically decreasing realized premiums, absence of any adjustment of
15 premium rates, implementation of a new underwriting philosophy that would result in a 35-40%
16 drop in premiums, and a drastically decreasing company surplus.

17 160. These reports included the following summarized facts:

- 18
- 19 • In September 2005, Elsass reported on appropriate loss reserves.
 - 20 • L&C had substantial growth of premiums and reserves between 2004 and 2009. By 2009, written premium was \$10.7 million and reserves were \$6.2 million. Uni-Ter's management fees also increased rapidly to \$1.4 million in 2008 and \$1.7 million in 2009.
 - 21 • Losses and LAE grew to \$9.1 million in 2010 and \$14 million in 2011.
 - 22 • Loss ratios were generally in the 30% range and below until 2009 when the addition of the Sophia Palmer work caused a loss ratio over 50% (because of Sophia Palmer claims having a loss ratio over 80%).
 - 23 • A new underwriting philosophy was discussed at the September 2011 meeting. Although it does not appear that the Board questioned how this would affect premiums earned, Uni-Ter expected this new philosophy would only renew accounts that had a favorable historical loss ratio and that that could result in a 35-40% reduction in premium volume.
 - 24 • In the 3rd quarter 2011, adverse development on claims incurred in 2009 showed up on L&C's financial results. Uni-Ter brought in Praxis to improve the reserve
- 25
26
27
28

1 setting process. Uni-Ter brought in Praxis to analyze and recommend reserves.
2 Praxis recommended reserve strengthening of \$2.2 million.

- 3 • Capital contributions totaling \$2.22 million were approved by the Board at the
4 October 5, 2011 meeting. That same meeting said that an additional \$550,000 in
5 capital could be raised in the 4th quarter 2011 and 1st quarter 2012.
- 6 • Financial information shows L&C was not paying losses in 2011. 12/19/11 draft
7 report from Milliman shows \$2.23 million paid losses and ALAE in 2009, \$2.44
8 million in 2010, but only \$199,000 in 2011.
- 9 • On 12/20/2011, Uni-Ter reported claims reserves increased \$5 million from the
10 November 2011 figures.
- 11 • Uni-Ter's pro forma 12/31/11 financials show that L&C was neither impaired nor
12 insolvent, but the 2011 Annual Statement shows losses and ALAE increased from
13 \$9.1 million at the beginning of 2011 to \$14.8 million at the end of the year.
- 14 • At January 16, 2012 meeting, surplus is only \$1,979,730, down from \$4,579,000
15 at end of 2010.
- 16 • At February 2, 2012 meeting, Board approved \$480,000 additional capital
17 contributions even though Elsass reported recent favorable claims activity. Prior
18 to this, the Board had determined that they wanted a second opinion from
19 Fishlinger to confirm the need for reserve strengthening made by Praxis.
- 20 • A 2/23/12 report showed that L&C's net written premiums for 2011 dropped 25%
21 (from \$12 to \$9 million). It confirmed that losses and LAE for 2011 were \$12.7
22 million when only \$8.1 million for 2010. It also said that L&C's current reserves
23 were deficient by just over \$750,000.
- 24 • A 2/23/12 report on in force policies states that total premiums for those policies
25 would be \$6.8 million for 2012.
- 26 • A 2/29/12 loss ratio report shows that earned premium for 2011 dropped to
27 \$5,209,362 from \$12,798,406 in 2010 and \$11,776,406 in 2009 and states that
28 earned premium for 2012 through February 2012 was only \$240,000 which,
annualized, would be only about \$1.4 million. It also shows that loss ratios for
2006 through 2010 were all above 65% and as high as 79%.
- April 12, 2012 Milliman report says that L&C's loss reserves are \$1.4 million
under the central estimate. That same reports says that ultimate loss and ALAE
have increased by \$9.2 million from the end of 2010. Table 3 of that report (page
12) states that Ultimate Loss & ALAE increased \$5.5 million from \$13.8 million
at the end of 2010 to \$19.2 million the end of 2011.

161. If the Board and officers saw and reviewed all of this information, they were
grossly negligent in not taking immediate corrective action by at least late 2011 (e.g., raising
premium rates). If the Board and officers did not see this information, they were grossly
negligent by not taking action to inform themselves of the actual financial condition of L&C.

162. The Board was in a position to see this information and knew that it had an
obligation to do so. Indeed, it had the contractual right to receive the information (including on a
monthly basis between 2004 and 2010). It also knew at least on several occasions that it was not

1 receiving sufficient information from Uni-Ter. On several occasions between 2005 and 2011, the
2 Board asked Uni-Ter to provide more and better financial and other information:

- 3 • March 2005 Minutes request for financial information monthly.
- 4 • April 2005 Minutes note nonreceipt of periodic marketing reports.
- 5 • At the October 2011 special meeting approving \$2.2 million of additional capital
6 the Board requested more frequent financial reports by Uni-Ter, preferably
7 monthly.

8 163. The facts show an absence of the requisite diligence of the Board and company
9 officers to ascertain and assess the available information so that decisions could be made and
10 based on such information, as set forth above.

11 164. The Board failed to keep itself properly informed because it relied too heavily on
12 recommendations of Uni-Ter, as set forth herein.

13 165. As a proximate result, Plaintiff has been damaged in an amount in excess of
14 \$10,000, the exact amount to be proven at trial in this matter.

15 166. Plaintiff has retained the undersigned law firm to represent the Receiver in this
16 matter, and is obligated to pay it a reasonable attorney's fee and costs, which it is entitled to
17 recover herein.

18 WHEREFORE, Plaintiff prays for relief as set forth herein.

19 **SECOND CLAIM FOR RELIEF**

20 **(Deepening of the Insolvency of L&C Caused by the Former Directors and Officers)**

21 167. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through
22 166, as though fully set forth herein.

23 168. The Board's inaction severely prolonged the insurance actions of L&C that led to
24 its initial insolvency and that then also increased its insolvency.

25 169. Had the Board taken action by late 2011, the substantial losses experienced by
26 L&C starting in late 2011 would not have occurred or, alternatively, would have been greatly
27 limited.

28 170. Because L&C had a surplus as of the end of 2011, according to its financial
statements, then all of the insolvency of L&C was arguably attributable to the directors' and

1 officers' failure to promptly identify and address the financial problems.

2 171. As a proximate result, Plaintiff has been damaged in an amount in excess of
3 \$10,000, the exact amount to be proven at trial in this matter.

4 172. Plaintiff has retained the undersigned law firm to represent the Receiver in this
5 matter, and is obligated to pay it a reasonable attorney's fee and costs, which it is entitled to
6 recover herein.

7 WHEREFORE, Plaintiff prays for relief as set forth herein.

8 **THIRD CLAIM FOR RELIEF**

9 **(Negligent Misrepresentation by Uni-Ter UMC)**

10 173. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through
11 172, as though fully set forth herein.

12 174. Uni-Ter UMC, through its employees, negligently misrepresented the specific
13 financial conditions of L&C including the level of losses and LAE.

14 175. Uni-Ter had created L&C and grown it rapidly for its own financial benefit, as
15 well as that of U.S. RE, who benefitted from the placement of reinsurance and from management
16 fees earned by its subsidiary. Uni-Ter had intimate familiarity with the financial information of
17 L&C.

18 176. However, instead of presenting all relevant financial information to the Board,
19 Uni-Ter appears to have selectively provided information such that the Board was not informed
20 of the actual financial condition of L&C. Even after a number of reports showed substantial
21 growth of L&C's losses in late 2011, Mr. Elsass even represented to the Board in early 2012 that
22 claims losses were not as bad as previously reported in late December.

23 177. Uni-Ter and Milliman told the Board that the large losses that started appearing in
24 the 3rd quarter of 2010 were primarily because of three insureds who had been non-renewed in
25 2011, thus giving the impression that this would resolve the large losses issue. These
26 representations are representative of how the Board was kept in the dark regarding the actual
27 financial condition of L&C.

28 178. L&C justifiably relied on the information presented to it by Uni-Ter, as set forth

1 herein.

2 179. As a proximate result, Plaintiff has suffered damages in excess of \$10,000, the
3 exact amount to be proven at trial herein.

4 180. Plaintiff has retained the undersigned law firm to represent her in this matter, and
5 is obligated to pay it a reasonable attorney's fee and costs, which it is entitled to recover herein.

6 WHEREFORE, Plaintiff prays for relief as set forth herein.

7 **FOURTH CLAIM FOR RELIEF**

8 **(Breach of Fiduciary Duty by Uni-Ter UMC and Uni-Ter CS)**

9 181. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through
10 180, as though fully set forth herein.

11 182. Uni-Ter owed a fiduciary duty to L&C as set forth above.

12 183. Uni-Ter breached its fiduciary duty to L&C by recommending to the Board that
13 the 2007 treaty be commuted too soon and by failing to gain Board approval to commute the 2008
14 and 2009 treaty such that that treaty was commuted without authorization to do so from the
15 Board.

16 184. Approval of commutation of the 2007 treaty was done at the January 10, 2008
17 board meeting.

18 185. Commutation benefitted U.S. RE, the parent of Uni-Ter, because the syndicate
19 insurers get to keep 75% of the premiums paid without any requirement to pay any claims. U.S.
20 RE also appears to have done an unapproved commutation for the 2008-2009 treaty at the
21 direction of Uni-Ter.

22 186. October 2010 emails between U.S. RE and Uni-Ter discuss booking the
23 commutation amount, but the January 2012 Minutes state that the Board deferred approval of
24 commutation of certain treaties including the 2008 and 2009 treaties.

25 187. As a proximate result, Plaintiff has been damaged in an amount in excess of
26 \$10,000, the exact amount to be proven at trial herein.

27 188. Plaintiff has retained the undersigned law firm to represent her in this matter, and
28 is obligated to pay it a reasonable attorney's fee and costs, which it is entitled to recover herein.

1 WHEREFORE, Plaintiff prays for relief as set forth herein.

2 **FIFTH CLAIM FOR RELIEF**

3 **(Breach of Fiduciary Duty Against U.S. RE)**

4 189. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through
5 188, as though fully set forth herein.

6 190. L&C engaged U.S. RE as its exclusive broker to find and secure appropriate
7 reinsurance. The Broker of Record Letter Agreement appointed U.S. RE as L&C's exclusive
8 reinsurance intermediary/broker and granted U.S. RE full and complete authority to negotiate the
9 placement of reinsurance on all classes of insurance with unspecified limits of coverage as
10 requested by the underwriter of L&C (i.e., Uni-Ter).

11 191. U.S. RE owed L&C a fiduciary duty, as set forth herein.

12 192. U.S. RE breached this fiduciary duty by, among other things, not obtaining
13 reinsurance through syndicates as listed in the fact section above. No facts were found that
14 reinsurance failed to pay as required. To the contrary, the reinsurance policies seemed not to be
15 invoked because deductible amounts were not reached, especially in the early years of 2004 to
16 2008.

17 193. Nevertheless, U.S. RE represented to L&C that it would act in L&C's best
18 interests arguably created additional duties toward L&C other than merely finding and securing
19 reinsurance. In violation of such duties, U.S. RE did not find appropriate reinsurance because the
20 deductible rates were consistently too high. This is shown by the fact that reinsurance did not
21 come into play at all in the early years. Indeed, the Board approved commutation of the 2007
22 treaty only 10 days into 2008.

23 194. As a proximate result, Plaintiff has been damaged in an amount in excess of
24 \$10,000, the exact amount to be proven at trial in this matter.

25 195. Plaintiff has retained the undersigned law firm to represent her in this matter, and
26 is obligated to pay it a reasonable attorney's fee and costs, which it is entitled to recover herein.

27 WHEREFORE, Plaintiff prays for relief and judgment as follows:

28 A. For actual damages sustained by Plaintiff in an amount in excess of \$10,000 in an

1 amount to be more specifically established at trial in accordance with proof;

2 B. For reasonable attorney's fees pursuant to statute or as special damages, or as
3 provided in the agreement between the parties;

4 C. For pre-judgment and post-judgment interest; and

5 D. For such other and further relief at law or in equity as the Court may deem just and
6 proper.

7 DATED this 23rd day of December, 2014.

8

FENNEMORE CRAIG JONES VARGAS

9

10

11

By: /s/ Karl L. Nielson

12

JAMES L. WADHAMS, ESQ.

Nevada Bar No. 1115

13

KARL L. NIELSON, ESQ.

Nevada Bar No. 5082

14

BRENOCH WIRTHLIN, ESQ.

Nevada Bar No. 10282

15

300 South Fourth Street, Suite 1400

Las Vegas, Nevada 89101

16

Telephone: (702) 692-8000

Facsimile: (702) 692-8099

17

knielson@fclaw.com

bwirthlin@fclaw.com

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*Attorneys for Plaintiff Commissioner of
Insurance For the State of Nevada*

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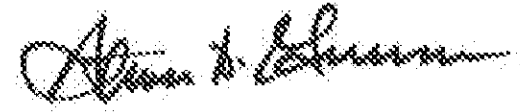
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EXHIBIT 1

EXHIBIT 1


CLERK OF THE COURT

1 **ORDR**
2 CATHERINE CORTEZ MASTO
3 Attorney General
4 JOANNA N. GRIGORIEV
5 Senior Deputy Attorney General
6 Nevada Bar No. 5649
7 555 East Washington Ave., Suite 1900
8 Las Vegas, NV 89101
9 (702) 486-3101
10 Email: jgrigoriev@ag.nv.gov
11 Attorneys for the Plaintiff

12
13 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF NEVADA**
14 **IN AND FOR THE COUNTY OF CLARK**

15 STATE OF NEVADA, EX REL.
16 COMMISSIONER OF INSURANCE, IN HIS
17 OFFICIAL CAPACITY AS STATUTORY
18 RECEIVER FOR DELINQUENT DOMESTIC
19 INSURER,
20
21 Plaintiff,

22 vs.

23 LEWIS & CLARK LTC RISK RETENTION
24 GROUP INC., a Nevada Domiciled Captive
25 Insurance Company,

26 Defendant,

27 UNI-TER Underwriting Management
28 Corp. and UNI-TER Claims
Services Corp.,

Intervener.

Case No. A-12-672047-B
Dept. XI

Hearing Date: March 1, 2013
(Chambers)

21
22 **[PROPOSED] ORDER OF LIQUIDATION**

23 This matter came before the Court on the 25th day of February, 2013
24 on the Motion for an Order of Liquidation ("Motion") by the Commissioner of Insurance
25 for the State of Nevada, ex. rel. in his official capacity as Receiver ("Receiver") of Lewis
26 and Clark LTC Retention Group, Inc. ("L&C"). The Court having reviewed the points and
27 authorities submitted by counsel and exhibits in support thereof, and heard arguments
28 of counsel,

1
2 IT IS HEREBY ORDERED that:

3 1. The Commissioner of Insurance, Scott. J. Kipper in his official capacity as
4 statutory Receiver for delinquent domestic insurance companies under Chapter 696B of
5 the Nevada Revised Statutes ("NRS"), having previously been appointed Receiver, is
6 hereby directed to liquidate the business of L&C pursuant to NRS 696B.220(2).

7 2. Any insurance policies issued by L&C are cancelled as of the entry of this
8 Order of Liquidation.

9 3. The Receiver is hereby vested by operation of law with title to and shall
10 take and secure possession of all assets and real and personal property of L&C of
11 every kind whatsoever and wherever located, whether in the possession of L&C or its
12 officers, directors, employees, consultants, attorneys, agents, managers, parents,
13 subsidiaries, affiliated corporations, or those acting in concert with any of these persons,
14 and any other persons, including, but not limited to, all property, offices maintained or
15 utilized by L&C, books, papers, contracts, deposits, stocks, securities, rights of action,
16 accounts, documents, data records, papers, evidences of debt, bonds, debentures,
17 mortgages, furniture, fixtures, office supplies, safe deposit boxes, legal/litigation files,
18 and all books and records of L&C, wherever located, and administer them under the
19 general supervision of the Court.

20 4. The Receiver is hereby substituted in the place of L&C in any contract or
21 policy of insurance or reinsurance in which L&C is the insured with another insurance
22 company.

23 5. The Receiver is directed to collect and liquidate the assets of L&C,
24 including but not limited to, funds held by L&C's officers, directors, managers,
25 reinsurers, reinsurance intermediaries, reinsurance pools, solicitors, service
26 representatives, administrators, adjusters or others, under agency contracts or
27 otherwise, which are due and unpaid to L&C, including due and unremitted premiums,
28 commissions, unearned commissions, reinsurance recoveries and "funds held" by
reinsurers or any others that properly belonging to L&C.

1 6. The Receiver is authorized to take such action as he considers necessary
2 or appropriate to liquidate L&C, including all of the powers granted under Chapter 696B
3 of NRS and the following:

4 a. Appoint one or more special deputy receivers to act for him, and
5 determine the deputies' reasonable compensation, subject to court approval upon the
6 filing thereafter of the quarterly reports pursuant to NRS 696B.290(7), or as frequently
7 as the Court determines. Special deputies have all the powers of the Receiver and
8 shall serve at the pleasure of the Receiver;

9 b. Without prior notice to or prior approval by the Court, employ
10 personnel and agents, actuaries, accountants, appraisers, administrators, adjusters,
11 consultants, attorneys and such other personnel as he may consider necessary to
12 assist in the liquidation of L&C;

13 c. Without prior notice to or prior approval by the Court, fix the
14 reasonable compensation of employees and agents, actuaries, accountants, appraisers,
15 administrators, adjusters, consultants, attorneys, and other personnel, subject to
16 approval by the Court, which approval shall be obtained by the Court's approval of the
17 Receiver's reports filed pursuant to NRS 696B.290(7);

18 d. Without prior notice to or prior approval by the Court, pay
19 reasonable compensation to persons appointed and employed from the funds or assets
20 of L&C, as well as any other administrative expenses of taking possession of,
21 conserving, collecting, conducting, liquidating, disposing of or otherwise dealing with the
22 business and property of L&C, subject to approval by the Court, which approval shall be
23 obtained by the Court's approval of the Receiver's reports filed pursuant to NRS
24 696B.290(7);

25 e. Collect all debts and monies due and claims belonging to L&C,
26 wherever located which, in the judgment of the Receiver, are economically feasible to
27 collect;

28

1 f. Continue to prosecute and to commence in the name of L&C or in
2 his own name any and all suits and other legal proceedings, in this state or elsewhere,
3 and to abandon the prosecution of claims he considers unprofitable to pursue further;

4 g. Prosecute any action which may exist on behalf of the
5 policyholders, members, or shareholders of L&C against any officer of L&C or any other
6 person;

7 h. Remove any or all records and property of L&C to the offices of the
8 Receiver, the Special Deputy Receiver or to such other place as may be convenient to
9 the purposes of efficient and orderly administration of the liquidation;

10 i. Deposit in one or more banks in this state such sums as are
11 required for meeting current administration expenses;

12 j. At the discretion of the Receiver, invest all sums not currently
13 needed, unless the Court orders otherwise;

14 k. File any necessary documents for recording in any records office of
15 any county of this state or elsewhere where property of L&C is located;

16 l. Acquire, hypothecate, encumber, lease, improve, sell, transfer,
17 abandon or otherwise dispose of or deal with any property of L&C at its market value or
18 upon such terms and conditions as are fair and reasonable. The Receiver may
19 execute, acknowledge and deliver any and all deeds, assignments, releases and other
20 instrument necessary or proper to effectuate any sale of property or other transaction in
21 connection with the liquidation;

22 m. Borrow money on the security of L&C's assets or without security,
23 and to execute and deliver all documents necessary to the transaction for the purpose
24 of facilitating the liquidation;

25 n. Exercise and enforce all the rights, remedies and powers of any
26 policyholder, including any power to avoid any transfer, lien or preference that may be
27 given by the general law and that is not included under chapter 696B of NRS;

28

1 o. Exercise and enforce all the rights, remedies and powers of any
2 policyholder, shareholder, or L&C, including any power to avoid any transfer, lien or
3 preference that may be given by the general law or under NRS 696B.410;

4 p. Apply for and/or receive any tax refunds, credits, tax loss carry-
5 forwards or other tax benefit that would be available to L&C but for the Order of
6 Liquidation.

7 q. The enumeration of the above-described powers and authority of
8 the Receiver shall not be construed as a limitation upon him, nor shall it exclude in any
9 manner the right to do such other acts not herein specifically enumerated, or otherwise
10 provided for, as may be necessary or appropriate for the accomplishment of or in aid of
11 the purpose of liquidation.

12 7. The Receiver is hereby granted and given all powers and authority under
13 the Nevada Revised Statutes authorizing the appointment of Insurance Receivers, and
14 particularly be and thereby is, granted and given all powers and authority in chapter
15 696B of NRS including, without limitation, those enumerated herein.

16 8. The Receiver is directed as of the date of entry of the Order of Liquidation,
17 to discontinue the defense of suits and other local proceedings in this state and
18 elsewhere, in which L&C or L&C's insureds are parties, or L&C is a named party on
19 behalf of an insured, including those suits and legal proceedings undertaken prior to or
20 after December 26, 2012.

21 9. The Receiver shall give or cause to be given notice of the entry of this
22 order as follows:

23 a. By first class mail to all policyholders as of the date of entry of this
24 order, and to all persons known or reasonably expected to have claims under policies
25 issued by L&C at their last known address, where available, but if insufficient
26 information for notification by mail is available, notice by publication in a newspaper of
27 general circulation shall be sufficient.

28 b. By first class mail to all trade creditors and reinsurers of L&C, as of
the date of entry of this order, as indicated by the records of L&C;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 60 days from the mailing of the notice, the claimant shall file his objections if any, with
2 the Receiver. Failure to file within 60 days shall be viewed as a waiver of all objections.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 25. The Receiver is authorized, within two years of his appointment as
4 receiver on December 26, 2012, or such time in addition to two years as applicable law
5 may permit, to commence any action or proceeding on behalf of L&C upon any cause of
6 action against which the period of limitation fixed by applicable law had not expired at
7 the time of the filing on November 15, 2012, of Plaintiff's Petition for Appointment of
8 Commissioner as Receiver Pursuant to NRS 696B.250.

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

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

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

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

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

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

5 **IT IS SO ORDERED.**

6 DATED this 28th day of February, 2013.

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10 DISTRICT COURT JUDGE
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16 Respectfully Submitted:

17 CATHERINE CORTEZ MASTO
18 Attorney General
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20 By: /s/ Joanna N. Grigoriev
21 JOANNA N. GRIGORIEV
22 Senior Deputy Attorney General
23 Nevada Bar No. 5649
24 555 East Washington Ave., Suite 1900
25 Las Vegas, NV 89101
26 (702) 486-3101
27 Email: jgrigoriev@ag.nv.gov
28 Attorneys for the Plaintiff

EXHIBIT 2

EXHIBIT 2

6A

MANAGEMENT AGREEMENT

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

ARTICLE I. Term of Agreement

This Agreement is effective as of 1/1/04. It will continue for a period of 7 years from the effective date hereof unless terminated prior thereto under the provisions of Article X of this Agreement, and shall be automatically renewed for an additional (7) years, subject to mutual agreement between the parties as to the terms of such renewal. If the parties are unable to so agree, then L&C shall be free to enter into a selection process for a new managing general agent.

ARTICLE II. Appointment of Manager; Lines of Authority

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

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

ARTICLE III. Manager's Duties and Responsibilities

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

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

- C. Policy Issuance: To timely and properly issue, deliver and execute or countersign policies, certificates, endorsements, and binders on forms approved by L&C and appropriate regulatory authorities, as required by law, for the business described in Exhibit A.
- D. Risks Bound: To record on the books of L&C each risk or policy bound or written under this Agreement.
- E. Compliance with State and Federal Regulations: To comply fully, timely and promptly with all manuals, rules, guidelines, instructions and directions issued in writing by L&C relating to the business covered by this Agreement as well as to comply with all state and federal rules, regulations, and statutes including those relating to privacy & confidentiality for all L&C business covered hereby.
- F. Premium Rates: To quote accurate premiums and rates for policies bound or written under this agreement in compliance with the approved and applicable rating manuals or rating plans of L&C.
- G. Statistical Reporting: To provide the necessary data processing and statistical records, including the development of any specialized programs which may be required by L&C.
- H. Accounting: To timely account for the business and for the financial affairs of L&C as follows:
1. Manager shall prepare and forward to L&C on a monthly basis, within twenty (20) calendar days of the end of each calendar month, a complete set of financial statements prepared in accordance with Generally Accepted Accounting Principles (GAAP) basis to include:
 - a. Operating Statement
 - b. Balance Sheet
 - c. Policies written for the month
 - d. Claims incurred for the month
 - e. Accounts receivable summary
 - f. Summary report of all claims, reserves and losses
 2. As of the end of each calendar quarter or calendar year as appropriate, Manager shall prepare and file, in accordance with Statutory Standards and GAAP, quarterly and annual financial statements with the Nevada Department of Insurance and any other State requiring same, including all regulatory forms necessary to keep L&C's Certificate of Authority in good standing.
- I. Fiduciary Capacity - Premium Trust Funds and Assets of L&C: To hold all premiums and assets of L&C in a bank, which is a member of the Federal Reserve System and investment custodian accounts owned by L&C. The bank accounts shall be designated by Manager in such a manner as to clearly establish that Manager is a fiduciary for L&C with respect to all funds so held. L&C funds, under fiduciary control of Manager, may be used as necessary to pay return premiums, claims, and operating expenses of L&C. These funds shall not be used for the operating expenses of Manager.

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

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

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

ARTICLE IV. Manager's Compensation

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

- A. Management Fee: For all services under this Agreement other than claims handling and Risk Management Manager shall receive fees as follows:
 1. During each year of L&C's operations, a sliding scale of commissions at the rate of 22% of the gross written premiums, net of cancellations and non-renewals, between 0-\$5,000,000; 20% of the gross written premiums, net of cancellations and non-renewals, greater than \$5,000,000.
 2. When gross written premiums, net of cancellations and non-renewals, exceed \$15 million the fee is reduced to 17.5%.
- B. Claims Handling Fees: For claims handling services under this Agreement, Manager shall receive a time-and-expense fee as follows:
 1. \$250 file setup fee for each claim or significant incident investigation.
 2. \$95 per hour for claim adjuster/nurse professional time, and actual travel expenses for investigations, mediations, trials, etc.
 3. Claims handling fees shall be billed monthly by Manager, by individual claim.
- C. Payment of Management Fees: Fees are to be paid to Manager monthly within 15 days after the end of each month, based on Manager's actual services provided during the month prior to the payment date.
- D. Profit Sharing Bonus: Manager shall receive a profit sharing bonus based on underwriting profitability of L&C. Such profitability shall be based on earned premiums and incurred losses on policies issued during each calendar year of operations of L&C. Determination of the bonus for each calendar year shall be as of December 31 of the fifth year following the end of each calendar

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

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

ARTICLE V. Representation with Respect to Policies

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

ARTICLE VI. Insurance of Manager

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

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

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

ARTICLE VII. Indemnification

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

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

ARTICLE VIII. Ownership of Expirations

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

ARTICLE IX. Termination of Agreement

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

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

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

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

B. Manager may terminate this Agreement as follows:

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

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

ARTICLE X. Cure Provision

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

ARTICLE XI. Continuing Duties of Manager after Termination

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

ARTICLE XII. Arbitration

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

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

- D. Submission of Briefs: The parties shall submit their initial briefs within 20 days from appointment of the umpire. Each may submit reply briefs within 10 days after filing the initial briefs.
- E. Arbitration Board: The board shall make an award of monetary damages or other relief with regard to the custom and usage of the insurance business which shall be in writing. The award shall be based upon a hearing in which evidence may be introduced without following strict rules of evidence but in which cross examination and rebuttal shall be allowed. At its own election or at the request of the board, either party may submit a post-hearing brief for consideration of the board within 20 days of the close of the hearing. The board shall make its award within 30 days following the close of the hearing or the submission of post-hearing briefs, whichever is longer, unless the parties consent to an extension. A decision by the majority of the members of the board shall become the award of the board and shall be final and binding upon all parties to the proceeding, however, the board shall have no authority to issue an award for punitive damages. Either party may apply to the United States District Court or to a Nevada State Court of competent jurisdiction for an order confirming the award; a judgment of such Court shall thereupon be entered on the award. If such an order is issued, the attorney's fees of the party so applying and court costs will be paid by the party against whom confirmation is sought.
- F. Arbitration Expenses: Each party shall bear the expense of its own arbitrator and shall jointly and equally bear with the other party the expense of the umpire. The remaining costs of the arbitration proceedings shall be allocated by the board.
- G. Survival: This Article shall survive the termination of this Agreement.

ARTICLE XIII. Other Terms and Conditions

- A. Waiver: The failure of L&C or Manager to insist on strict compliance with this Agreement, or to exercise any right or remedy shall not constitute a waiver of any rights provided under this Agreement, nor estop the parties from thereafter demanding full and complete compliance nor prevent the parties from exercising such a remedy in the future.
- B. Conflict with Law: If any provision of this Agreement should be declared invalid by a court of general jurisdiction and suspended by specific law or regulation, such law or regulation shall control to the extent of such conflict without affecting the remaining portions of this Agreement.
- C. Assignment: This Agreement may not be assigned in whole or in part by Manager.
- D. Headings: The headings preceding the text of the articles and paragraphs of the Agreement are intended solely for the convenience of reference and shall not affect the meaning, construction or effect of this Agreement.

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

If to L&C:

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

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

If to Manager:

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

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

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

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

FOR L&C:

BY:
TITLE:

J. W. Marshall
President

FOR MANAGER:

BY:
TITLE:

[Signature]
President

Exhibit A - Underwriting Authority

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

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

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

Exhibit B - Claims Management Authority

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

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

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

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

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

- F. Service of Suit: L&C hereby appoints Vernon E. Leverty, Leverty & Associates Law CHTD., 832 Willow Street Reno, Nevada 89502 as agent for receiving service of process on any suit or proceeding involving a claim or loss arising out of a policy issued by Manager on L&C's behalf. Manager shall also have authority to appoint a suitable independent entity as agent for service of process in all states in which L&C may do business as necessary.
- G. Licensed Adjusters: All claims must be adjusted by properly licensed adjusters.
- H. Defense Counsel: Manager will identify defense counsel by state, and will review the qualifications with L&C and obtain the approval of L&C before engaging defense counsel and such review shall be on periodic basis.

FIRST AMENDMENT TO
MANAGEMENT AGREEMENT

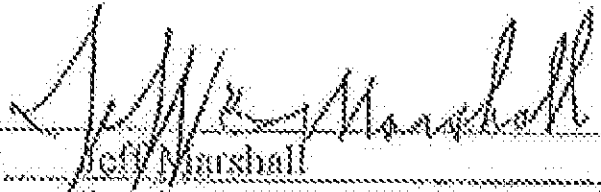
THIS FIRST AMENDMENT TO MANAGEMENT AGREEMENT is made between LEWIS & CLARK LTC RISK RETENTION GROUP, INC., a Nevada corporation ("L&C"), and UNI-TER UNDERWRITING MANAGEMENT CORPORATION, a Delaware corporation ("Manager"), effective as of January 1, 2004.

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

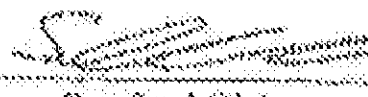
1. Article IV, Subsection A of the Management Agreement is hereby amended to provide that the calculation of gross written premiums shall be made net of the per bed risk management fee charged from time to time, as well as net of cancellations and nonrenewals.

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

LEWIS & CLARK LTC RISK RETENTION
GROUP, INC.

By: 
Name: Jeff Marshall
Title: President

UNI-TER UNDERWRITING MANAGEMENT
CORPORATION

By: 
Name: Sanford Elvass
Title: President

**SECOND AMENDMENT TO
MANAGEMENT AGREEMENT**

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

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

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

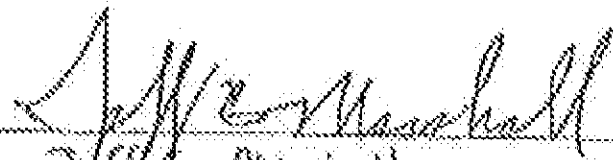
2. Article IV, Subsection A of the Management Agreement is hereby amended to read as follows:

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

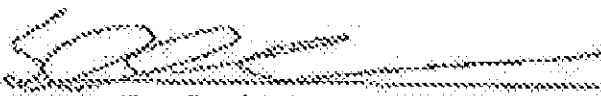
During each year of L&C's operations, commissions at the rate of 12% of the annual gross written premiums (net of cancellations and non-renewals) plus the amount of agency commissions (at rates approved by L&C) payable to retail and wholesale agents appointed by the Manager.

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

LEWIS & CLARK LTC RISK RETENTION
GROUP, INC.

By: 
Name: Jeffrey Marshall
Title: President

UNI-TER UNDERWRITING
MANAGEMENT CORPORATION

By: 
Name: Sanford Elsass
Title: President

THIRD AMENDMENT TO
MANAGEMENT AGREEMENT


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

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

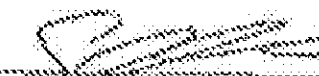
1. Article IV, Subsection B. 2. of the Management Agreement is hereby amended to provide that the hourly rate for claim adjuster/professional time is set at \$105 per hour.

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

LEWIS & CLARK LTC RISK RETENTION
GROUP, INC.

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

UNI-TER UNDERWRITING
MANAGEMENT CORPORATION

By: 
Name: Sanford Elsass
Title: President

**FOURTH AMENDMENT TO
MANAGEMENT AGREEMENT**

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

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

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

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

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

LEWIS & CLARK LTC RISK RETENTION
GROUP, INC.

UNI-TER UNDERWRITING
MANAGEMENT CORPORATION

By: _____

Name: _____

Title: _____

J. C. Marshall
J. C. Marshall
President

By: _____

Name: _____

Title: _____

Sanford Elsass
Sanford Elsass
President

**FIFTH AMENDMENT TO
MANAGEMENT AGREEMENT**

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

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

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

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

Loss Ratio

Greater than 60.1%
56.1% to 60.0%
52.1% to 56.0%
48.1% to 52.0%
44.1% to 48.0%
40.1% to 44.0%
40.0% or less

Profit Sharing Bonus

None
1% of earned premium for calendar year
2% of earned premium for calendar year
3% of earned premium for calendar year
4% of earned premium for calendar year
5% of earned premium for calendar year
6% of earned premium for calendar year

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

LEWIS & CLARK LTC RISK RETENTION
GROUP, INC.

UNI-TER UNDERWRITING
MANAGEMENT CORPORATION

By: [Signature]
Name: W. E. Marshall
Title: President

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

SIXTH AMENDMENT TO
MANAGEMENT AGREEMENT


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

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

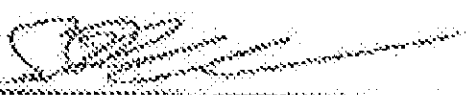
1. Article IV, Subsection B. 2. of the Management Agreement is hereby amended to provide that the hourly rate for claim adjustor/professional time is set at \$125 per hour.

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

LEWIS & CLARK LTC RISK RETENTION
GROUP, INC.

By: 
Name: Michele Dood-Clark
Title: Secretary

UNI-TER UNDERWRITING
MANAGEMENT CORPORATION

By: 
Name: Sanford Elsass
Title: President

SEVENTH AMENDMENT TO
MANAGEMENT AGREEMENT

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

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

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

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

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

LEWIS & CLARK LTC RISK RETENTION
GROUP, INC.

UNI-TER UNDERWRITING
MANAGEMENT CORPORATION

By: [Signature]
Name: T. C. Marshall
Title: President

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

**EIGHTH AMENDMENT TO
MANAGEMENT AGREEMENT**

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


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

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

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

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

LEWIS & CLARK LTC RISK RETENTION
GROUP, INC.

By: 
Name: Jeff C. Marshall
Title: President

UNI-TER UNDERWRITING
MANAGEMENT CORPORATION

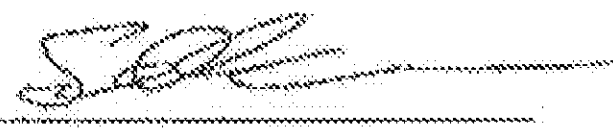
By: 
Name: Sanford Elsass
Title: President

EXHIBIT 3

EXHIBIT 3

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MANAGEMENT AGREEMENT

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

ARTICLE I. Term of Agreement

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

ARTICLE II. Appointment of Manager; Lines of Authority

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

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

ARTICLE III. Manager's Duties and Responsibilities

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

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

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

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

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

P. Governmental Contacts: To promptly respond to all contacts and correspondence received from insurance regulatory or other governmental authorities that pertain to business described in Exhibit A, to respond appropriately to all summonses, complaints, subpoenas or other court documents, and to advise L&C of any such items that are of a material nature.

Q. Claims Handling: To respond to all claims, suits and losses reported to Manager and/or L&C, and to perform the investigation, settlement and payment of each and all claims, and to collect deductibles due and salvage or subrogation. Manager's specific claim handling duties are set forth in Exhibit B.

R. Risk Management: To arrange or perform risk management services for the insureds of L&C. Such risk management shall have the primary goal of reducing the frequency of medical incidents that give rise to policy claims. Specific risk management duties and compensation therefore will be negotiated and invoiced directly between Manager and L&C insureds.

S. Competent Staff: To maintain sufficient supplies and equipment, and a staff of competent and trained personnel, to produce, develop, underwrite and supervise the business covered by this Agreement.

T. Accurate Records: To keep and maintain separate, identifiable, orderly, accurate, complete and timely records and accounts of all business and transactions pertaining to policies bound or written under the Agreement including complete underwriting and rate files, all claims-related records, all accounting and financial records, regulatory records, and all other records relating to the operations of L&C. Such records and files shall be the property of L&C; provided that Manager may retain copies of all such records and files. In addition, any Insurance Commissioner shall have access to all books, accounts, records and files of Manager for business bound or written under this Agreement and any such books, accounts, records, and files shall be kept in a form acceptable by such Insurance Commissioner. Records of L&C shall be retained according to Section NRS 694C.410 Nevada Statutes.

U. Electronic Files: All records maintained in electronic format shall be treated the same as hard copy records for purposes of this agreement. Manager shall maintain appropriate data backup procedures and transmit all required data on a timely basis.

V. Audit: To permit L&C during the term of this agreement to visit, inspect, examine, audit and verify, at Manager's offices, within normal business hours, with or without prior notice any of the properties, accounts, files, documents, books, reports, work papers and other records belonging to or in the possession or control of Manager or of any other person relating to the

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

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

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

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

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

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

ARTICLE IV. Manager's Compensation

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

*

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

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

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

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

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

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

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

fourth year following the end of each such calendar year. The profit sharing bonus shall be paid to Manager no later than June 1st of the year following such fourth year (for example, for 2011, the profit sharing bonus will be calculated as of December 31, 2015 and paid by June 1, 2016). In no event will a profit sharing bonus be earned, accrued or paid to Manager for a calendar year for which L&C has no Profit (or a loss ("Loss") based upon the above methodology). L&C's Profit for any calendar year, and the calculation of Manager's profit sharing bonus for such calendar year, shall not be affected by a Loss in any other calendar year for the calendar years 2007 - 2009. However, any Loss in any calendar year beginning with 2010 shall not be carried back to prior years, but shall be carried forward to reduce the Profit, and/or increase the Loss, as applicable, in the succeeding calendar year.

ARTICLE V. Representation with Respect to Policies

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

ARTICLE VI. Insurance of Manager

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

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

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

ARTICLE VII. Indemnification

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

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

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

ARTICLE VIII. Ownership of Expirations

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

ARTICLE IX. Termination of Agreement

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

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

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

B. Manager may terminate this Agreement as follows:

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

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

ARTICLE X. Cure Provision

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

ARTICLE XI. Continuing Duties of Manager after Termination

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

ARTICLE XII. Arbitration

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

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

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

ARTICLE XIII. Other Terms and Conditions

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

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

If to L&C:

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

Jeff C. Marshall
President & CEO
Eagle Healthcare Inc.
12015 115th Avenue NE
Suite E-195
Kirkland, Washington 98034

If to Manager:

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

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

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

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

FOR L&C:

BY:

TITLE:

DATE:

J. H. Marshall
President
11/23/10

FOR MANAGER:

UNI-TER UNDERWRITING MANAGEMENT
CORPORATION

BY:

TITLE:

DATE:

[Signature]
President
12/14/10

UNI-TER CLAIMS SERVICES CORPORATION

BY:

TITLE:

DATE:

[Signature]
President
12/15/10

Exhibit A – Underwriting Authority

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

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

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

Exhibit B -- Claims Management Authority

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

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

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

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

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

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

FIRST AMENDMENT TO
MANAGEMENT AGREEMENT

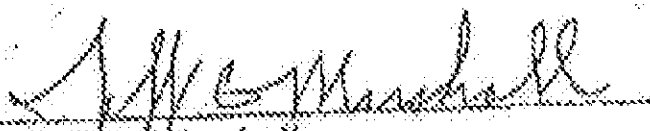
THIS FIRST AMENDMENT TO MANAGEMENT AGREEMENT dated January 1, 2011 (the "Management Agreement") is made between LEWIS & CLARK LTC RISK RETENTION GROUP, INC., a Nevada corporation ("L&C"), and UNI-TER UNDERWRITING MANAGEMENT CORPORATION, a Delaware corporation ("Manager"), effective as of January 1, 2011.

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

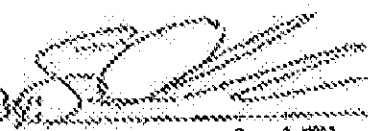
For calendar year 2011 only, line 4 of Article IV, Section A is hereby revised to provide for a rate of commissions at 10% (rather than 12%). Continuation of this 2% differential (or portion thereof) for subsequent periods covered by this Management Agreement is subject to mutual agreement of the parties.

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

LEWIS & CLARK LTC RISK RETENTION
GROUP, INC.

By: 
Name: Jeff C. Marshall
Title: President

UNI-TER UNDERWRITING
MANAGEMENT CORPORATION

By: 
Name: Sanford Elsass
Title: President

*This was revised
on February 7th, 2011*

SECOND AMENDMENT TO
MANAGEMENT AGREEMENT

THIS SECOND AMENDMENT TO MANAGEMENT AGREEMENT dated January 1, 2011 (the "Management Agreement") is made between LEWIS & CLARK LTC RISK RETENTION GROUP, INC., a Nevada corporation ("L&C"), and UNI-TRR UNDERWRITING MANAGEMENT CORPORATION, a Delaware corporation ("Manager"), effective as of November 16, 2011.


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

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

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

LEWIS & CLARK LTC RISK RETENTION
GROUP, INC.

UNI-TRR UNDERWRITING
MANAGEMENT CORPORATION

By: 
Name: Jeff A. Marshall
Title: President

By: _____
Name: Sanford Elmsa
Title: President

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SECOND AMENDMENT TO
MANAGEMENT AGREEMENT

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

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

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

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

LEWIS & CLARK LTC RISK RETENTION
GROUP, INC.

UNI-TER UNDERWRITING
MANAGEMENT CORPORATION

By: _____
Name: Jeff C. Marshall
Title: President

By: Donna K. Decker
Name: Sanford Bleas Donna Decker
Title: President Coq/CFO

THIRD AMENDMENT TO
MANAGEMENT AGREEMENT

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

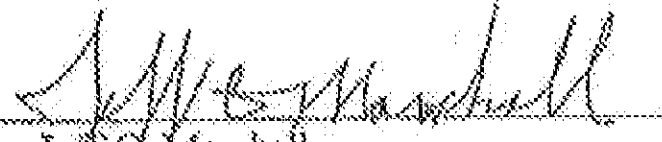
For good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

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

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

LEWIS & CLARK LTC RISK RETENTION
GROUP, INC.

UNI-TER UNDERWRITING
MANAGEMENT CORPORATION

By: 
Name: Jeff O. Marshall
Title: President

By: _____
Name: Sanford Elsass
Title: President

**THIRD AMENDMENT TO
MANAGEMENT AGREEMENT**

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

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

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

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

LEWIS & CLARK LTC RISK RETENTION
GROUP, INC.

UNI-TER UNDERWRITING
MANAGEMENT CORPORATION

By: _____
Name: Jeff C. Marshall
Title: President

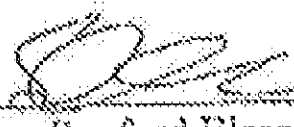
By:  _____
Name: Sanford Elsass
Title: President

EXHIBIT 4

EXHIBIT 4

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

(Date) 12/22/03

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

Re: Broker of Record Letter Agreement

Dear Mr. Piccione:

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

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

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

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

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

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

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

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

Very truly yours,

LEWIS AND CLARK LTC RISK RETENTION GROUP, INC.

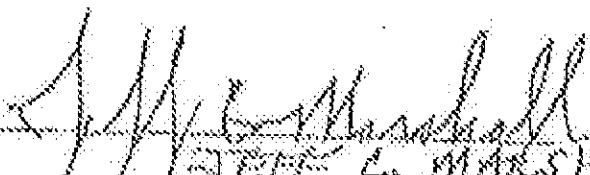

By: JEFF C. MARSHALL
Title: Chief Executive Officer (Resident)

EXHIBIT 5

EXHIBIT 5

7A



Lewis & Clark LTC Risk Retention Group, Inc.

Audited Financial Statements

*Years ended December 31, 2011 and 2010
with Report of Independent Auditors*

Lewis & Clark LTC Risk Retention Group, Inc.

Audited Financial Statements

Years ended December 31, 2011 and 2010

Contents

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Report of Independent Auditors

Board of Directors
Lewis & Clark LTC Risk Retention Group, Inc.

We have audited the accompanying balance sheets of Lewis & Clark LTC Risk Retention Group, Inc. ("the Company") as of December 31, 2011 and 2010 and the related statements of income and comprehensive income, changes in shareholders' equity and cash flows for the years then ended. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

As discussed in Note F, at December 31, 2011 and 2010, the Company classified its surplus notes payable as a component of shareholders' equity. The foregoing accounting treatment is allowed under the captive insurance laws of the State of Nevada but is not in accordance with accounting principles generally accepted in the United States of America.

In our opinion, except for the effects of the inclusion of the surplus notes as shareholders' equity as described in the preceding paragraph, the financial statements referred to above present fairly, in all material respects, the financial position of Lewis & Clark LTC Risk Retention Group, Inc. at December 31, 2011 and 2010, and the results of its operations and its cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

Johnson Lambert & Co. LLP

Jacksonville, Florida
May 8, 2012

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Lewis & Clark LTC Risk Retention Group, Inc.

Balance Sheets

	As of December 31,	
	2011	2010
Assets		
Fixed maturity securities, at fair value	\$ 10,618,359	\$ 12,668,070
Cash and cash equivalents	2,896,198	1,274,251
Deposit held by reinsurer	2,288,918	769,200
Premiums receivable	122,031	2,328,164
Deferred policy acquisition costs	1,087,202	1,246,396
Prepaid reinsurance	739,203	943,744
Reinsurance recoverable on unpaid losses & LAE	1,322,971	30,000
Accrued investment income	77,287	95,414
Prepaid expenses	265,827	140,932
Net deferred tax asset	2,113,620	602,366
Federal income taxes recoverable	438,985	61,213
Deposit	623,628	-
Other assets	478,552	45,399
Total assets	\$ 23,072,781	\$ 20,205,149
Liabilities and shareholders' equity		
Liabilities:		
Reserve for losses and loss adjustment expenses	\$ 15,348,990	\$ 9,181,477
Unearned premiums	3,752,244	5,025,763
Advance premiums	-	17,430
Other accounts payable	200,250	88,848
Management fee payable	87,617	1,084,400
Premium taxes payable	138,243	227,521
Total liabilities	19,527,344	15,625,439
Shareholders' equity:		
Common stock, par value of \$1; 100,000 shares authorized; 27,829 and 27,090 issued and outstanding	27,829	27,090
Paid-in and contributed capital	3,147,314	3,031,088
Surplus notes (Note F)	3,700,000	1,000,000
Retained (deficit) earnings	(3,429,608)	312,801
Accumulated other comprehensive income, net of tax	99,902	208,731
Total shareholders' equity	3,545,437	4,579,710
Total liabilities and shareholders' equity	\$ 23,072,781	\$ 20,205,149

See accompanying notes to the financial statements.

Lewis & Clark LTC Risk Retention Group, Inc.

Statements of Income and Comprehensive Income

	Years ended December 31,	
	2011	2010
Revenues		
Premiums earned	\$ 10,066,502	\$ 12,514,088
Investment income	532,999	350,611
Other income	1,301	48,725
Total revenues	<u>10,600,802</u>	<u>12,913,424</u>
Expenses		
Loss and loss adjustment expenses incurred	12,759,727	8,183,817
Underwriting and acquisition expenses	2,310,222	2,516,632
Management fees	1,030,411	1,515,101
Interest expense	54,719	68,897
Investment expense	<u>77,158</u>	<u>79,990</u>
Total expenses	<u>16,232,237</u>	<u>12,364,437</u>
Net (loss) income before income taxes	(5,631,435)	548,987
Income tax benefit (expense)	<u>1,889,026</u>	<u>(392,711)</u>
Net (loss) income	<u>\$ (3,742,409)</u>	<u>\$ 156,276</u>
Comprehensive Income		
Net (loss) income	\$ (3,742,409)	\$ 156,276
Other comprehensive income		
Change in net unrealized gain on investments	(206,795)	170,449
Reclassification adjustment for realized gains included in net income	<u>97,966</u>	<u>9,332</u>
Comprehensive (loss) income	<u>\$ (3,851,238)</u>	<u>\$ 336,057</u>

See accompanying notes to the financial statements.

Lewis & Clark LTC Risk Retention Group, Inc.

Statements of Changes in Shareholders' Equity

	Common Stock	Paid-in and Contributed Capital	Surplus Notes	Retained Earnings (Deficit)	Accumulated Other Comprehensive Income (Loss)	Total Shareholders' Equity
Balance at January 1, 2010	\$ 26,023	\$2,819,853	\$1,000,000	\$ 156,525	\$ 28,950	\$ 4,031,351
Issuance of common stock	1,067	211,235	-	-	-	212,302
Other comprehensive income	-	-	-	-	179,781	179,781
Net income	-	-	-	156,276	-	156,276
Balance at December 31, 2010	27,090	3,031,088	1,000,000	312,801	208,731	4,579,710
Issuance of common stock	739	116,226	-	-	-	116,965
Issuance of surplus notes	-	-	2,700,000	-	-	2,700,000
Other comprehensive loss	-	-	-	-	(108,829)	(108,829)
Net loss	-	-	-	(3,742,409)	-	(3,742,409)
Balance at December 31, 2011	\$ 27,829	\$3,147,314	\$3,700,000	\$ (3,429,608)	\$ 99,902	\$ 3,545,437

See accompanying notes to the financial statements.

Lewis & Clark LTC Risk Retention Group, Inc.

Statements of Cash Flows

	Years ended December 31,	
	2011	2010
Cash flows from operating activities		
Net (loss) income	\$ (3,742,409)	\$ 156,276
Add (deduct) items not affecting cash:		
Amortization of premium of bonds	(27,995)	8,181
(Gain) loss on sale of securities	(148,433)	14,139
Net deferred income tax	(1,511,254)	189,678
Changes in assets and liabilities:		
Premiums receivable	2,206,133	(1,456,824)
Deferred policy acquisition costs	159,194	(17,769)
Accrued investment income	18,127	770
Federal income taxes recoverable	(377,772)	134,509
Reinsurance recoverable on unpaid losses and LAE	(1,292,971)	(30,000)
Receivable from affiliate		25,054
Prepaid reinsurance	204,541	(78,886)
Deposit held by reinsurers	(1,519,718)	(348,451)
Deposits	(623,628)	
Other assets	(78,048)	5,949
Losses and loss adjustment expenses	6,167,513	2,925,989
Unearned and advance premiums	(1,290,949)	(481,600)
Accrued expenses	(974,659)	(706,205)
Net cash from operations	<u>(2,832,328)</u>	<u>340,810</u>
Cash flow from investing activities		
Purchase of fixed maturity securities	(14,716,493)	(12,789,067)
Sales and maturities of fixed maturity securities	<u>16,833,803</u>	<u>10,875,000</u>
Net cash from investing activities	<u>2,117,310</u>	<u>(1,914,067)</u>
Cash flow from financing activities		
Proceeds from issuance of common stock	116,965	212,302
Issuance of surplus notes	<u>2,220,000</u>	<u>-</u>
Net cash from financing activities	<u>2,336,965</u>	<u>212,302</u>
Net change in cash and cash equivalents	1,621,947	(1,360,955)
Cash and cash equivalents, beginning of year	<u>1,274,251</u>	<u>2,635,206</u>
Cash and cash equivalents, end of year	<u>\$ 2,896,198</u>	<u>\$ 1,274,251</u>

See accompanying notes to the financial statements.

Lewis & Clark LTC Risk Retention Group, Inc.

Notes to Financial Statements

Years ended December 31, 2011 and 2010

Note A - Organization and Significant Accounting Policies

Organization

Lewis & Clark LTC Risk Retention Group, Inc. (the "Company") was established as a stock insurance company under the captive insurance company statutes of the State of Nevada, and operates pursuant to the Federal Liability Risk Retention Act of 1986 ("LRRA"). Pursuant to the LRRA, the Company's policies are not subject to coverage by the respective states' guaranty fund. The Company was incorporated on December 15, 2003 and commenced business on December 31, 2003.

The Company writes professional and general liability insurance for long-term care facilities that include skilled nursing facilities, assisted living facilities and independent living facilities ("LTC Facilities") and nurses professional liability. Policy limits range from \$100,000 to \$2,000,000 per occurrence, with aggregate policy limits of up to \$4,000,000. During 2011 and 2010, the Company had approximately 1,175 and 1,077 policyholders, respectively, with no single policyholder accounting for more than 30% and 17% of direct written premium in 2011 or 2010. LTC Facilities and nurses purchasing liability coverage from the Company are also required to make a capital investment in the Company. The Company is prohibited from writing insurance for any entity or individual that is not a shareholder.

The Company is managed by Uni-Ter Underwriting Management Corporation, (the "Manager"). For 2011 or 2010, the Manager received a management fee equal to 14% of gross written premium for LTC facility, professional and commercial general liability policies and 30% of gross written premium for nurses professional liability. During 2011 or 2010, management fees charged to expense amounted to \$1,611,589 and \$2,102,485, respectively. A claim services fee is also paid to the Manager equal to a base fee plus an hourly rate. An affiliate of the Manager serves as the Company's reinsurance intermediary.

Lewis & Clark LTC Risk Retention Group, Inc.

Notes to Financial Statements

Years ended December 31, 2011 and 2010

Note A- Organizations and Significant Accounting Policies (Continued)

Historically, a profit sharing bonus based upon the underwriting profitability of the Company is payable to the Manager as of December 31st of the fourth year following the end of each calendar year equal to between 1% and 6% of earned premium for those underwriting years provided that the Company's loss ratio is less than 60.1%. During 2010, the profit sharing bonus structure changed to include a bonus based on adjusted pre-tax income as defined by the new agreement. Upon execution of the new agreement, the Company reduced the profit sharing bonus payable by \$851,021. At December 31, 2011 and 2010, the Company accrued a profit sharing bonus payable in the amount of \$0 and \$263,637.

The Company and the Manager entered into a Warrant Agreement dated January 1, 2004 that allows the Manager to purchase up to 2.5% of the outstanding shares of the Company in the event the Company ceases to be an RRG under the LRRRA. The price of the shares is calculated by reference to the Company's shareholders' equity. No amounts have been recorded in the accompanying financial statements with respect to the Warrant Agreement as the Company has no plans to cease operating as an RRG.

Basis of Reporting

Except as disclosed in Note F, the accompanying financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP") promulgated by the Financial Accounting Standards Board Accounting Standards Codification (ASC or the guidance). The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Cash and Cash Equivalents

Cash and cash equivalents are presented at cost, which approximates fair value. The Company considers all highly liquid investments with original maturities of three months or less to be cash equivalents. The Company maintains its cash balances at several financial institutions. The Federal Deposit Insurance Corporation and the Securities Investor Protection Corporation provide limited insurance for these accounts. Management monitors balances in excess of insured limits and believes they do not represent a significant credit risk to the Company.

Lewis & Clark LTC Risk Retention Group, Inc.

Notes to Financial Statements (Continued)

Note A - Organization and Significant Accounting Policies (Continued)

Investments

The Company classifies its fixed maturity securities as available-for-sale and carries these investments at fair value with unrealized gains and losses reported as a separate component of shareholders' equity, net of tax. Interest income is recognized as earned. Realized gains and losses on the sales of invested assets are determined on the basis of specific identification.

Other-Than-Temporary Impairments

Other-than-temporary impairments ("OTTI") for fixed maturity securities is recognized when an entity has the intent to sell or when it is more likely than not that an entity will be required to sell the debt security before its anticipated recovery in value. Investments are considered impaired and written-down to fair value through earnings when management expects that the decline in value is "other-than-temporarily." For the years ended December 31, 2011 and 2010, management determined that no investments had unrealized losses that were other-than-temporary.

Liability for Losses and Loss Adjustment Expenses

The liability for losses and loss adjustment expenses ("LAE") represents management's best estimate of the ultimate cost of all reported and unreported losses that are unpaid as of the balance sheet date. The liability for loss and loss adjustment expenses was estimated using individual claim-basis valuations, statistical analysis, and various actuarial projections. The projection of future claim payment and reporting is based on an analysis of the Company's historical experience, supplemented by an analysis of industry loss data. Management believes that its aggregate provision for losses and loss adjustment expenses is reasonable and adequate to meet the ultimate net cost of covered losses, but such provision is necessarily based on estimates and the ultimate net cost may vary significantly from such estimates. Future events that could impact these estimates include jury decisions, court interpretations, legislative changes, public attitudes and other social/economic conditions such as inflation that may differ from the assumptions used to estimate the Company's liabilities. As adjustments to these estimates become necessary, such adjustments are reflected in current operations.

Premiums

Premiums written are earned on a daily pro-rata basis over the terms of the policies to which they relate. Premiums ceded are reflected as a reduction to premiums earned. The unearned premium reserve represents the portion of premiums written that is applicable to the unexpired terms of policies in-force. A premium deficiency reserve is calculated to the extent that anticipated losses and LAE on premiums unearned at the balance sheet date exceed the unearned premium liability net of anticipated investment income. At December 31, 2011 and 2010, management determined that no premium deficiency reserve was required.

Lewis & Clark LTC Risk Retention Group, Inc.

Notes to Financial Statements (Continued)

Note A - Organization and Significant Accounting Policies (Continued)

Reinsurance

The Company uses ceded reinsurance to protect itself from significant large claims. Certain reinsurance contracts provide for adjustable premiums based on actual loss experience incurred. Management makes estimates of additional amounts due or receivable under its reinsurance agreements based on loss experience.

In preparing financial statements, management estimates the amounts recoverable from reinsurers to be uncollectible based on an assessment of factors including the creditworthiness of the reinsurers and the adequacy of collateral obtained, where applicable. The Company recorded no allowance for uncollectible reinsurance at December 31, 2011 and 2010 and did not expense any uncollectible reinsurance during the years ended December 31, 2011 and 2010.

Deferred Policy Acquisition Costs

Acquisition costs represent the costs of writing business that vary with and are primarily related to the production of new or renewal insurance business. Such costs that relate to the unexpired portions of premiums written are deferred and carried as assets on the accompanying balance sheet.

Income Taxes

The Company files a stand-alone federal income tax return. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax basis and for operating loss and tax credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled.

The Company believes that its federal income tax filing positions and deductions will be sustained on audit and does not anticipate any adjustments that will result in a material change to its financial position. Therefore, no reserves for uncertain federal income tax positions have been recorded.

Subsequent Events

The Company has evaluated subsequent events for disclosure and recognition through May 8, 2012, the date on which these financial statements were available to be issued.

Lewis & Clark LTC Risk Retention Group, Inc.

Notes to Financial Statements (Continued)

Note B - Insurance Activity

Premium activity for 2011 and 2010 is summarized as follows:

	Direct	Ceded	Net
2011			
Premiums written	\$ 10,224,774	\$ (1,227,250)	\$ 8,997,524
Change in unearned premiums	1,273,520	(204,542)	1,068,978
Premiums earned	\$ 11,498,294	\$ (1,431,792)	\$ 10,066,502
2010			
Premiums written	\$ 14,491,006	\$ (2,544,266)	\$ 11,946,740
Change in unearned premiums	488,462	78,886	567,348
Premiums earned	\$ 14,979,468	\$ (2,465,380)	\$ 12,514,088

The following table details the activity in the reserve for losses and LAE during 2011 and 2010:

	2011	2010
Gross balances at January 1	\$ 9,181,477	\$ 6,255,488
Less: reinsurance recoverable on unpaid losses	(30,000)	-
Net balances at January 1	9,151,477	6,255,488
Incurred related to:		
Current year	6,374,000	6,294,000
Prior years	6,385,779	1,889,817
Total incurred losses and LAE	12,759,779	8,183,817
Paid related to:		
Current year	1,876,000	1,504,000
Prior years	6,009,237	3,783,828
Total paid losses and LAE	7,885,237	5,287,828
Net balances at December 31	14,026,019	9,151,477
Plus: reinsurance recoverable on unpaid losses	1,322,971	30,000
Gross balances at December 31	\$ 15,348,990	\$ 9,181,477

Lewis & Clark LTC Risk Retention Group, Inc.

Notes to Financial Statements (Continued)

Note B - Insurance Activity (Continued)

For the year ending December 31, 2011, management recorded reserves discounted for the time value of money. The calculation was based on the anticipated yield of the Company's investment portfolio and the independent actuary's analysis of expected payout periods. For the year ending December 31, 2010, reserves were recorded at their nominal value and not discounted. Management believes the liability for unpaid losses and loss adjustment expenses is reasonable due to the extended period of time over which such losses are reported and settled. The subsequent development of this liability may not conform to the assumptions inherent in its determination and may vary, perhaps significantly, from the recorded amount.

The unfavorable development recognized during 2011 relates to the increase in severity on several large liability claims related to accident year 2010 and 2009 totaling \$6.1 million. The unfavorable development recognized during 2010 relates to the loss development for accident year 2009.

The components of the liability for gross losses and LAE are as follows:

	<u>2011</u>	<u>2010</u>
Case reserves	\$ 14,300,137	\$ 5,290,894
Supplemental reserves	<u>1,048,853</u>	<u>3,890,583</u>
Total reserves	<u>\$ 15,348,990</u>	<u>\$ 9,181,477</u>

The Company has reinsurance agreements in place to generally cede 100% of losses in excess of \$350,000 to unrelated reinsurers. The contracts covering the layer \$650,000 in excess of \$350,000 include annual aggregate deductibles. Beginning in December 2009, the Company began retaining 25% of losses in excess of \$1 million per claim. Ceded losses incurred were \$1,293,000 and \$30,000 for the years ended December 31, 2011 and 2010, respectively. The Company remains obligated for amounts ceded in the event that the reinsurers do not meet their obligations.

Lewis & Clark LTC Risk Retention Group, Inc.

Notes to Financial Statements (Continued)

Note C - Investments

The amortized cost, gross unrealized gains and losses and fair value of investments in fixed maturity securities, as of December 31, 2011 and 2010 are summarized as follows:

	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
2011				
Obligations of the U.S. Treasury and U.S. Government Agencies	\$ 6,491,420	\$ 149,020	\$ (6,602)	\$ 6,633,838
Special revenue	1,507,586	7,258	(9,435)	1,505,409
Industrial and miscellaneous	2,519,451	6,360	(46,699)	2,479,112
Totals	<u>\$ 10,518,457</u>	<u>\$ 162,638</u>	<u>\$ (62,736)</u>	<u>\$ 10,618,359</u>
2010				
Obligations of the U.S. Treasury and U.S. Government Agencies	\$ 10,323,447	\$ 238,667	\$ (32,357)	\$ 10,529,757
Special revenue	1,465,874	3,479	(7,918)	1,461,435
Industrial and miscellaneous	670,018	7,115	(255)	676,878
Totals	<u>\$ 12,459,339</u>	<u>\$ 249,261</u>	<u>\$ (40,530)</u>	<u>\$ 12,668,070</u>

The summary of the amortized cost and fair value of the Company's investment in fixed maturity securities at December 31, 2011 by contractual maturity, is shown below. The actual maturities may differ from contractual maturities because certain borrowers have the right to call or prepay obligations with or without call or prepayment penalties.

	Amortized Cost	Fair Value
Maturity:		
In 2012	\$ 493,094	\$ 499,652
In 2013-2016	5,147,913	5,192,058
In 2017-2021	4,250,572	4,267,196
Due after 2021	626,878	659,453
Total fixed maturities	<u>\$10,518,457</u>	<u>\$10,618,359</u>

Proceeds from sales and maturities of bonds were \$16,833,803 for the year ended December 31, 2011. Gross gains of \$178,482 and gross losses of \$30,049 were realized on those sales. Proceeds from sales and maturities of bonds were \$10,875,000 for the year ended December 31, 2010. Gross gains of \$1,355 and gross losses of \$15,494 were realized on those sales.

Lewis & Clark LTC Risk Retention Group, Inc.

Notes to Financial Statements (Continued)

Note C - Investments (Continued)

The following table presents the Company's fixed maturity securities within the fair value hierarchy, and the related inputs used to measure those securities at December 31, 2011:

	<u>Total</u>	<u>Level 1</u>	<u>Level 2</u>	<u>Level 3</u>
Obligations of the U.S. Treasury and U.S. Government Agencies	\$ 6,633,838	\$ -	\$ 6,633,838	\$ -
Special revenue	1,505,409	-	1,505,409	-
Industrial and miscellaneous	2,479,112	-	2,479,112	-
Totals	<u>\$10,618,359</u>	<u>\$ -</u>	<u>\$10,618,359</u>	<u>\$ -</u>

Major categories of the Company's 2011 and 2010 investment income are summarized as follows:

	<u>2011</u>	<u>2010</u>
Investment income		
Fixed maturity securities	\$ 383,839	\$ 361,958
Net realized gain (loss)	148,433	(14,139)
Cash and short-term investments	727	2,792
Investment income	<u>\$ 532,999</u>	<u>\$ 350,611</u>

There were 12 fixed maturity securities with unrealized losses as of December 31, 2011. There were 3 securities that were in a loss position for more than 12 months.

	<u>Less than 12 months</u>		<u>12 months or greater</u>	
	<u>Fair value</u>	<u>Unrealized losses</u>	<u>Fair value</u>	<u>Unrealized losses</u>
Obligations of the U.S. Treasury and U.S. Government Agencies	\$ 1,465,407	\$ (4,395)	\$ 200,398	\$ (2,207)
Special revenue	285,750	(4,454)	269,453	(4,981)
Industrial and miscellaneous	1,751,928	(28,050)	175,048	(18,642)
Totals	<u>\$ 3,503,085</u>	<u>\$ (36,899)</u>	<u>\$ 644,899</u>	<u>\$ (25,837)</u>

Lewis & Clark LTC Risk Retention Group, Inc.

Notes to Financial Statements (Continued)

Note D - Federal Income Taxes

The components of the provision for federal income taxes for the years ended December 31, 2011 and 2010 are as follows:

	2011	2010
Current tax (benefit) expense	\$ (377,772)	\$ 203,033
Deferred tax (benefit) expense	(1,511,254)	189,678
Income tax (benefit) expense	<u>\$ (1,889,026)</u>	<u>\$ 392,711</u>

As of December 31, 2011, the Company had a net operating loss carryforward for federal tax purposes of \$4,102,324, which will begin to expire in 2031, if unused.

The Company paid \$0 and \$55,000 in federal income taxes during 2011 and 2010, respectively.

Deferred federal income taxes arise from temporary differences between the valuation of assets and liabilities as determined for financial reporting purposes and income tax purposes. Although realization is not assured, management believes it is more likely than not that the net deferred tax asset existing at December 31, 2011 will be realized; therefore, no valuation allowance is being recorded at year end. The amount of the deferred tax considered realizable could be reduced in the near term if estimates of future taxable income are reduced.

As of December 31, 2011, the open tax years subject to examination are 2008 through 2011.

The tax effects of temporary differences that give rise to significant portions of the deferred tax assets and deferred tax liabilities are as follows:

	December 31, 2011	December 31, 2010
Deferred tax assets:		
Loss reserve discounting	\$ 493,509	\$ 321,417
Unearned premium reserve	204,887	278,763
Organization costs	23,233	25,500
Net operating loss carryforward	1,394,790	-
Accrued expenses	-	11,150
Other	<u>31,168</u>	<u>36,505</u>
Total deferred tax assets	2,147,587	673,335
Deferred tax liabilities:		
Unrealized capital gains	<u>33,967</u>	<u>70,969</u>
Total deferred tax liabilities	<u>33,967</u>	<u>70,969</u>
Net deferred tax asset	<u>\$ 2,113,620</u>	<u>\$ 602,366</u>

Lewis & Clark LTC Risk Retention Group, Inc.

Notes to Financial Statements (Continued)

Note E - Contingencies

The Company is a party to various lawsuits in the normal course of business. These lawsuits generally seek to establish liability under the terms and conditions of insurance policies issued by the Company. The Company's management does not believe that any ongoing litigation would, individually or collectively, result in judgments for amounts, after considering the established loss reserves and reinsurance, that would be material to the Company's financial condition or results of operations.

Note F - Capitalization

The Company is the maker of a subordinated surplus debenture made payable to Oneida Savings Bank ("Oneida"), a New York corporation. The note was originally made on March 9, 2005 in the amount of \$1,000,000, and provided initial capitalization for the Company. The note bears interest at the prime rate plus 2% (currently 5.25%), and provides for an annual extension of the principal at the Company's discretion. Approval from the Nevada Division of Insurance is required prior to any payment of interest or principal. Oneida serves as custodian of the Company's invested assets, and an officer of the Company is also an officer of Oneida.

During 2011, the Company issued \$2,700,000 of subordinated surplus debentures to six members of the Company's board of directors and to the Manager. Of the amount issued, \$480,000 was recorded as capital subscriptions receivable at December 31, 2011, and was collected during the first quarter of 2012. The notes bear interest at the prime rate as defined within plus 2% (currently 5.25%) and are due 36 months from the date of issue. Approval from the Nevada Division of Insurance is required prior to any payment of interest or principal. These notes include a conversion feature whereby they can be exchanged for shares of the Company's common stock.

During 2011 and 2010, the Company received approval to pay interest on the notes totaling \$0 and \$78,966, respectively. At December 31, 2011 and 2010, accrued interest payable amounted to \$87,514 and \$16,397, respectively.

Lewis & Clark LTC Risk Retention Group, Inc.

Notes to Financial Statements (Continued)

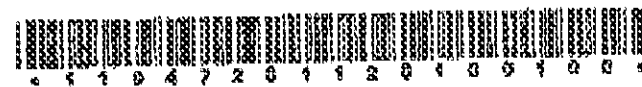
Note F- Capitalization (Continued)

For the purpose of submitting its financial statements for regulatory purposes, the Company uses GAAP with the exception of variances prescribed by State of Nevada laws and regulations. The captive insurance laws of the State of Nevada allow for contributed capital and surplus to be in the form of cash or an approved surplus note. Such treatment is allowed under the captive insurance regulations of the Nevada Division of Insurance but is not in accordance with GAAP. Had the Company applied GAAP, total shareholders' equity reported in these financial statements would have been (\$74,683) and \$3,579,710 at December 31, 2011 and 2010, respectively.

The laws of the State of Nevada require the Company to maintain capital and surplus of at least \$500,000.

A reconciliation of December 31, 2011 net loss and shareholders' equity presented in these financial statements and the December 31, 2011 Nevada Insurance Annual Report is as follows:

	Net income	Shareholders' equity
Annual report	\$ 3,662,529	\$ 3,625,316
Change in deferred tax asset	79,880	(79,880)
Rounding	-	1
Audited financial statements	<u>\$ 3,742,409</u>	<u>\$ 3,545,437</u>



ANNUAL STATEMENT

For the Year Ended December 31, 2011
of the Condition and Affairs of the

Lewis & Clark LTC Risk Retention Group, Inc.

NAIC Group Code.....
(Current Period) (Prior Period)
Organized under the Laws of Nevada
Incorporated/Organized..... December 31, 2003
Statutory Home Office
Main Administrative Office
Mail Address
Primary Location of Books and Records
Internet Web Site Address
Statutory Statement Contact

NAIC Company Code..... 11947
State of Domicile or Place of Entry Nevada
Country of Domicile US
Commenced Business..... December 31, 2003
3773 Howard Hughes Pkwy, 3rd Floor South..... Las Vegas NV 89169
(Street and Number) (City or Town, State and Zip Code)
3655 Brookside Parkway, Suite 200..... Alpharetta GA 30022
(Street and Number) (City or Town, State and Zip Code)
3655 Brookside Parkway, Suite 200..... Alpharetta GA 30022
(Street and Number) (City or Town, State and Zip Code)
3655 Brookside Parkway, Suite 200..... Alpharetta GA 30022
(Street and Number) (City or Town, State and Zip Code)
www.uni-ter.com
Donna K. Dallon
(Name)
ddallon@uni-ter.com
(E-Mail Address)

Employer's ID Number..... 20-0506093
678-781-2400
(Area Code) (Telephone Number)
678-781-2400
(Area Code) (Telephone Number)
678-781-2400
(Area Code) (Telephone Number)
678-781-2450
(Area Code) (Telephone Number) (Extension)
678-781-2450
(Area Code) (Telephone Number) (Fax Number)

OFFICERS

Name	Title	Name	Title
1. Jeff Carley Marshall	President	2. Eric Eugene Stickels	Treasurer
3. Eric Eugene Stickels	Secretary	4.	

OTHER

DIRECTORS OR TRUSTEES

Robert McIntosh Chur	Steven Charles Fogg	Mark Samuel Carter	Dr. Carol Clancy Harter
Robert William Hurbat	Darbara Lee Lumpkin	Jeff Carley Marshall	Eric Eugene Stickels

State of.....
County of.....

The officers of this reporting entity being duly sworn, each depose and say that they are the described officers of said reporting entity, and that on the reporting period stated above, all of the herein described assets were the absolute property of the said reporting entity, free and clear from any liens or claims therein, except as herein stated, and that this statement, together with related exhibits, schedules and explanations therein contained, annexed or referred to, is a full and true statement of all the assets and liabilities and of the condition and affairs of the said reporting entity as of the reporting period stated above, and of its income and deductions therefrom for the period ended, and have been completed in accordance with the NAIC Annual Statement Instructions and Accounting Practices and Procedures manual except to the extent that: (1) state law may differ; or, (2) that state rules or regulations require differences in reporting not related to accounting practices and procedures, according to the best of their information, knowledge and belief, respectively. Furthermore, the scope of this attestation by the described officers also includes the related corresponding electronic filing with the NAIC, when required, that is an exact copy (except for formatting differences due to electronic filing) of the enclosed statement. The electronic filing may be requested by various regulators in lieu of or in addition to the enclosed statement.

(Signature) Jeff Carley Marshall	(Signature) Eric Eugene Stickels	(Signature) Eric Eugene Stickels
1. (Printed Name) President	2. (Printed Name) Treasurer	3. (Printed Name) Secretary
(Title)	(Title)	(Title)

Subscribed and sworn to before me
This _____ day of _____ 2012

a. Is this an original filing? Yes [X] No []
b. If no
1. State the amendment number
2. Date filed
3. Number of pages affected

ASSETS

	Current Year			Prior Year
	1 Assets	2 Nonadmitted Assets	3 Net Admitted Assets (Col. 1 - 2)	4 Net Admitted Assets
1. Bonds (Schedule B):	10,514,357		10,514,357	12,550,070
2. Stocks (Schedule D):			0	
2.1 Preferred stocks:			0	
2.2 Common stocks:			0	
3. Mortgage loans on real estate (Schedule E):			0	
3.1 First liens:			0	
3.2 Other than first liens:			0	
4. Real estate (Schedule A):			0	
4.1 Properties occupied by the company (less \$.....0 encumbrances):			0	
4.2 Properties held for the production of income (less \$.....0 encumbrances):			0	
4.3 Properties held for sale (less \$.....0 encumbrances):			0	
5. Cash (\$.....2,896,198, Sch. E-Part 1), cash equivalents (\$.....143,586, Sch. E-Part 2) and short-term investments (\$.....0, Sch. D-2):	2,896,198		2,896,198	1,274,262
6. Contract loans (including \$.....0 premium notes):			0	
7. Derivatives (Schedule C):			0	
8. Other invested assets (Schedule B-1):			0	
9. Receivables for securities:			0	
10. Securities lending related collateral assets (Schedule B-2):	0	0	0	0
11. Aggregate write-ins for invested assets:	13,514,557	0	13,514,557	13,942,332
12. Subtotals, cash and invested assets (Lines 1 to 11):	13,514,557	0	13,514,557	13,942,332
13. Title plants less \$.....0 charged off (for Title Insurance only):			0	
14. Investment income due and receivable:	77,287		77,287	66,414
15. Premiums and considerations:				
15.1 Uncollected premiums and agents' balances in course of collection:	122,331		122,331	1,285,104
15.2 Deferred premiums, agents' balances and installments booked but deferred and not yet due (including \$.....0 earned but unlibed premiums):			0	
15.3 Accrued retrospective premiums:			0	1,031,606
16. Reinsurance:				
16.1 Amounts recoverable from reinsurers:			0	
16.2 Funds held by or deposited with reinsured companies:			0	
16.3 Other amounts recoverable under reinsurance contracts:	3,039,002		3,039,002	2,818,500
17. Amounts receivable relating to unissued plans:				
18.1 Current federal and foreign income tax receivable and interest thereon:	439,915		439,915	61,813
18.2 Net deferred tax asset:	2,193,601		2,193,601	602,358
19. Guaranty funds receivable or on deposit:			0	
20. Electronic data processing equipment and software:			0	
21. Furniture and equipment, including health care delivery assets (\$.....0):			0	
22. Net adjustment in assets and liabilities due to foreign exchange rates:			0	
23. Receivables from parent, subsidiaries and affiliates:			0	
24. Health care (\$.....0) and other amounts receivable:			0	
25. Aggregate write-ins for other than invested assets:	2,455,208	0	2,455,208	1,432,726
26. Total assets excluding Separate Accounts, Segregated Accounts and Protected Cell Accounts (Lines 12 to 25):	21,840,572	0	21,840,572	21,281,805
27. From Separate Accounts, Segregated Accounts and Protected Cell Accounts:			0	
28. TOTALS (Lines 26 and 27):	21,840,572	0	21,840,572	21,281,805
DETAILS OF WRITE-INS				
1101:			0	
1102:			0	
1103:			0	
1104. Summary of remaining write-ins for Line 11 from margin page:	0	0	0	0
1105. Totals (Lines 1101 thru 1103 plus 1104) (Line 11 above):	0	0	0	0
2501. Capital Subscribers Receivable:	478,552		478,552	66,808
2502. Prepaid Insurance and Deposits:	14,031		14,031	83,620
2503. Deferred Acquisition Costs:	1,087,202		1,087,202	1,246,386
2504. Summary of remaining write-ins for Line 25 from margin page:	872,423	0	872,423	55,411
2505. Totals (Lines 2501 thru 2504 plus 2504) (Line 25 above):	2,455,208	0	2,455,208	1,432,726

LIABILITIES, SURPLUS AND OTHER FUNDS

	\$ Current Year	\$ Prior Year
1. Losses (Part 2A, Line 35, Column 8).....	11,755,924	7,353,259
2. Reinsurance payable on paid losses and loss adjustment expenses (Schedule F, Part 1, Column 8).....	2,269,096	1,796,188
3. Loss adjustment expenses (Part 2A, Line 35, Column 9).....		
4. Commissions payable, contingent commissions and other similar charges.....	200,354	1,140,454
5. Other expenses (excluding taxes, licenses and fees).....	138,243	227,621
6. Taxes, licenses and fees (excluding federal and foreign income taxes).....		
7.1 Current federal and foreign income taxes (including \$..... on realized capital gains (losses)).....		
7.2 Net deferred tax liability.....		
8. Borrowed money \$..... and interest thereon \$.....		
9. Unearned premiums (Part 1A, Line 35, Column 5) (after deducting unearned premiums for coded reinsurance of \$....., 738,203 and including warranty reserves of \$..... and accrued accident and health experience rating refunds including \$..... for medical loss ratio rebate for the Public Health Service Act).....	3,013,041	4,082,618
10. Advance premium.....		17,439
11. Dividends declared and unpaid:		
11.1 Stockholders.....		
11.2 Policyholders.....	760,084	2,030,400
12. Coded reinsurance premiums payable (net of coding expenditures).....		
13. Funds held by company under reinsurance treaty (Schedule F, Part 2, Column 10).....		
14. Amounts withheld or retained by company for account of others.....		
15. Remittances and items not allocated.....		
16. Provision for reinsurance (Schedule F, Part 7).....		
17. Net adjustments in assets and liabilities due to foreign exchange rates.....		
18. Drafts outstanding.....		
19. Payable to parent, subsidiaries and affiliates.....		
20. Derivatives.....		
21. Payable for securities.....		
22. Payable for securities lending.....		
23. Liability for amounts held under universal plans.....		
24. Capital notes \$..... and interest thereon \$.....	87,514	32,794
25. Aggregate write-ins for liabilities.....	16,215,248	16,702,096
26. Total liabilities excluding protected cell liabilities (Lines 1 through 25).....		
27. Protected cell liabilities.....	16,215,248	16,702,096
28. Total liabilities (Lines 26 and 27).....		
29. Aggregate write-ins for special surplus funds.....	27,000	27,000
30. Common capital stock.....		
31. Preferred capital stock.....		
32. Aggregate write-ins for other than special surplus funds.....	3,700,000	1,000,000
33. Surplus notes.....	3,147,314	3,031,098
34. Gross paid in and contributed surplus.....	(3,248,827)	221,832
35. Unassigned funds (surplus).....		
36. Loss treasury stock, at cost:		
36.10.000 shares common (value included in Line 30 \$.....)		
36.20.000 shares preferred (value included in Line 31 \$.....)		
37. Surplus as regards policyholders (Lines 29 to 36, less 36) (Page 4, Line 32).....	2,676,318	4,579,710
38. TOTAL (Page 2, Line 28, Col. 3).....	21,840,872	21,281,006

DETAILS OF WRITE-INS

2501. Interest Payable.....	87,514	32,794
2502.		
2503.		
2504. Summary of remaining write-ins for Line 25 from overflow page.....	0	0
2505. Totals (Lines 2501 thru 2503 plus 2504 (Line 25 above)).....	87,514	32,794
2601.		
2602.		
2603.		
2604. Summary of remaining write-ins for Line 26 from overflow page.....	0	0
2605. Totals (Lines 2601 thru 2603 plus 2604 (Line 26 above)).....	0	0
3201.		
3202.		
3203.		
3204. Summary of remaining write-ins for Line 32 from overflow page.....	0	0
3205. Totals (Lines 3201 thru 3203 plus 3204 (Line 32 above)).....	0	0

STATEMENT OF INCOME

	1	2
	Current Year	Prior Year
UNDERWRITING INCOME		
1. Premiums earned (Part 1, Line 25, Column 4)	10,094,507	12,814,066
DEDUCTIONS		
2. Losses incurred (Part 2, Line 34, Column 7)	8,544,239	5,079,012
3. Loss adjustment expenses incurred (Part 3, Line 25, Column 1)	4,215,545	3,124,204
4. Other underwriting expenses incurred (Part 3, Line 25, Column 2)	3,374,840	4,275,051
5. Aggregate write-ins for underwriting deductions	0	0
6. Total underwriting deductions (Lines 2 through 5)	16,134,624	12,478,267
7. Net income of protected cells		
8. Net underwriting gain (loss) (Line 1 minus Line 6 plus Line 7)	(8,040,117)	271,176
INVESTMENT INCOME		
9. Net investment income earned (Exhibit of Net Investment Income, Line 17)	282,805	243,225
10. Net realized capital gains (losses) less capital gains tax of \$.....0 (Exhibit of Capital Gains (Losses))	146,776	(14,138)
11. Net investment gain (loss) (Lines 9 + 10)	429,581	229,087
OTHER INCOME		
12. Net gain (loss) from equity or premium balances charged off (amount recovered \$.....0 amount charged off \$.....0)	0	0
13. Finance and service charges not included in premiums	1,301	48,725
14. Aggregate write-ins for miscellaneous income	1,301	48,725
15. Total other income (Lines 12 through 14)		
16. Net income before dividends to policyholders, after capital gains tax and before all other federal and foreign income taxes (Lines 8 + 11 + 15)	(5,611,435)	548,937
17. Dividends to policyholders		
18. Net income, after dividends to policyholders, after capital gains tax and before all other federal and foreign income taxes (Line 16 minus Line 17)	(5,611,435)	548,937
19. Federal and foreign income taxes incurred	(1,883,508)	382,711
20. Net income (Line 18 minus Line 19) (to Line 22)	(7,494,943)	166,226
CAPITAL AND SURPLUS ACCOUNT		
21. Surplus as regards policyholders, December 31 prior year (Page 4, Line 28, Column 3)	4,579,709	4,051,348
22. Net income (from Line 20)	(7,494,943)	166,226
23. Net transfers (to) from Protected Cell accounts		
24. Change in net unrealized capital gains or (losses) less capital gains tax of \$.....0	(108,829)	179,789
25. Change in net unrealized foreign exchange capital gain (loss)		
26. Change in net deferred income tax		
27. Change in nonadmitted assets (Exhibit of Nonadmitted Assets, Line 28 Column 3)		
28. Change in provision for reinsurance (Page 3, Line 18, Column 2 minus Column 1)	2,700,000	
29. Change in surplus notes		
30. Surplus (contributed to) withdrawn from protected cells		
31. Cumulative effect of changes in accounting principles		
32. Capital changes:		
32.1 Paid in	739	1,067
32.2 Transferred from surplus (Stock Dividend)		
32.3 Transferred to surplus		
33. Surplus adjustments:		
33.1 Paid in	118,225	211,235
33.2 Transferred to capital (Stock Dividend)		
33.3 Transferred from capital		
34. Net remittances from or (to) Home Office		
35. Dividends to stockholders		
36. Change in treasury stock (Page 3, Lines 36.1 and 36.2, Column 2 minus Column 1)	0	0
37. Aggregate write-ins for gains and losses in surplus		
38. Change in surplus as regards policyholders for the year (Lines 22 through 37)	(954,232)	548,301
39. Surplus as regards policyholders, December 31 current year (Line 21 plus Line 38) (Page 3, Line 37)	3,625,477	4,679,738
DETAILS OF WRITE-INS		
0501		
0502		
0503		
0509. Summary of remaining write-ins for Line 6 from overflow page	0	0
0509. Totals (Lines 0501 thru 0503 plus 0509) (Line 6 above)	0	0
1401. Misc income	1,301	48,725
1402		
1403		
1409. Summary of remaining write-ins for Line 14 from overflow page	0	0
1409. Totals (Lines 1401 thru 1403 plus 1409) (Line 14 above)	1,301	48,725
3701. PV adjustment		
3702		
3703		
3709. Summary of remaining write-ins for Line 37 from overflow page	0	0
3709. Totals (Lines 3701 thru 3703 plus 3709) (Line 37 above)	0	0

CASH FLOW

	Current Year	Prior Year
CASH FROM OPERATIONS		
1. Premiums collected net of reinsurance	9,885,910	11,174,829
2. Net investment income	277,688	362,178
3. Miscellaneous income	1,381	48,725
4. Total (Lines 1 through 3)	10,164,981	11,475,629
5. Benefit and loss related payments	4,350,006	3,754,733
6. Net transfers to Separate Accounts, Segregated Accounts and Protected Cell Accounts		
7. Commissions, expenses paid and aggregate write ins for deductions	8,188,838	7,289,859
8. Dividends paid to policyholders		68,934
9. Federal and foreign income taxes paid (recovered) net of \$.....0 tax on capital gains (losses)	12,508,850	11,113,129
10. Total (Lines 5 through 9)	(2,314,555)	392,706
11. Net cash from operations (Line 4 minus Line 10)		
CASH FROM INVESTMENTS		
12. Proceeds from investments sold, matured or repaid:		
12.1 Bonds	16,633,803	16,875,000
12.2 Stocks		
12.3 Mortgage loans		
12.4 Real estate		
12.5 Other invested assets		
12.6 Net gains or (losses) on cash, cash equivalents and short-term investments		
12.7 Miscellaneous proceeds		
12.8 Total investment proceeds (Lines 12.1 to 12.7)	16,633,803	16,875,000
13. Cost of investments acquired (long-term only):		
13.1 Bonds	14,718,883	12,788,857
13.2 Stocks		
13.3 Mortgage loans		
13.4 Real estate		
13.5 Other invested assets		
13.6 Loan/advance applications		
13.7 Total investments acquired (Lines 13.1 to 13.6)	14,718,883	12,788,857
14. Net increase (decrease) in current loans and premium notes		
15. Net cash from investments (Line 12.8 minus Lines 13.7 minus Line 14)	2,117,390	(1,914,857)
CASH FROM FINANCING AND MISCELLANEOUS SOURCES		
16. Cash provided (applied):		
16.1 Surplus notes, capital notes	2,705,000	
16.2 Capital and paid in surplus, less treasury stock	118,985	212,302
16.3 Borrowed funds		
16.4 Net deposits on deposit-type contracts and other insurance liabilities		
16.5 Dividends to stockholders	(867,733)	(21,638)
16.6 Other cash provided (applied)	1,849,282	181,413
17. Net cash from financing and miscellaneous sources (Lines 16.1 to 16.6 minus Line 16.5 plus Line 16.6)		
RECONCILIATION OF CASH, CASH EQUIVALENTS AND SHORT-TERM INVESTMENTS		
18. Net change in cash, cash equivalents and short-term investments (Line 11 plus Line 15 plus Line 17)	1,821,847	(1,388,854)
19. Cash, cash equivalents and short-term investments:		
19.1 Beginning of year	1,274,253	2,635,207
19.2 End of year (Line 18 plus Line 19.1)	3,096,100	1,246,353
Notes: Supplementary disclosures of cash flow information for non-cash transactions		
2012031		

UNDERWRITING AND INVESTMENT EXHIBIT

PART 1 - PREMIUMS EARNED

Line of Business		1 Net Premiums Written per Column 6, Part 1B	2 Unearned Premiums December 31 Prior Year per Col. 3, Last Year's Part 1	3 Unearned Premiums December 31 Current Year per Col. 6, Part 1A	4 Premiums Earned During Year (Col. 1 + 2 - 3)
1.	Fire				0
2.	Allied lines				0
3.	Firemariners multiple peril				0
4.	Marine multiple peril				0
5.	Commercial multiple peril				0
6.	Mortgage guaranty				0
7.	Ocean marine				0
8.	Inland marine				0
9.	Financial guaranty				0
11.1	Medical professional liability - occurrence	1,321,629	1,035,377	1,134,147	1,422,859
11.2	Medical professional liability - claims-made	8,088,110	1,977,930	1,164,263	8,821,770
12.	Autos				0
13.	Group accident and health				0
14.	Credit accident and health (group and individual)				0
15.	Other accident and health				0
16.	Workers' compensation				0
17.1	Other liability - occurrence	282,046	235,230	278,040	288,226
17.2	Other liability - claims-made	2,085,734	813,486	440,573	2,452,648
17.3	Excess workers' compensation				0
18.1	Products liability - occurrence				0
18.2	Products liability - claims-made				0
19.1, 19.3	Private passenger auto liability				0
19.3, 19.4	Commercial auto liability				0
21.	Auto physical damage				0
22.	Aircraft (all perils)				0
23.	Fidelity				0
24.	Surety				0
25.	Burglary and theft				0
27.	Boiler and machinery				0
28.	Credit				0
29.	Interrisk				0
30.	Warranty				0
31.	Reinsurance - nonproportional assumed property				0
32.	Reinsurance - nonproportional assumed liability				0
33.	Reinsurance - nonproportional assumed financial lines				0
34.	Aggregate write-ins for other lines of business	0	0	0	0
35.	TOTAL	11,907,624	4,032,019	3,013,041	10,904,592

DETAILS OF WRITE-INS

3401.					0
3402.					0
3403.					0
3499.	Summary of remaining write-ins for Line 34 from elsewhere page	0	0	0	0
3499.	Total (Lines 3401 thru 3403 plus 3499) (Line 34 above)	0	0	0	0

UNDERWRITING AND INVESTMENT EXHIBIT

PART 1A - RECAPITULATION OF ALL PREMIUMS

Line of business		1	2	3	4	5
		Amount Unearned (Running One Year or Less from Date of Policy) (a)	Amount Unearned (Running More Than One Year from Date of Policy) (b)	Earned Out Unearned Premium	Reserve for Rate Credits and Retrospective Adjustments Based on Experience	Total Reserve for Unearned Premiums (Cols. 1 + 2 + 3 + 4)
1.	Fire					0
2.	Allied lines					0
3.	Farmowners multiple peril					0
4.	Homeowners multiple peril					0
5.	Commercial multiple peril					0
6.	Mortgage guaranty					0
7.	Ocean marine					0
8.	Inland marine					0
9.	Financial guaranty					1,134,147
10.	Medical professional liability - occurrence	1,134,147				1,134,147
11.1	Medical professional liability - claims-made	1,154,282				1,154,282
11.2	Medical professional liability - claims-made					0
12.	Earthquake					0
13.	Group accident and health					0
14.	Credit accident and health (group and individual)					0
15.	Other accident and health					0
16.	Workers' compensation					278,348
17.1	Other liability - occurrence	278,348				278,348
17.2	Other liability - claims-made	446,872				446,872
17.3	Excess workers' compensation					0
18.1	Products liability - occurrence					0
18.2	Products liability - claims-made					0
19.1, 19.2	Private passenger auto liability					0
19.3, 19.4	Commercial auto liability					0
21.	Auto physical damage					0
22.	Aircraft (all perils)					0
23.	Fidelity					0
24.	Surety					0
25.	Burglary and Rob.					0
26.	Theft and extortion					0
27.	Crime					0
28.	International					0
29.	War/terrorism					0
30.	Reinsurance - nonproportional assumed property					0
31.	Reinsurance - nonproportional assumed liability					0
32.	Reinsurance - nonproportional assumed financial loss					0
33.	Aggregate write-ins for other lines of business	0	0	0	0	0
34.	TOTALS	3,513,847	0	0	0	3,513,847
35.	Accrued retrospective premiums based on experience					0
36.	Earned but unearned premiums					3,513,847
37.	Balance (sum of Lines 35 through 37)					0

DETAILS OF WRITE-INS

3401.						0
3402.						0
3403.						0
3404.	Summary of remaining write-ins for Line 34 from overflow page	0	0	0	0	0
3405.	Totals (Lines 3401 plus 3403 plus 3404) (Line 34 above)	0	0	0	0	0

(a) State how basis of computation used in each case.

UNDERWRITING AND INVESTMENT EXHIBIT

PART 1B - PREMIUMS WRITTEN

Line of Business	1 Direct Business (a)	Insurance Assumed		Insurance Ceded		Net Premiums Written (Data 1 + 2 + 3 - 4 - 5)
		2 From Affiliates	3 From Non-Affiliates	4 To Affiliates	5 To Non-Affiliates	
1. Fire						0
2. Allied lines						0
3. Farmowners multiple peril						0
4. Homeowners multiple peril						0
4. Commercial multiple peril						0
6. Mortgage guaranty						0
8. Ocean marine						0
9. Inland marine						0
10. Financial guaranty						0
11.1 Medical professional liability - occurrence	1,805,755				88,136	1,821,828
11.2 Medical professional liability - claims-made	5,873,058				774,839	5,098,116
12. Earthquake						0
13. Group accident and health						0
14. Credit accident and health (group and individual)						0
15. Other accident and health						0
16. Workers' compensation						0
17.1 Other liability - occurrence	328,103				36,058	292,045
17.2 Other liability - claims-made	2,417,851				332,117	2,085,734
17.3 Excess workers' compensation						0
18.1 Products liability - occurrence						0
18.2 Products liability - claims-made						0
19.1, 19.2 Private passenger auto liability						0
19.3, 19.4 Commercial auto liability						0
21. Auto physical damage						0
22. Aircraft (all perils)						0
23. Trolley						0
24. Steamer						0
25. Burglary and theft						0
27. Boiler and machinery						0
28. Credit						0
29. Intentional						0
30. War/terrorism						0
31. Reinsurance - nonproportional assumed property	XXX					0
32. Reinsurance - nonproportional assumed liability	XXX					0
33. Reinsurance - nonproportional assumed financial lines	XXX					0
34. Aggregate write-ins for other lines of business	0	0	0	0	0	0
35. TOTALS	10,524,774	0	0	0	1,257,206	8,267,524

DETAILS OF WRITE-INS

3401.						0
3402.						0
3403.						0
3404. Summary of remaining write-ins for Line 34 from previous page	0	0	0	0	0	0
3405. Totals (Lines 3401 thru 3403 plus 3404) (Line 34 above)	0	0	0	0	0	0

(a) Does the company's direct premiums written include premiums recorded on an installment basis? Yes ☐ No ☐

If yes, 1. The amount of such installment premiums \$.....0.

2. Amount at which such installment premiums would have been reported had they been recorded on an unamortized basis \$.....0.

UNDERWRITING AND INVESTMENT EXHIBIT
PART 2 - LOSSES PAID AND INCURRED

PART 2 - LOSS AND LOSS ADJUSTMENT EXPENSES								
Line of Business	Losses Paid and Incurred				Net Losses		Losses Incurred Current Year (Col. 4 & 5, 2)	Percentage of Losses Incurred to Premiums Earned (Col. A, Part 1)
	Direct	Reinsurance Assumed	Reinsurance Ceded	Net Reinsurance (Col. 1-3, 2)	Current Year (2011-2012)	Prior Year		
1. All other								
2. Automobile liability								
3. Commercial liability								
4. Commercial liability								
5. Commercial liability								
6. Commercial liability								
7. Commercial liability								
8. Commercial liability								
9. Commercial liability								
10. Commercial liability								
11. Commercial liability								
12. Commercial liability								
13. Commercial liability								
14. Commercial liability								
15. Commercial liability								
16. Commercial liability								
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18. Commercial liability								
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84. Commercial liability								
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88. Commercial liability								
89. Commercial liability								
90. Commercial liability								
91. Commercial liability								
92. Commercial liability								
93. Commercial liability								
94. Commercial liability								
95. Commercial liability								
96. Commercial liability								
97. Commercial liability								
98. Commercial liability								
99. Commercial liability								
100. Commercial liability								

UNDERWRITING AND INVESTMENT EXHIBIT

[illegible]

UNDERWRITING AND INVESTMENT EXHIBIT

PART 3 - EXPENSES

	1	2	3	4
	Loss Adjustment Expenses	Other Underwriting Expenses	Investment Expenses	Total
1. Claims adjustment services:				4,215,546
1.1 Direct	4,215,546			0
1.2 Reinsurance assumed				0
1.3 Reinsurance ceded				0
1.4 Net claim adjustment services (1.1 + 1.2 - 1.3)	4,215,546	0	0	4,215,546
2. Commission and brokerage:		1,089,089		1,089,089
2.1 Gross, including contingent				0
2.2 Reinsurance assumed, including contingent				0
2.3 Reinsurance ceded, including contingent		68,000		0
2.4 Contingent - direct				0
2.5 Contingent - reinsurance assumed				0
2.6 Contingent - reinsurance ceded				0
2.7 Policy and membership fees				0
2.8 Net commission and brokerage (2.1 + 2.2 - 2.3 + 2.4 + 2.5 - 2.6 + 2.7)	0	1,089,089	0	1,089,089
3. Allowances to brokers and agents		1,100,414		1,100,414
4. Advertising		216,423		216,423
5. Cards, letters and correspondence		50,389		50,389
6. Surveys and underwriting reports				0
7. Audit of accounts/ records				0
8. Salary and related items:				0
8.1 Salaries				0
8.2 Payroll taxes				0
9. Employee relations and welfare				0
10. Insurance		38,625		38,625
11. Directors' fees		54,500		54,500
12. Travel and travel items		43,710		43,710
13. Rent and rent items				0
14. Equipment				0
15. Cost or depreciation of EDP equipment and software		2,006		2,006
16. Printing and stationery		8,158		8,158
17. Postage, telephone and telegraph, exchange and express				0
18. Legal and auditing		137,809		137,809
19. Taxes (Lines 8 to 18)	0	1,818,048	0	1,818,048
20. Taxes, licenses and fees:				0
20.1 State and local insurance taxes deducting guaranty association costs		427,267		427,267
20.2 Insurance department license and fees		7,302		7,302
20.3 Gross guaranty association assessments				0
20.4 All other (including federal and foreign income and real estate)				0
20.5 Total taxes, licenses and fees (20.1 + 20.2 + 20.3 + 20.4)	0	434,569	0	434,569
21. Real estate expenses				0
22. Real estate taxes				0
23. Reimbursements by reinsured plans		69,133	42,899	112,032
24. Aggregate write-ins for miscellaneous expenses				0
25. Total expenses incurred	4,215,546	2,374,940	42,899	7,633,385
26. Less unpaid expenses - current year	2,286,989	338,787		2,625,776
27. Add unpaid expenses - prior year	1,760,188	1,367,874		3,128,062
28. Amounts recoverable relating to reinsured plans, prior year				0
29. Amounts recoverable relating to reinsured plans, current year				0
30. TOTAL EXPENSES PAID (Lines 25 - 26 + 27 - 28 + 29)	3,754,838	4,404,218	42,899	8,201,955
DETAILS OF WRITE-INS				
2401. Consulting		35,685		35,685
2402. Bank Service Charges		33,446		33,446
2403. Investment Expenses			42,899	42,899
2404. Summary of remaining write-ins for Line 24 from overflow page	0	0	0	0
2405. Totals (Lines 2401 thru 2403 plus 2404) (Line 24 above)	0	69,133	42,899	112,032

(a) exclude management fees of \$.....0 to affiliates and \$.....0 to non-affiliates.

EXHIBIT OF NET INVESTMENT INCOME

	1 Collected During Year	2 Earned (2011) Year
1. U.S. government bonds.....	(a) 271,213	257,626
1.1 Bonds exempt from U.S. tax.....	(a) 82,838	25,601
1.2 Other bonds (unaffiliated).....	(a)	
1.3 Bonds of affiliates.....	(a)	
2.1 Preferred stocks (unaffiliated).....	(a)	
2.11 Preferred stocks of affiliates.....	(a)	
2.2 Common stocks (unaffiliated).....	(a)	
2.21 Common stocks of affiliates.....	(a)	
3. Mortgage loans.....	(a)	
4. Real estate.....	(a)	
5. Contract loans.....	(a)	
6. Cash, cash equivalents and short-term investments.....	(a) 727	727
7. Derivative instruments.....	(a)	
8. Other invested assets.....	(a)	
9. Aggregate write-ins for investment income.....		0
10. Total gross investment income.....	324,778	384,233
11. Investment expenses.....	(b)	42,889
12. Investment taxes, licenses and fees, excluding federal income taxes.....	(b)	64,718
13. Interest expense.....	(b)	0
14. Depreciation on real estate and other invested assets.....	(b)	0
15. Aggregate write-ins for deductions from investment income.....		0
16. Total deductions (Lines 11 through 15).....		107,607
17. Net investment income (Line 10 minus Line 16).....		276,626

DETAILS OF WRITE-INS

0901.....		
0902.....		
0903.....		
0904. Summary of remaining write-ins for Line 9 from overflow page.....	0	0
0905. Totals (Lines 0901 thru 0903 plus 0904 (Line 9 above)).....	0	0
1001.....		
1002.....		
1003.....		
1004. Summary of remaining write-ins for Line 10 from overflow page.....		0
1005. Totals (Lines 1001 thru 1003 plus 1004 (Line 10 above)).....		0
(a) Includes \$ 67,497 account of discount loss \$ 30,548 amortization of premium and loss \$ 41,607 paid for accrued interest on purchases.		
(b) Includes \$ 0 account of discount loss \$ 0 amortization of premium and loss \$ 0 paid for accrued interest on purchases.		
(c) Includes \$ 0 account of discount loss \$ 0 amortization of premium and loss \$ 0 paid for accrued interest on purchases.		
(d) Includes \$ 0 for company's occupancy of its own buildings and excludes \$ 0 interest on encumbrances.		
(e) Includes \$ 0 account of discount loss \$ 0 amortization of premium and loss \$ 0 paid for accrued interest on purchases.		
(f) Includes \$ 0 account of discount loss \$ 0 amortization of premium.		
(g) Includes \$ 0 investment expenses and \$ 0 investment taxes, licenses and fees, excluding federal income taxes, attributable to Segregated and Separate Accounts.		
(h) Includes \$ 0 interest on surplus notes and \$ 0 interest on capital notes.		
(i) Includes \$ 0 depreciation on real estate and \$ 0 depreciation on other invested assets.		

EXHIBIT OF CAPITAL GAINS (LOSSES)

	1 Realized Gain (Loss) on Sales or Maturity	2 Other Realized Adjustments	3 Total Realized Capital Gain (Loss) (Columns 1 + 2)	4 Change in Unrealized Capital Gain (Loss)	5 Change in Unrealized Foreign Exchange Capital Gain (Loss)
1. U.S. government bonds.....	161,557		161,557	(132,000)	
1.1 Bonds exempt from U.S. tax.....	(2,781)		(2,781)	4,180	
1.2 Other bonds (unaffiliated).....			0		
1.3 Bonds of affiliates.....			0		
2.1 Preferred stocks (unaffiliated).....			0		
2.11 Preferred stocks of affiliates.....			0		
2.2 Common stocks (unaffiliated).....			0		
2.21 Common stocks of affiliates.....			0		
3. Mortgage loans.....			0		
4. Real estate.....			0		
5. Contract loans.....			0		
6. Cash, cash equivalents and short-term investments.....			0		
7. Derivative instruments.....			0		
8. Other invested assets.....			0		
9. Aggregate write-ins for capital gains (losses).....			0		0
10. Total capital gains (losses).....	148,776	0	148,776	(108,820)	0

DETAILS OF WRITE-INS

0901.....					
0902.....					
0903.....					
0904. Summary of remaining write-ins for Line 9 from overflow page.....	0	0	0	0	0
0905. Totals (Lines 0901 thru 0903 plus 0904 (Line 9 above)).....	0	0	0	0	0

EXHIBIT OF NONADMITTED ASSETS

	1 Current Year Total Nonadmitted Assets	2 Prior Year Total Nonadmitted Assets	3 Change in Total Nonadmitted Assets (Col. 2 - Col. 1)
1. Bonds (Schedule D):			0
2. Stocks (Schedule D):			0
2.1 Preferred stocks			0
2.2 Common stocks			0
3. Mortgage loans on real estate (Schedule E):			0
3.1 First lien			0
3.2 Other than first lien			0
4. Real estate (Schedule A):			0
4.1 Properties occupied by the company			0
4.2 Properties held for the production of income			0
4.3 Properties held for sale			0
5. Cash (Schedule E-Part 1), cash equivalents (Schedule E-Part 2) and short-term investments (Schedule D):			0
6. Contract loans			0
7. Derivatives (Schedule D):			0
8. Other invested assets (Schedule D):			0
9. Receivables for securities			0
10. Securities lending reinvested collateral assets (Schedule D):			0
11. Aggregate write-ins for invested assets	0	0	0
12. Subside, cash and invested assets (Lines 1 to 11)	0	0	0
13. Title plans (for Title Insurance only)			0
14. Investments in common and preferred			0
15. Premiums and considerations:			0
15.1 Unearned premiums and agents' balances in the course of collection			0
15.2 Deferred premiums, agents' balances and installments booked but deferred and not yet due			0
15.3 Accrued retrospective premiums			0
16. Reinsurance:			0
16.1 Amounts receivable from reinsurers			0
16.2 Funds held by or deposited with reinsured companies			0
16.3 Other amounts receivable under reinsurance contracts			0
17. Amounts receivable relating to unissued plans			0
18.1 Current federal and foreign income tax recoverable and interest thereon			0
18.2 Net deferred tax asset			0
19. Guaranty funds receivable or on deposit			0
20. Electronic data processing equipment and software			0
21. Furniture and equipment, including health care delivery assets			0
22. Net adjustment in assets and liabilities due to foreign exchange rates			0
23. Receivables from parent, subsidiaries and affiliates			0
24. Health care and other amounts receivable			0
25. Aggregate write-ins for other than invested assets	0	0	0
26. Total assets excluding Separate Accounts, Segregated Accounts and Protected Cell Accounts (Lines 12 through 25)	0	0	0
27. From Separate Accounts, Segregated Accounts and Protected Cell Accounts			0
28. TOTALS (Lines 26 and 27)	0	0	0

DETAILS OF WRITE-INS

1101			0
1102			0
1103			0
1104. Summary of remaining write-ins for Line 11 from overflow page	0	0	0
1105. Totals (Lines 1101 thru 1103 plus 1104) (Line 11 above)	0	0	0
2501. Prepaid insurance			0
2502			0
2503			0
2504. Summary of remaining write-ins for Line 25 from overflow page	0	0	0
2505. Totals (Lines 2501 thru 2503 plus 2504) (Line 25 above)	0	0	0

NOTES TO FINANCIAL STATEMENTS

Note 1 - Summary of Significant Accounting Policies

A. Accounting Practices

The accompanying financial statements have been prepared in conformity with Generally Accepted Accounting Principles (GAAP) as required by the Insurance Department of the State of Nevada (the "Department").

Differences between Nevada prescribed practices and NAIC statutory accounting practices which affect the company are deferred acquisition costs, surplus note interest payable, non-admitted assets, and unrealized gains and losses on bonds. Deferred acquisition costs, surplus note interest payable and deferred tax expense/benefits are permissible on NV (GAAP) basis, however, they are not on SAP basis, therefore affecting net income. Surplus note interest is only recorded on a SAP basis when paid. Assets that are not permitted on SAP are non-admitted and unrealized gains and losses on bonds are adjustments affecting surplus. The details of the differences are as follows:

Description	2011	2010
1 Net income, NV basis	(3,662,529)	156,276
2 Effects of NV prescribed practices		
Deferred Acquisition Costs	(159,104)	(17,769)
Surplus Note Interest Expense	(54,719)	(10,069)
Deferred Tax Expense/Benefit	1,591,134	189,676
3 Effects of NV permitted practices	0	0
4 Net income, NAIC SAP	(5,039,760)	318,116
5 Policyholders' surplus NV basis	3,625,316	4,579,710
6 Effects of NV prescribed practices		
Non-admitted prepaid expenses	(16,031)	(85,520)
Non-admitted capital subscriptions receivable	(478,552)	(45,399)
Non-admitted deferred acquisition costs	(1,087,202)	(1,246,396)
Surplus Note Interest Payable	87,514	32,795
Unrealized gains/losses on bonds	(99,002)	(208,730)
7 Effects of NV permitted practices	0	0
8 Policyholders' surplus, NAIC SAP basis	2,031,143	3,028,490

The Company, in conformity with Generally Accepted Accounting Principles as required by the Insurance Department of the State of Nevada, records a discount to reflect the time value of money against unpaid losses and loss adjustment expenses net of reinsurance.

B. Use of Estimates in the Preparation of the Financial Statements

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues, including premiums, investment and other income, and expenses during the reported period. Actual results could differ from those estimates.

C. Accounting Policies

Premiums are generally earned pro-rata over the period for which the coverage is provided. Unearned premiums represent the portion of premiums written that are applicable to the unexpired terms of policies in force.

Cash and Cash Equivalents

The Company has cash balances in a bank in excess of the maximum amount insured by the FDIC as of December 31, 2011. Included in cash and cash equivalents are securities with original maturities of less than three months. In addition the Company uses the following accounting policies:

1. Short-term investments are stated at fair market value.
2. Bonds are stated at fair market value.
3. Not applicable.
4. Not applicable.
5. Not applicable.
6. Not applicable.
7. The Company has no subsidiaries.
8. Not applicable.
9. Not applicable.
10. Not applicable.
11. The liabilities for unpaid losses and the direct defense and cost containment component of loss adjustment expenses ("LAE") are based primarily on individual case estimates for losses reported by claimants to the Company. Estimates are provided for losses and the direct defense and cost containment component of LAE incurred but not reported. Such estimates are based on Company and industry experience. These estimates are regularly reviewed and as experience develops and new information becomes known, the reserves are adjusted. Such estimates, if any, are reflected in the results of operations in the period in which they become known.

NOTES TO FINANCIAL STATEMENTS

Note 2 - Accounting Changes and Corrections of Errors

Effective with the annual statement filing for December 31, 2011, the Company has discounted the reserves for unpaid losses and loss adjustment expenses to reflect the time value of money.

Note 3 - Business Combinations and Goodwill

Not applicable.

Note 4 - Discontinued Operations

Not Applicable.

Note 5 - Investments

Sections A-G are not applicable to Lewis & Clark LTC Risk Retention Group.

Note 6 - Joint Ventures, Partnerships and Limited Liability Companies

Not applicable.

Note 7 - Investment Income

A. Accrued Investment Income

The Company does not admit investment income due and accrued if amounts are over 90 days past due.

B. Amounts Non-admitted

Not applicable.

Note 8 - Derivative Instruments

Not applicable.

Note 9 - Income Taxes

The tax effects of temporary differences that give rise to significant portions of the deferred tax assets are as follows:

Deferred Tax Assets:	
Capital Loss Carryforward	1,450,935
Accrued Interest Expense	20,756
Fixed Asset	1,414
Unrealized Gains/Loss	(33,967)
Loss reserve discounting	485,709
Organizational Costs	23,233
Unearned Premium Reserve	204,887
AMT Credit	23,515
	2,103,500

Note 10 - Information Concerning Parent, Subsidiaries and Affiliates

Not applicable.

Note 11 - Debt

Not applicable.

Note 12 - Retirement Plans, Deferred Compensation, Postemployment Benefits and Compensated Absences and Other Postretirement Benefit Plans

Not applicable.

NOTES TO FINANCIAL STATEMENTS

Note 13 - Capital and Surplus, Shareholders' Dividend Restrictions and Quasi-Reorganizations

The Company has an authorized capital of 100,000 shares of common stock with a par value of \$1.00 per share. The common stock of the Company is being offered exclusively to persons who own or operate long term care facilities for a minimum purchase based upon the type of facility and the number of beds at each facility owned and operated by the shareholders, at a subscription price of \$100.00 per share. As of December 31, 2011 the Company had approximately 27,828 shares of common stock issued and outstanding.

The Company received a \$1,750,000 surplus contribution in the form of two surplus notes from Oneida Savings Bank, a New York Corporation. Note #1 was issued in May 2004 for \$750,000 and accrues interest at a rate of 6% per annum through October 1, 2004, at which time interest is accrued at the WSJ Prime Rate plus 2% and adjusted every three months through maturity. The note was renewed in November 2006 for an additional eighteen months. In 2008, principal payments totaling \$500,000 were made against this note leaving a balance of \$250,000 at 12/31/08. The remaining \$250,000 was paid in 2009. Note #2 was issued on March 9, 2005 and accrues interest at a rate of 7.5% per annum through July 1, 2005, at which time interest is accrued at the prime rate as published in the Wall Street Journal plus 2% and adjusted every three months through maturity. This note was renewed in September 2007 for an additional eighteen months and further extended to March 9, 2012.

Additional surplus notes totaling \$2,700,000 were issued in 2011. They were issued between October and December with three year maturity dates. Interest is accrued at the WSJ Prime Rate plus 2% and will be adjusted every three months through maturity.

In accordance with the Nevada statute governing surplus notes, all repayments are subject to the prior approval to the Nevada Division of Insurance. In 2011, the Company has reflected interest payments of \$54,719.

Note 14 - Contingencies

A. Contingent Commitments:

None

B. Assessments:

None

C. Gain Contingencies:

None

D. All Other Contingencies:

The Company may be a party to lawsuits in the normal course of business. These lawsuits generally seek to establish liability under insurance policies. The Company's management is not aware of any ongoing litigation which would, individually or collectively, result in judgments for amounts, after considering the established loss reserves that would be material to the Company's financial condition or results of operations.

Note 15 - Leases

Not applicable.

Note 16 - Information About Financial Instruments with Off-Balance Sheet Risk and Financial Instruments with Concentrations of Credit Risk

Not applicable.

Note 17 - Sale, Transfer and Servicing of Financial Assets and Extinguishments of Liabilities

Not applicable.

Note 18 - Gain or Loss to the Reporting Entity from Uninsured Plans and the Uninsured Portion of Partially Insured Plans

Not applicable.

NOTES TO FINANCIAL STATEMENTS

Note 19 - Direct Premium Written/Produced by Managing General Agents/Third Party Administrators

The Company uses the following Managing General Agent (MGA) to write and administer general/professional liability policies for Long Term Care facilities. 100% of the direct premiums are written by this MGA. The terms of the MGA contract gives this MGA the exclusive authority for underwriting, premium collections, claims adjustment, and claims payment.

Name and Address of Managing General Agent or Third Party Administrator	FEI Number	Exclusive Contract	Type of Business Written	Type of Authority Granted	Direct Premium Written
Uni-Tar Underwriting Management Corp. 3855 Brookside Parkway, #200 Alpharetta, GA 30022	13-4027355	YES	General/Professional Liability	P,CA,C	\$10,224,774

Note 20 - Other Items

The Company is in compliance with Executive Order- 13224-Blocking Property and Prohibiting Transaction with Persons Who Permit, Threaten to Commit or Support Terrorism.

As of December 31, 2011, the Company has no premiums receivable that are considered to be uncollectible.

Note 21 - Events Subsequent

Not applicable.

Note 22 - Reinsurance

Lewis & Clark LTC Risk Retention Group has the following reinsurance policy in effect as 12/31/11.

1. 1st Layer of coverage: the limit of coverage is 100% of \$650,000 Ultimate Net Loss each and every claim, each insured excess of \$350,000 Ultimate Net Loss each and every claim. Coverage effective 6/1/11-5/31/12
2. Excess Layer: the limit of coverage is 100% of \$1,000,000 Ultimate Net Loss, each and every claim, each insured excess of \$1,000,000 Ultimate Net Loss, each and every claim, each insured. Coverage effective 6/1/11-5/31/12

Note 23 - Retrospectively Rated Contracts & Contracts Subject to Redetermination

A. The Company estimates accrued retrospective premium adjustments through the review of each individual retrospectively rated risk, comparing case basis loss development with that anticipated in the policy contract to arrive at the best estimate of return or additional retrospective premium.

B. The Company records accrued retrospective premium as an adjustment to written premium.

C. The Company recorded a retrospective premium adjustment in the amount of \$1,000,000 for 2011. This amount represents 11.1% of the total net written premiums for 2011.

NOTES TO FINANCIAL STATEMENTS

Note 24 - Change in Incurred Losses and Loss Adjustment Expenses

Activity in the unpaid losses and loss adjustment expenses is summarized as follows:

Balance- January 1, 2011	\$9,153,000
Incurred related to:	
Current year	7,418,000
2010	3,039,000
2009	2,284,000
2008	747,000
2007	182,000
2006	375,000
2005	(359,000)
2004	(1,000)
Total Incurred:	13,665,000
Paid related to:	
Current year	1,879,000
2010	3,571,000
2009	1,545,000
2008	222,000
2007	630,000
2006	131,000
2005	(1,000)
2004	(1,000)
Total Paid:	7,975,000
Balance- December 31, 2011	\$ 14,843,000

Note 25 - Intercompany Pooling Arrangements

Not applicable.

Note 26 - Structured Settlements

Not applicable.

Note 27 - Health Care Receivables

Not applicable.

Note 28 - Participating Policies

Not applicable.

Note 29 - Premium Deficiency Reserves

Not applicable.

Note 30 - High Deductibles

Not applicable.

Note 31 - Discounting of Liabilities for Unpaid Losses or Unpaid Loss Adjustment Expenses

NOTES TO FINANCIAL STATEMENTS

Unpaid losses and loss adjustment expenses have been discounted on a non-labour basis using an overall effective interest rate of 2.8%. The discount rates used are consistent with management's judgment regarding long-term trends in investment returns and anticipated claims settlement patterns. The amount of the discount as of December 31, 2011 is \$864,000.

Note 32 - Asbestos/Environmental Reserves

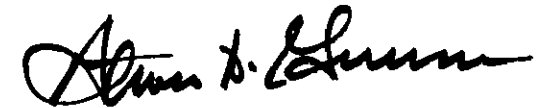
Not applicable.

Note 33 - Subscriber Savings Accounts

Not applicable.

Note 34 - Multiple Peril Crop Insurance

Not applicable.



CLERK OF THE COURT

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

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants.

CASE NO.: A-14-711535-C

DEPT. NO.: 27

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

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

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 10th day of December, 2015.

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

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

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


NOTICE OF MOTION

TO: ALL PARTIES AND THEIR COUNSEL OF RECORD:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that counsel for Defendants will bring the foregoing DEFENDANTS ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, AND ERIC STICKELS' MOTION TO DISMISS on for hearing before the above-entitled Court, on the 13 day of JAN, ²⁰¹⁶~~2015~~, at the hour of 10:00AM 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 10th day of December, 2015.

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

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

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

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

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

Plaintiff generally alleges causes of action against the BOD for 1) Gross Negligence and 2) Deepened the Insolvency. However, the Complaint fails to state the requisite facts to support either of these as a cause of action against Defendants. Moreover, Nevada has never recognized a stand-alone claim against a board member for "deepening the insolvency," such that the plaintiff can maintain this claim.

II. SUMMARY OF PLAINTIFF'S ALLEGATIONS

L&C was formed in Nevada as a risk retention group in and around 2003 for purposes of writing professional and general liability coverage for long term care facilities. Complaint, ¶ 30. The L&C board of directors at the time retained Defendants Uni-Ter UMC and Uni-Ter CS (Collectively "Uni-Ter") for purposes of managing L&C. *Id.* at ¶ 33. Between 2003 to 2012, L&C grew to provide coverage in over 46 states and also acquired a risk retention group for nurses in Florida. *Id.* at ¶¶ 34-37.

Defendant Uni-Ter held themselves out as leaders in providing liability insurance to the healthcare industry. *Id.* at ¶ 38. Over the years, L&C board of directors entered into various management agreements with Uni-Ter, where Uni-Ter was to 1) market the insurance products, 2) handle underwriting, 3) handle claims, 4) conduct audits and maintain the records for L&C, 5) facilitate re-insurance, and 6) provide the record keeping and financials for L&C. *Id.* at ¶¶ 45-48.

1 BOD met quarterly and were provided various reports by Uni-Ter. *Id.* at ¶¶ 68-
2 69. In and around October, 2011, BOD received news of L&C's bad finances. At that
3 time, BOD also approved capital contributions by shareholders Oneida, Eagle
4 Healthcare, Pinnacle, Marquis, Elderwood, Rohm and Uni-Ter. *Id.* at ¶¶ 91-92. The
5 capital infusion was approximately \$2.2 million. *Id.* at ¶ 144. Moreover, BOD retained
6 professionals to conduct additional audits, specifically that of L&C's claims. *Id.* at ¶¶ 93,
7 103.

8 Oneida, Eagle Healthcare, Pinnacle, Marquis, Elderwood, and Rohm were
9 shareholders of the risk retention group, L&C. See *Id.* at ¶ 36. They were also
10 companies represented by defendant board of directors: Eric Stickels, Jeff Marshall,
11 Mark Garber, Steve Fogg, Robert Chur, and Robert Hurlbut. See *Id.* at ¶¶ 25, 22, 11,
12 8, 3.

13 Between December 2011 through January 2012, BOD received more news
14 about L&C's apparent down turn, including an increase in claim reserves and a
15 decrease in surplus. *Id.* at ¶¶ 92-94. Near the end of January 2012, L&C's Nevada
16 attorney (Connie Akridge) began communicating with the Nevada Division of Insurance
17 about the Insurance Commissioner's inquiry into the state of L&C. *Id.* at ¶¶ 96-97. In
18 May 2012, the Insurance Commissioner scheduled a date to examine L&C. *Id.* at ¶
19 101. By July 2012, BOD received news of more increases in the claims loss reserve
20 and decided that no new business would be written. *Id.* at ¶ 103. By September 24,
21 2012, the BOD decided to contact the Insurance Commissioner to request that L&C be
22 placed into rehabilitation. *Id.* at ¶ 106.

23 III. LEGAL ARGUMENT

24 A. A Motion To Dismiss is Appropriate

25 A defendant is entitled to dismissal of a claim when a plaintiff fails "to state a
26 claim under which relief can be granted." NRCP 12(b)(5). "When considering a motion
27 to dismiss made under NRCP 12(b)(5), a district court must construe the complaint
28 liberally and draw every fair reference in favor of the plaintiff." *Cohen v. Mirage Resorts*,

1 *Inc.*, 119 Nev. 1, 22, 62 P.3d 720, 734 (2003). However, the court is “not bound to
2 accept as true a legal conclusion couched as a factual allegation.” *Papasan v. Allain*,
3 478 U.S. 265, 286, 106 S. Ct. 2932, 2944 (1986). Assuming the factual allegations as
4 true, Plaintiff cannot maintain a claim against Defendants.

5 **B. Plaintiff’s Case in its Entirety Must be Dismissed as against the BOD**
6 **because directors can only be liable for either a Breach of Fiduciary**
7 **Duty, Intentional Misconduct or Fraud, None of which are Alleged.**

8 Nevada does not recognize a claim for gross negligence or deepening insolvency
9 as against a board of director. NRS 78.138 entitled “Directors and officers: Exercise of
10 powers; performance of duties; presumptions and considerations; liability to corporation
11 and stockholders” establish the basis for liability against BOD. The statute states in
12 pertinent part:

13 7. Except as otherwise provided in NRS 35.230, 90.660, 91.250, 452.200,
14 452.270, 668.045 and 694A.030, or unless the articles of incorporation or
15 an amendment thereto, in each case filed on or after October 1, 2003,
16 provide for greater individual liability, a director or officer is not individually
17 liable to the corporation or its stockholders or creditors for any damages
18 as a result of any act or failure to act in his or her capacity as a director or
19 officer unless it is proven that:

- 20 (a) The director’s or officer’s act or failure to act constituted a breach of
21 his or her fiduciary duties as a director or officer; and
22 (b) The breach of those duties involved intentional misconduct, fraud or a
23 knowing violation of law.

24 In this case, there are no applicable exceptions to the rule that a board of director can
25 only be liable under the claim of breach of fiduciary duty, intentional misconduct, or
26 fraud. NRS 35.230 concerns liability of a corporation’s directors when judgment of
27 ouster rendered. NRS 90.660 concerns the sale of a security. NRS 91.250 concerns
28 liability of principals and agents with respect to commodities or investments. NRS
452.220 and 452.270 concerns liability surrounding cemeteries. NRS 668.045 concerns
with liability for bank officers and agents. Finally, NRS 694A.030 has to do with liability
for the unfair use of information. Given each and every claim against BOD arises out of

1 their alleged acts or failure to act in their capacity of directors and officers of L&C,
2 Plaintiff cannot proceed on the claims of gross negligence and deepening insolvency as
3 they do not arise to claims for personal liability under NRS 78.139.

4 **C. Plaintiff's First Cause of Action for Gross Negligence against BOD**
5 **must be dismissed Because Plaintiff has failed to state facts in**
6 **Support of the claimed relief**

7 Plaintiff claims that the BOD caused L&C to be damaged because 1) BOD did
8 not take immediate corrective action by late 2011 to bolster L&C's financial state, 2) the
9 BOD did not inform themselves of the actual financial condition of L&C and 3) BOD
10 should not have relied on the recommendations of Defendant Uni-Ter. Plaintiff's
11 conclusory statements are belied by the factual allegations set forth in the Complaint,
12 and the legal authority. Therefore, this Court must dismiss Plaintiff's claim for gross
13 negligence.

14 *1. Plaintiff's Conclusory Statements are Contradicted by the Factual*
15 *Allegations: Defendants Took Immediate Corrective Action by Late*
16 *2011*

17 According to Plaintiff's own Complaint, BOD took immediate action to remedy
18 L&C's financial state by late 2011. Although it is not clear what specific date Plaintiff
19 believes triggers the date for the board to take immediate corrective action, The
20 Complaint alleges a number of activities taken by the BOD to remedy L&C's precarious
21 financial situation following a September 2011 board meeting. Some of these actions
22 include but are not limited to the following:

- 23
- 24 • That on September 21, 2011, a new underwriting philosophy was put in in
place. ¶ 90.
 - 25 • On October 5, 2011, BOD held a special meeting approving capital
26 contributions by shareholders in the amount of \$2.2 million, representing
companies managed, owned or related to board members: Eric Stickels,
27 Jeff Marshall, Mark Garber, Steve Fogg, Robert Chur, and Robert Hurlbut.
Id. at ¶¶ 91-92, 144. *see Id.* at ¶¶ 25, 22, 11, 8, 3.
- 28

- 1 • On December 28, 2011, BOD approved the retention of William Fishlinger to review L&C's claims. *Id.* at ¶ 93.
- 2 • On or around January 2012, BOD authorized its counsel to communicate with the Insurance Commissioner about L&C's financial state. *Id.* at ¶¶
- 3 96-97.
- 4 • On May 14, 2012, with the assistance of BOD's counsel, the Insurance Commissioner had scheduled an examination of L&C. *Id.* at ¶ 101.
- 5 • On July 25, 2012, BOD requested Fishlinger to conduct another claims reserve review. *Id.* at ¶ 103.
- 6 • On July 25, 2012, BOD also determined that no new business should be written. *Id.*
- 7 • On September 24, 2012, BOD determined that the Insurance Commissioner be contacted to place L&C into rehabilitation. *Id.* at ¶ 106.
- 8

9
10 In summary, the BOD attempted to turnaround L&C with an infusion of capital, followed by an audit of L&C's claims to determine the accurate amount of reserves and liabilities, followed by opening lines of communication with the Insurance Commissioner. When it appeared that L&C was not able to be turned around, or BOD would need the assistance of the state, L&C advised the Insurance Commissioner all within a span of one year. It is disingenuous for Plaintiff to maintain a claim for gross negligence based on an alleged failure to act when many of BOD's affirmative efforts are alleged within the Complaint. The facts show that BOD acted immediately to remedy the financial situation and as early as January 2012, L&C began communicating with Plaintiff regarding its financial position. Assuming the factual allegations as true and dismissing Plaintiff's conclusory statements, this Court should dismiss the claim for gross negligence because Plaintiff fails to state a claim in support thereof.

21 2. *Plaintiff cannot maintain a claim for gross negligence arising out of*
22 *BOD's alleged failure to be informed of L&C's actual finances; there*
23 *are no factual statements to support the actual finances were*
24 *anything other than what Uni-Ter reported at the time.*

25 The claim that somehow BOD was not aware of L&C's actual finances and had a
26 duty to become apprised of them is predicated on a claim that L&C's finances were not
27 accurately reported. However, there is nothing within the Complaint that alleges that
28

1 the financial reports presented by Uni-Ter to the BOD were inaccurate. Given this clear
2 lack of foundational allegation, BOD cannot be held liable for failing to become informed
3 of L&C's actual finances as a theory of gross negligence.

4 3. *Plaintiff cannot maintain a claim for gross negligence arising out of*
5 *a reliance on Uni-Ter's Representations because the law states*
6 *otherwise.*

7 Under NRS 78.138, in performing their duties as directors, BOD can rely on
8 professionals to provide information, opinions, and reports. NRS 78.138 states in
9 pertinent part:

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

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

14 (b) counsel, public accountants, financial advisers, valuation
15 advisers, investment bankers or other persons as to matters reasonably
16 believed to be within the preparer's or presenter's professional or expert
competence;

17 Insofar as Plaintiff claims that BOD had no right to rely on Uni-Ter for its reporting of
18 financials and its recommendations, this conclusory statement is contradicted by the law
19 and facts of this case. As stated above, NRS 78.138 clearly allows directors to rely on
20 opinions and reports prepared by professionals. Moreover, BOD had no reason to
21 believe that Uniter was anything other than professionals and experts in insurance.

22 Plaintiff acknowledges and alleges that BOD entered into an agreement with
23 professional Uni-Ter for Uni-Ter to provide them with obtaining and maintaining
24 accurate financial and statistical reports. See ¶ 45. In fact, Plaintiff also acknowledges
25 that BOD could reasonably rely on Uni-Ter's competent services, as Uni-Ter held
26 themselves out as a leader in providing liability insurance to the healthcare industry and
27
28

1 created at least four other risk retention groups. See ¶¶ 38-39.

2 Contrary to the Plaintiff's assertions, the law allows directors to rely upon the
3 advice of professionals and nothing in the Complaint creates a basis for BOD to have
4 acted otherwise.

5 **D. Plaintiff's Second Cause of Action for Deepening the Insolvency of**
6 **L&C must be dismissed Because this is not a Recognized Claim in**
7 **the State of Nevada**

8 Traditionally, in Nevada, liability against a board of director for his or her actions
9 taken as a board of director falls under the theory of breach of fiduciary duty. See
10 *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 632 (2006). The Nevada Supreme Court
11 has yet to recognize a claim for deepening the insolvency. This theory however has
12 been recognized in a handful of other states and the most frequently cited case in
13 support of an independent claim against a board of director for this is *Official Committee*
14 *of Unsecured Creditors v. R.F. Lafferty & Co., Inc.*, 267 F.3d 340 (2001). Although set
15 in the context of a bankruptcy, the Third Circuit evaluated the policy for recognition of
16 "deepening the insolvency" as a separate action and found such a claim may have merit
17 in Pennsylvania, when there is a "fraudulent and concealed incurrence of debt." *Id.* at
18 349. The Court analyzed that there could be a damage with the incurrence of debt
19 because it can result in "legal and administrative costs on the corporation," *Id.* at 349-
20 350. Further, it "can undermine a corporation's relationships with its customers,
21 suppliers and employees." *Id.* at 350. Finally, "prolonging an insolvent corporation's life
22 through bad debt may simply cause the dissipation of corporate assets." *Id.*

23 Here, we have none of the policy considerations or even similar facts to support
24 the creation of a new independent cause of action in Nevada. In this case, Plaintiff
25 actually alleges on one hand that BOD did not take immediate action to correct L&C's
26 financial condition but also acknowledges that a month after becoming aware of its
27 precarious financial condition, BOD approved the inflow of approximately \$2.2 million in
28

1 capital. Insofar as this was in exchange for debt, this was not a fraudulently, concealed
2 debt but an exchange for surplus notes. It was passed by BOD and reflected in the
3 L&C minutes. Moreover, these facts were all disclosed to the Insurance Commissioner.
4 See Plaintiff's Complaint, Exhibit 5. The facts simply do not justify creation of a new
5 cause of action in the State of Nevada.

6 **E. Alternatively, this Court Should Dismiss Plaintiff's Complaint for a**
7 **Failure to Plead with Particularity Under NRCP 9(b)**

8 If the Court is inclined to recognize the claim for "deepened insolvency," this
9 Court should nonetheless dismiss Plaintiff's Complaint and require the claim to be pled
10 with specificity pursuant to NRCP 9(b). As discussed above, such a claim is founded on
11 a theory of fraud.

12 Under NRCP 9(b), a plaintiff is required to "plead the circumstances constituting
13 fraud with particularity." *Rocker v. KPMG, LLP*, 122 Nev. 1185, 1192 (2006). "To plead
14 with particularity, plaintiffs must include in their complaint 'averments to the time, the
15 place, the identity of the parties involved and the nature of the fraud.'" *Id.* Given the
16 fact that Plaintiff is the Insurance Commissioner, was for years provided with L&C's
17 administrative disclosures and upon placement of the receivership was provided with
18 L&C's corporate documents, Plaintiff should unequivocally be required to plead with
19 specificity to provide defendants adequate notice of the charges against them.

20 ///

21 ///

22 ///

1 IV. CONCLUSION

2 Although L & C ultimately filed and was placed in receivership, the board of
3 directors did not cause its demise. Board of directors are not required to be omniscient
4 or guarantors of a corporation. The legislature created protections for corporations and
5 their board of directors. This court should look to the actual facts alleged and find that
6 Plaintiff has failed to state a claim for which relief can be granted as against the board
7 members.

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

13 DATED this 16th day of December, 2015

14 LIPSON, NEILSON, COLE, SETLZTER & GARIN, P.C.

15 By: 

16 Joseph P. Garin, Esq. (Bar No. 6653)
17 Angela T. Nakamura Ochoa, Esq. (Bar No. 10164)
18 9900 Covington Cross Dr., Suite 120
19 Las Vegas, NV 89148

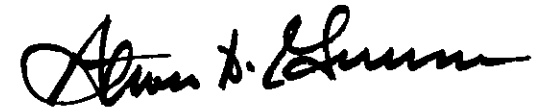
20 *Attorneys for Defendants/Third-Party*
21 *Plaintiffs Robert Chur, Steve Fogg,*
22 *Mark Garber, Carol Harter,*
23 *Robert Hurlbut, Barbara Lumpkin,*
24 *Jeff Marshall, and Eric Stickels*

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and Administrative Order 14-2, I certify that on the 11th day of December, 2015, I electronically transmitted the foregoing **DEFENDANTS ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, AND ERIC STICKELS' MOTION TO DISMISS** to the Clerk's Office using the Odyssey E-File & Serve System for filing and transmittal to the following Odyssey E-File & Serve registrants:

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

Renee M. Rittenhouse
Employee of
LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.



CLERK OF THE COURT

OPPS
JAMES L. WADHAMS, ESQ.
Nevada Bar No. 1115
KARL L. NIELSON, ESQ.
Nevada Bar No. 5082
BRENOCH WIRTHLIN, ESQ.
Nevada Bar No. 10282
FENNEMORE CRAIG, P.C.
300 South Fourth Street, Suite 1400
Las Vegas, Nevada 89101
Telephone: (702) 692-8000
Facsimile: (702) 692-8099
kn Nielson@fclaw.com; bwirthlin@fclaw.com
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

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

Date of Hearing: January 27, 2016

Time of Hearing: 10:00 a.m.

Plaintiff, the Court-appointed receiver ("Plaintiff") of Lewis & Clark LTC Risk Retention Group, Inc. ("L&C"), hereby submits its opposition to Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall, and Eric Stickels' (collectively the "Board") Motion to Dismiss ("Motion"). This Opposition is brought pursuant to NRCP 12(b)(5) and is based on the attached memorandum of points and authorities, all exhibits

1 attached hereto, any oral argument the Court chooses to entertain at a hearing on this matter, and
2 all pleadings and documents on file herein.

3 DATED this 15th day of January, 2016.

4
5 **FENNEMORE CRAIG, P.C.**

6
7 By: /s/ Karl L. Nielson
8 JAMES L. WADHAMS, ESQ.
9 Nevada Bar No. 1115
10 KARL L. NIELSON, ESQ.
11 Nevada Bar No. 5082
12 BRENOCH WIRTHLIN, ESQ.
13 Nevada Bar No. 10282
14 300 South Fourth Street, Suite 1400
15 Las Vegas, Nevada 89101
16 Telephone: (702) 692-8000
17 Facsimile: (702) 692-8099
18 knielson@fclaw.com
19 bwirthlin@fclaw.com
20 *Attorneys for Plaintiff Commissioner of*
21 *Insurance For the State of Nevada*

22 **MEMORANDUM OF POINTS AND AUTHORITIES**

23 **I. INTRODUCTION AND SUMMARY OF ARGUMENT**

24 The Board Motion is essentially an attempt to hide behind Nevada's business judgment
25 rule ("BJR"). In certain circumstances, the BJR can be an effective tool shielding individual
26 directors and officers from the negative consequences of poor business decisions. However,
27 binding Nevada case law recognizes that the BJR does not protect directors and officers from
28 gross negligence, nor does it provide protections against the consequences of decisions made by
29 directors and officers who failed to properly inform themselves or who relied on information they
30 knew or should have known was unreliable. This is exactly what happened in this case, and the
31 allegations supporting Plaintiff's claim against the Board for gross negligence are plead with
32 ample specificity. Accordingly, the Board cannot hide behind NRS 78.138 and the Motion must
33 be denied.

34 Finally, the Board's statement that "deepening of the insolvency" is not a recognized

1 claim in Nevada is inaccurate. Nevada federal district courts have recognized this claim. The
2 Board's formulation of this claim is inaccurate, and the specificity required to allege fraud under
3 NRCP 9 is not required. However, as with Plaintiff's gross negligence claim, even if such
4 specificity were required, the claim has been stated with sufficient supporting factual assertions to
5 meet this standard as well. As such, the Motion must be denied.

6 **II. STATEMENT OF FACTS**

7 L&C was a Nevada domiciled risk retention group formed in 2004. Between 2004 and
8 2012, L&C provided general and professional liability coverage to long term care facilities and
9 home health providers. The Board members were directors and/or officers of L&C during the
10 relevant time period. Defendants Uni-Ter Underwriting Management Corp. and Uni-Ter Claims
11 Services Corp. (collectively "Uni-Ter") were retained as a manager of L&C. Defendant U.S. RE
12 Corporation ("U.S. RE") was retained to provide reinsurance to L&C. The basis of Plaintiff's
13 claims against the Board was that the Board was making uninformed and/or misinformed
14 decisions without properly informing itself of the problematic, and later extremely dire, financial
15 information of L&C to which the Board had complete and total access. Moreover, the Board was
16 grossly negligent in failing to take appropriate action due to the fact that the Board was relying on
17 information from outside sources which either (1) the Board knew to be inaccurate or incomplete,
18 or (2) should have known was inaccurate or incomplete. As a result of the Board's gross
19 negligence, L&C incurred substantial additional debt and obligations which it would not have
20 incurred but for the Board's gross negligence and failure to make informed decisions.

21 As the Complaint contains nearly 200 highly detailed factual allegations, it is not possible
22 to recite all factual bases supporting Plaintiff's claims for gross negligence and deepening of the
23 insolvency against the Board. However, below is a brief summary of the information supporting
24 the claims, as set forth more fully in the Complaint and incorporated by reference herein.

25 For example, as of the end of 2011, there was an overwhelming amount of information
26 that clearly showed that L&C's financial condition was in peril. The information available to the
27 Board at that time showed a rapid and drastic increase in loss reserves, reports of inadequate
28 reserves requiring repeated capital infusions in late 2011 and early 2012, high loss ratios,

1 drastically decreasing realized premiums, absence of any adjustment of premium rates,
2 implementation of a new underwriting philosophy that would result in a 35-40% drop in
3 premiums, and a drastically decreasing company surplus. Had the Board properly informed itself
4 of the financial situation of L&C, it would have known the following, which include pertinent
5 items from the information available to the Board at the time:

- 6
- 7 • L&C had substantial growth of premiums and reserves between 2004 and 2009. By 2009, written premium was \$10.7 million and reserves were \$6.2 million. Uni-
8 Ter's management fees also increased rapidly to \$1.4 million in 2008 and \$1.7 million in 2009.
- 9 • Losses and LAE grew to \$9.1 million in 2010 and \$14 million in 2011.
- 10 • Loss ratios were generally in the 30% range and below until 2009 when the
11 addition of the Sophia Palmer¹ work caused a loss ratio over 50% (because of
12 Sophia Palmer claims having a loss ratio over 80%).
- 13 • A new underwriting philosophy was discussed at the September 2011 meeting. Although it does not appear that the Board questioned how this would affect
14 premiums earned, Uni-Ter expected this new philosophy would only renew
15 accounts that had a favorable historical loss ratio and that that could result in a 35-
16 40% reduction in premium volume.
- 17 • Financial information shows L&C was not paying losses in 2011. 12/19/11 draft
18 report from Milliman² shows \$2.23 million paid losses and Allocated Loss
19 Adjustment Expenses ("ALAE") in 2009, \$2.44 million in 2010, but only
20 \$199,000 in 2011.
- 21 • On 12/20/2011, Uni-Ter reported claims reserves increased \$5 million from the
22 November 2011 figures.
- 23 • Uni-Ter's pro forma 12/31/11 financials show that L&C was neither impaired nor
24 insolvent, but the 2011 Annual Statement shows losses and ALAE increased from
25 \$9.1 million at the beginning of 2011 to \$14.8 million at the end of the year.
- 26 • At the January 16, 2012 meeting, surplus is only \$1,979,730, down from
27 \$4,579,000 at end of 2010.
- 28 • A 2/23/12 report showed that L&C's net written premiums for 2011 dropped 25%
(from \$12 to \$9 million). It confirmed that losses and LAE for 2011 were \$12.7
million when only \$8.1 million for 2010. It also said that L&C's current reserves
were deficient by just over \$750,000.
- A 2/23/12 report on in force policies states that total premiums for those policies
would be \$6.8 million for 2012.

¹ L&C acquired Sophia Palmer Nurses Risk Retention Group ("Sophia Palmer") in 2009. Sophia Palmer wrote general and professional liability policies to nurses mostly in Florida. L&C assumed all outstanding liabilities of Sophia Palmer.

² Milliman, Inc. ("Milliman") is an actuarial firm that provided Rate and Loss Reserve analysis to Uni-Ter ("Milliman Reports").

- A 2/29/12 loss ratio report shows that earned premium for 2011 dropped to \$5,209,362 from \$12,798,406 in 2010 and \$11,776,406 in 2009 and states that earned premium for 2012 through February 2012 was only \$240,000 which, annualized, would be only about \$1.4 million. It also shows that loss ratios for 2006 through 2010 were all above 65% and as high as 79%.
- April 12, 2012 Milliman Report says that L&C's loss reserves are \$1.4 million under the central estimate. That same report says that ultimate loss and ALAE have increased by \$9.2 million from the end of 2010. Table 3 of that report (page 12) states that Ultimate Loss & ALAE increased \$5.5 million from \$13.8 million at the end of 2010 to \$19.2 million the end of 2011.

See Complaint generally, including ¶ 160 providing in depth summary. If the Board saw and reviewed all of this information as alleged, they were grossly negligent in not taking immediate corrective action by at least late 2011, for example, by raising premium rates. Alternatively, if the Board did not review or understand this information, they were grossly negligent by not taking action to inform themselves of the actual financial condition of L&C.

The Nevada Department of Insurance ("DOI") filed a Receivership Action related to L&C in November, 2012, commencing case number A-12-672047-B in the Eighth Judicial District Court of Nevada, in and for the County of Clark ("Receivership Action"). In the Receivership Action, the court entered an Order of Liquidation ("Liquidation Order") on February 28, 2013. A copy of the Liquidation Order is attached to the Complaint as Exhibit 1. In the Liquidation Order, Plaintiff was appointed as the Receiver ("Receiver") of L&C. *Id.* The express powers granted to Receiver in the Order include the power to "[p]rosecute any action which may exist on behalf of the policyholders, members or shareholders of L&C against any officer of L&C or any other person[.]" See Liquidation Order at ¶6(g). The current action was instituted based on this provision.

III. LAW AND ARGUMENT

Standard of Review

"An order granting an NRCP 12(b)(5) motion to dismiss for failure to state a claim upon which relief can be granted faces a rigorous standard of review on appeal, as [the Supreme Court of Nevada] must construe the pleadings liberally and accept all factual allegations in the complaint as true." *Blackjack Bonding v. City of Las Vegas Mun. Court*, 116 Nev. 1213, 1217, 14

1 P.3d 1275, 1278 (2000) (citation omitted). Furthermore, in deciding a motion to dismiss a court
2 “must draw every fair inference in favor of the non-moving party.” *Id.* “A complaint will not be
3 dismissed for failure to state a claim unless it appears beyond a doubt that the plaintiff could
4 prove no set of facts which, if accepted by the trier of fact, would entitle him or her to relief.” *Id.*
5 Moreover, when a complaint can be amended to state a claim for relief, “leave to amend, rather
6 than dismissal, is the preferred remedy.” *Cohen v. Mirage Resorts, Inc.*, 119 Nev. 1, 22, 62 P.3d
7 720, 734 (2003). Further, “[l]eave to amend should be freely given when justice requires.” *Id.*

8 **A. The Business Judgment Rule does not protect the gross negligence of**
9 **uninformed directors and officers. Accordingly, the Board cannot hide**
10 **behind NRS 78.138 and the Motion must be denied.**

11 The crux of the Board’ Motion is the argument that their grossly negligent actions are
12 protected by the BJR, codified as NRS 78.138. However, not only is the Board misreading the
13 applicable statute, but in addition the Supreme Court of Nevada has expressly rejected this
14 argument.

15 As the Supreme Court of Nevada recognized in *Shoen v. SAC Holding Corp.*, 122 Nev.
16 621, 632, 137 P.3d 1171, 1179 (2006), in 1991 the Nevada Legislature codified the business
17 judgment rule at NRS 78.138. In their Motion, the Board fails to quote all pertinent portions of
18 that statute, which provides in relevant part:

19 ...

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

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

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

(c) A committee on which the director or officer relying thereon
does not serve, established in accordance with NRS 78.125, as to matters
within the committee's designated authority and matters on which the
committee is reasonably believed to merit confidence,

**but a director or officer is not entitled to rely on such information, opinions,
reports, books of account or statements if the director or officer has**

1 **knowledge concerning the matter in question that would cause reliance**
2 **thereon to be unwarranted.**

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

6 ...

7 7. Except as otherwise provided in NRS 35.230, 90.660, 91.250, 452.200,
8 452.270, 668.045 and 694A.030, or unless the articles of incorporation or an
9 amendment thereto, in each case filed on or after October 1, 2003, provide for
10 greater individual liability, a director or officer is not individually liable to the
11 corporation or its stockholders or creditors for any damages as a result of any act
12 or failure to act in his or her capacity as a director or officer unless it is proven
13 that:

14 (a) The director's or officer's act or failure to act constituted a
15 breach of his or her fiduciary duties as a director or officer; and

16 (b) The breach of those duties involved intentional misconduct,
17 fraud or a knowing violation of law.

18 Nev. Rev. Stat. Ann. § 78.138 (West). The Board, quoting only a *portion* of the BJR, asserts that
19 there is a "rule that a board of director can only be liable under the claim[s] of breach of fiduciary
20 duty, intentional misconduct, or fraud." *See* Motion at p. 6. This is incorrect, contrary to the
21 plain language of the statute, and has been expressly rejected by the Supreme Court of Nevada.
22 *See Shoen, supra, v. SAC Holding Corp.*, 122 Nev. at 640, 137 P.3d at 1184. Under Nevada law,
23 the BJR **only** applies where all the requirements of the statute have been met, *i.e.*, the directors or
24 officers at issue have made a decision "in good faith, **on an informed basis** and with a view to
25 the interests of the corporation." *See* NRS 78.138(3). However, as section 2 makes clear, "a
26 director or officer **is not entitled to rely** on [information provided by others] **if the director or**
27 **officer has knowledge concerning the matter in question that would cause reliance thereon**
28 **to be unwarranted.**" (Emphasis added). This is consistent with Delaware law, which forms the
basis for Nevada's BJR. As the court in *In re Los Angeles Dodgers LLC*, 457 B.R. 308, 313
(Bankr. D. Del. 2011) recognized, "the business judgment rule governs **unless the opposing**
party can show one of four elements: (1) the directors did not in fact make a decision, (2) **the**
directors' decision was uninformed; (3) the directors were not disinterested or independent; or
(4) **the directors were grossly negligent.**" As set forth in substantial detail in the Complaint,

1 this is exactly what has happened here. Thus, the Board cannot hide behind the protections of the
2 BJR.

3 Stated another way, as a plain reading of the statute makes clear, the BJR does not protect
4 directors who, like the Board, make uninformed decisions or decisions in reliance on information
5 where they knew or should have known that reliance on that information was unwarranted. In
6 fact, the *Shoen* Court, *supra*, specifically held that “the business judgment rule **does not protect**
7 **the gross negligence of uninformed directors and officers.**” *Id.* 122 Nev. at 640, 137 P.3d at
8 1184. The Board mistakenly asserts that “[g]iven each and every claim against [the Board] arises
9 out of their alleged acts or failure to act in their capacity of [sic] directors and officers of L&C,
10 Plaintiff cannot proceed on the claims of gross negligence and deepening insolvency as they do
11 not arise to [sic] to claims for personal liability under NRS 78.139.” *See* Opposition at p. 6. As
12 set forth above, this statement would only be true if the Board had acted on a properly informed
13 basis and absent gross negligence. As the First Claim for Relief in the Complaint sets forth in
14 substantial detail, the Board did not act on an informed basis, had “knowledge concerning the
15 matter in question that would cause reliance [on the information they had received] to be
16 unwarranted,” and was therefore grossly negligent. *See* Complaint at ¶¶ 156-166, reproduced,
17 *supra*. Accordingly, the Motion must be denied.

18 **B. Plaintiff’s First Cause of Action sets forth a claim for Gross Negligence**
19 **against the Board in substantial detail. Thus, the Motion must be dismissed.**

20 First, it should be noted that the Board improperly attempts to argue the facts of the case,
21 asserting that the allegations in the Complaint “are contradicted by the factual allegations:
22 [Individual] Defendants took immediate corrective action by late 2011.” *See* Motion at p. 7. This
23 is clearly inappropriate. As the Court is well aware, in deciding a motion to dismiss a court “must
24 construe the pleadings liberally **and accept all factual allegations in the complaint as true**” and
25 “must draw every fair inference in favor of the non-moving party.” *Blackjack Bonding, supra*,
26 116 Nev. at 1217, 14 P.3d at 1278 (emphasis added). For purposes of this Motion, all factual
27 allegations in the Complaint are accepted as true with all inferences drawn in favor of Plaintiff.
28 Thus, any argument of the facts, their interpretation, or any disagreement by the Board with the

1 allegations in the Complaint (1) must be disregarded and (2) show that the Board either
2 misunderstands the focus of a motion to dismiss or is submitting a meritless motion in an effort to
3 educate the Court on its position. Either way, the Motion must be denied.

4 Second, the Board attacks what it views as a lack of factual statements to support the
5 allegations that the information the Board was receiving was not accurate. *See* Motion at pp. 8-9.
6 This is simply inaccurate and misleading. In fact, a large part of Plaintiff's claims against the
7 Board – and the allegations set forth in the Complaint – clearly show that the Board should have
8 known that the information it was receiving from outside sources was incomplete and/or
9 inaccurate and yet the Board failed to take appropriate action to properly inform itself:

10 162. The Board was in a position to see this information and knew that it
11 had an obligation to do so. Indeed, it had the contractual right to receive the
12 information (including on a monthly basis between 2004 and 2010). **It also knew**
13 **at least on several occasions that it was not receiving sufficient information**
14 **from Uni-Ter. On several occasions between 2005 and 2011, the Board asked**
15 **Uni-Ter to provide more and better financial and other information:**

- 16
- March 2005 Minutes request for financial information monthly.
 - April 2005 Minutes note nonreceipt of periodic marketing reports.
 - At the October 2011 special meeting approving \$2.2 million of
- 18 additional capital the Board requested more frequent financial reports by Uni-Ter,
19 preferably monthly.

20 163. **The facts show an absence of the requisite diligence of the**
21 **Board and company officers to ascertain and assess the available information**
22 **so that decisions could be made and based on such information,** as set forth
23 above.

24 164. The Board failed to keep itself properly **informed because it relied**
25 **too heavily on recommendations of Uni-Ter,** as set forth herein.

26 *See* Complaint at ¶¶ 162-164 (emphasis added). Further, the Complaint sets forth a multitude of
27 information provided to the Board which was either inaccurate or should have led the Board to
28 take drastically different actions than it took:

1 158. As of the end of 2011, **there was more than ample information**
2 **that, in combination, clearly showed that L&C's financial condition was in**
3 **dangerous peril.**

4 159. This information available in late 2011 included rapid and drastic
5 increase in loss reserves, reports of inadequate reserves requiring repeated capital
6 infusions in late 2011 and early 2012, high loss ratios, drastically decreasing
7 realized premiums, absence of any adjustment of premium rates, implementation
8 of a new underwriting philosophy that would result in a 35-40% drop in premiums,
9 and a drastically decreasing company surplus.

10 160. These reports included the following summarized facts:

- 11 • In September 2005, Elsass reported on appropriate loss reserves.
- 12 • L&C had substantial growth of premiums and reserves between 2004 and 2009.
13 By 2009, written premium was \$10.7 million and reserves were \$6.2 million. Uni-
14 Ter's management fees also increased rapidly to \$1.4 million in 2008 and \$1.7
15 million in 2009.
- 16 • Losses and LAE grew to \$9.1 million in 2010 and \$14 million in 2011.
- 17 • Loss ratios were generally in the 30% range and below until 2009 when the
18 addition of the Sophia Palmer work caused a loss ratio over 50% (because of
19 Sophia Palmer claims having a loss ratio over 80%).
- 20 • A new underwriting philosophy was discussed at the September 2011 meeting.
21 Although it does not appear that the Board questioned how this would affect
22 premiums earned, Uni-Ter expected this new philosophy would only renew
23 accounts that had a favorable historical loss ratio and that that could result in a 35-
24 40% reduction in premium volume.
- 25 • In the 3rd quarter 2011, adverse development on claims incurred in 2009 showed
26 up on L&C's financial results. Uni-Ter brought in Praxis to improve the reserve
27 setting process. Uni-Ter brought in Praxis to analyze and recommend reserves.
28 Praxis recommended reserve strengthening of \$2.2 million.
- Capital contributions totaling \$2.22 million were approved by the Board at the
October 5, 2011 meeting. That same meeting said that an additional \$550,000 in
capital could be raised in the 4th quarter 2011 and 1st quarter 2012.
- Financial information shows L&C was not paying losses in 2011. 12/19/11 draft
report from Milliman shows \$2.23 million paid losses and ALAE in 2009, \$2.44
million in 2010, but only \$199,000 in 2011.
- On 12/20/2011, Uni-Ter reported claims reserves increased \$5 million from the
November 2011 figures.
- Uni-Ter's pro forma 12/31/11 financials show that L&C was neither impaired nor
insolvent, but the 2011 Annual Statement shows losses and ALAE increased from
\$9.1 million at the beginning of 2011 to \$14.8 million at the end of the year.

- At January 16, 2012 meeting, surplus is only \$1,979,730, down from \$4,579,000 at end of 2010.
- At February 2, 2012 meeting, Board approved \$480,000 additional capital contributions even though Elsass reported recent favorable claims activity. Prior to this, the Board had determined that they wanted a second opinion from Fishlinger to confirm the need for reserve strengthening made by Praxis.
- A 2/23/12 report showed that L&C's net written premiums for 2011 dropped 25% (from \$12 to \$9 million). It confirmed that losses and LAE for 2011 were \$12.7 million when only \$8.1 million for 2010. It also said that L&C's current reserves were deficient by just over \$750,000.
- A 2/23/12 report on in force policies states that total premiums for those policies would be \$6.8 million for 2012.
- A 2/29/12 loss ratio report shows that earned premium for 2011 dropped to \$5,209,362 from \$12,798,406 in 2010 and \$11,776,406 in 2009 and states that earned premium for 2012 through February 2012 was only \$240,000 which, annualized, would be only about \$1.4 million. It also shows that loss ratios for 2006 through 2010 were all above 65% and as high as 79%.
- April 12, 2012 Milliman report says that L&C's loss reserves are \$1.4 million under the central estimate. That same reports says that ultimate loss and ALAE have increased by \$9.2 million from the end of 2010. Table 3 of that report (page 12) states that Ultimate Loss & ALAE increased \$5.5 million from \$13.8 million at the end of 2010 to \$19.2 million the end of 2011.

161. If the Board and officers saw and reviewed all of this information, they were grossly negligent in not taking immediate corrective action by at least late 2011 (e.g., raising premium rates). If the Board and officers did not see this information, they were grossly negligent by not taking action to inform themselves of the actual financial condition of L&C.

Id. at ¶¶ 158-161 (emphasis added). Thus, the Board's assertions that the Complaint fails to state a claim for gross negligence based on the Board's failure to properly inform itself is inaccurate and the Motion should be denied.

Finally, the Board makes one last attempt to avail itself of the inaccurate argument that its gross negligence is protected by the BJR. *See* Motion at ¶¶ 9-10. Once again, the Board quotes only a portion of the relevant statutory provision – NRS 78.138(2) – without quoting the portions that entirely undercut its position. In fact, while it is true that if a board properly informs itself it is entitled to rely on information prepared by other professionals, what the Board fails to quote is the remaining portion of NRS 78.138(2) which states that “a director or officer **is not entitled to**

1 rely on [information provided by others] if the director or officer has knowledge concerning
2 the matter in question that would cause reliance thereon to be unwarranted.” (Emphasis
3 added). In this case, as set forth above and more fully in the Complaint, incorporated herein by
4 reference, the Board either failed to inform itself properly or failed to properly act on the
5 information it received, committing gross negligence under either scenario. Accordingly, the
6 Motion must be dismissed.

7 **D. The Board’s statement that “deepening of the insolvency” is not a recognized**
8 **claim in Nevada is inaccurate.**

9 Regarding Plaintiff’s claim for “deepening of the insolvency,” it is inaccurate that it is not
10 a recognized claim in Nevada. *See In re AgriBioTech, Inc.*, 319 B.R. 216, 224 (D. Nev. 2004). In
11 *AgriBioTech*, handed down in 2004, Judge Philip Pro – then the Chief Judge – applying Nevada
12 law in the case, held that the bankruptcy trustee at issue in that litigation had standing to pursue
13 claims for “deepening of the insolvency.” *In re AgriBioTech, Inc.*, 319 B.R. 216, 224 (D. Nev.
14 2004). There the allegations in the complaint filed by the trustee stated that the defendant
15 accountants had failed to take proper measures to disclose accounting improprieties being
16 perpetrated on the debtor by corporate insiders, failed to make good faith effort to prevent cover-
17 ups of accounting improprieties, and actually assisted insiders in such cover-ups, with result that
18 debtor's existence was prolonged and it slid more deeply into insolvency. *Id.* The court
19 recognized that this stated a cause of action belonging to the debtor, which the trustee could
20 pursue. *Id.* (citing as examples *Official Comm. of Unsecured Creditors v. R.F. Lafferty & Co.,*
21 *Inc.*, 267 F.3d 340, 351 (3d Cir.2001) (holding Pennsylvania would recognize a “deepening
22 insolvency” theory as independent harm to the corporation and listing other federal cases so
23 holding); *Schacht v. Brown*, 711 F.2d 1343, 1350 (7th Cir.1983) (noting that fraudulently
24 prolonging a corporation's life does not confer a benefit on the corporation).” *See also Smith v.*
25 *Arthur Andersen LLP*, 421 F.3d 989, 1003 (9th Cir. 2005) (citing to *Kittay v. Atl. Bank (In re*
26 *Global Serv. Group LLC)*, 316 B.R. 451, 457 (Bankr.S.D.N.Y.2004) (holding that an entity
27 suffers a “distinct and compensable injury when it continues to operate and incur more debt.”));
28 *see also Smith v. Arthur Andersen LLP*, 421 F.3d 989, 1004 (9th Cir. 2005) (“We do, however,

1 agree with the Third Circuit's observation in *Lafferty* that ‘**prolonging an insolvent**
2 **corporation's life through bad debt may’ dissipate corporate assets and thereby harm the**
3 **value of corporate property.** Thus, we agree that the complaint states a cognizable harm to
4 Boston Chicken when it alleges that the defendants ‘prolonged’ the firm's existence, causing it to
5 expend corporate assets that would not have been spent ‘if the corporation [had been] dissolved in
6 a timely manner, rather than kept afloat with spurious debt.’”). (Internal citations omitted)
7 (emphasis added).

8 In this case the Complaint clearly states that the Board’s decisions severely prolonged the
9 insurance actions of L&C that led to its initial insolvency and that then also increased its
10 insolvency. *See* Complaint at ¶¶ 168-171. Had the Board taken appropriate, informed action by
11 late 2011, the substantial losses experienced by L&C starting in late 2011 would not have
12 occurred or, alternatively, would have been greatly limited. *Id.* Further, because L&C had a
13 surplus as of the end of 2011, according to its financial statements, then all of the insolvency of
14 L&C was arguably attributable to the directors’ and officers’ failure to promptly identify and
15 address the financial problems. *Id.* The Board’s misguided attempts to argue the facts and
16 attempt to justify its decisions in the Motion are entirely improper. Accordingly, this claim –
17 recognized in Nevada – must be permitted to proceed and the Motion should be denied in its
18 entirety.

19 E. **The claim for “Deepening of the Insolvency” is plead with substantial detail**
20 **and clarity. Further, as this is different than a claim for fraud, NRCP 9(b) is**
21 **inapplicable.**

22 Nevada is a notice pleading state. *W. States Const., Inc. v. Michoff*, 108 Nev. 931, 936,
23 840 P.2d 1220, 1223 (1992). Thus, “our courts liberally construe pleadings to ‘place into issue
24 matters which are fairly noticed to the adverse party.’” (Citation omitted). A complaint need
25 only set forth sufficient facts to demonstrate the necessary elements of a claim for relief so that
26 the defending party has adequate notice of the nature of the claim and relief sought. *Id.*; *see also*
27 *Ravera v. City of Reno*, 100 Nev. 68, 70, 675 P.2d 407, 408 (1984) (test for determining whether
28 the allegations of a cause of action are sufficient to assert claim is whether allegations give fair

1 notice of nature and basis of claim and relief requested).

2 Here the Complaint contains no fewer than 195 allegations, and while a certain number of
3 factual allegations do not necessarily mean a complaint sufficiently states a claim for relief, here
4 the Board's argument is plainly meritless. The Complaint sets forth the dates, times, places and
5 identify of the parties involved, as well as the nature of the Board's actions and/or inactions in
6 stating the claim for deepening of the insolvency. Thus, while the more stringent pleading
7 standards of NRCP 9(b) do not apply as a claim for deepening of the insolvency is different than
8 a claim for fraud,³ even if that standard was applied the Board has more than sufficient
9 information to provide it with "adequate notice of the charges against them." See Motion at p.11.
10 Thus, the Motion must be denied.

11 **F. Alternatively, Plaintiff should be given leave to amend.**

12 Should the Court be inclined to grant the Motion, Plaintiff respectfully requests that leave
13 to amend be given. As set forth above, when a complaint can be amended to state a claim for
14 relief, "leave to amend, rather than dismissal, is the preferred remedy." *Cohen, supra*, 119 Nev.
15 at 22, 62 P.3d at 734. Further, "[l]eave to amend should be freely given when justice requires."
16 *Id.*

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25 _____
26 ³ The Board accurately notes that in some formulations a claim for deepening of the insolvency is
27 "founded on a theory of fraud," but this is not always or necessarily the case. See J.B. Heaton,
28 *Deepening Insolvency*, 30 J. Corp. L. 465, 468 (2005) (recognizing that not all such claims are
predicated on fraud).

IV. CONCLUSION

For all these reasons, Plaintiff respectfully requests that this Court deny the Board's Motion, and grant such other and further relief as it deems necessary.

DATED this 15th day of January, 2016.

FENNEMORE CRAIG, P.C.

By: /s/ Karl L. Nielson
JAMES L. WADHAMS, ESQ.
Nevada Bar No. 1115
KARL L. NIELSON, ESQ.
Nevada Bar No. 5082
BRENOCH WIRTHLIN, ESQ.
Nevada Bar No. 10282
300 South Fourth Street, Suite 1400
Las Vegas, Nevada 89101
Telephone: (702) 692-8000
Facsimile: (702) 692-8099
knielson@fclaw.com
bwirthlin@fclaw.com
*Attorneys for Plaintiff Commissioner of
Insurance For the State of Nevada*

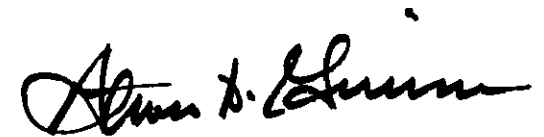
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Fennemore Craig, P.C. and that on January 15, 2016, service of the foregoing OPPOSITION TO DEFENDANTS ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, AND ERIC STICKELS' MOTION TO DISMISS was made on the following counsel of record and/or parties via the Court's electronic filing system as follows:

Joseph P. Garin, Esq.
Angela T. Nakamura Ochoa, Esq.
LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, NV 89144
Attorneys for Defendants
Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut,
Barbara Lumpkin, Jeff Marshall, and Eric Stickels

/s/ Cheryl Landis
An employee of Fennemore Craig, P.C.



CLERK OF THE COURT

TRAN

EIGHTH JUDICIAL DISTRICT COURT
CIVIL/CRIMINAL DIVISION
CLARK COUNTY, NEVADA

COMMISSIONER OF INSURANCE)	CASE NO.	A-14-711535
FOR THE STATE OF NEVADA AS)		
RECEIVER OF LEWIS AND CLARK,)	DEPT. NO.	XXVII
)		
Plaintiff,)		
)		
vs.)		
)		
ROBERT CHUR, et al,)		
)		
Defendants.)		

BEFORE THE HONORABLE NANCY ALLF, DISTRICT COURT JUDGE

WEDNESDAY, JANUARY 27, 2016

TRANSCRIPT RE:

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

APPEARANCES:

For the Plaintiff: BRENOCH R. WIRTHLIN, ESQ.
KARL L. NIELSON, ESQ.

For Defendants U.S. RE Corporation,
Uni-Ter Underwriting Management Corp.,
and Uni-Ter Claims Services Corp.: GEORGE F. OGILVIE, III, ESQ.

For Defendants Robert Chur, Steve Fogg,
Mark Garber, Carol Harter, Robert Hurlbut,
Barbara Lumpkin, Jeff Marshall, and
Eric Stickels: ANGELA NAKAMURA OCHOA, ESQ.

RECORDED BY: Traci Rawlinson, Court Recorder

1 CLARK COUNTY, NEVADA

WEDNESDAY, JANUARY 27, 2016

2 **PROCEEDINGS**

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

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

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

7 THE COURT: Thank you.

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

11 THE COURT: Thank you.

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

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

17 Ms. Ochoa.

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

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

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

10 THE COURT: Thank you, Ms. Ochoa.

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

12 MR. OGILVIE: No, Your Honor.

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

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

16 THE COURT: Of course.

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

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

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

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

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

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

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

1 these claims.”

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

9 THE COURT: Thank you, Mr. Wirthlin.

10 Ms. Ochoa.

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

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

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

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

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

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

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

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

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

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

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

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

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

12 MS. OCHOA: I will, Your Honor.

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

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

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

16 MR. WIRTHLIN: No, Your Honor.

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

18 THE COURT: Thirty days.

19 MS. OCHOA: Okay, thank you.

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

21 MS. OCHOA: Okay.

22 THE COURT: Thank you both.

23 MR. WIRTHLIN: Thank you, Your Honor.

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

1 THE COURT: Yes?

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

3 THE COURT: I see that.

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

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

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

14 THE COURT: Very good.

15 MR. OGILVIE: Thank you.

16 THE COURT: Thank you.

17 MR. WIRTHLIN: Thank you, Your Honor.

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

19 * * * * *

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

22 
23 _____
24 Liz Garcia, Transcriber
LGM Transcription Service

NEOJ

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

Nevada Bar No. 6653

ANGELA T. NAKAMURA OCHOA, ESQ.

Nevada Bar No. 10164

9900 Covington Cross Drive, Suite 120

Las Vegas, Nevada 89144

(702) 382-1500 - Telephone

(702) 382-1512 - Facsimile

jgarin@lipsonneilson.com

aocchoa@lipsonneilson.com

Attorneys for Defendants/Third-Party

Plaintiffs Robert Chur, Steve Fogg,

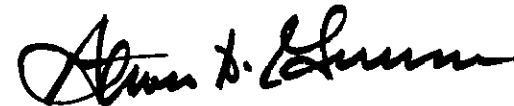
Mark Garber, Carol Harter,

Robert Hurlbut, Barbara Lumpkin,

Jeff Marshall, and Eric Stickels

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CLERK OF THE COURT

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
GRANTING IN PART AND DENYING IN
PART DEFENDANTS ROBERT CHUR,
STEVE FOGG, MARK GARBER, CAROL
HARTER, ROBERT HURLBUT,
BARBARA LUMPKIN, JEFF MARSHALL,
AND ERIC STICKELS' MOTION TO
DISMISS**

PLEASE TAKE NOTICE that on the 25th day of February, 2016, an Order Granting in Part and Denying in Part Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall, and Eric Stickels' Motion to Dismiss, was entered. A copy of said Order is attached hereto and made part

hereof.

DATED this 26th day of February, 2016.

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

By: /s/ Angela T. Nakamura Ochoa

Joseph P. Garin, Esq. (6653)

Angela T. Nakamura Ochoa, Esq. (10164)

9900 Covington Cross Dr., Suite 120

Las Vegas, NV 89144

(702) 382-1500 – Telephone

(702) 382-1512 – Facsimile

igarin@lipsonneilson.com

aochoa@lipsonneilson.com

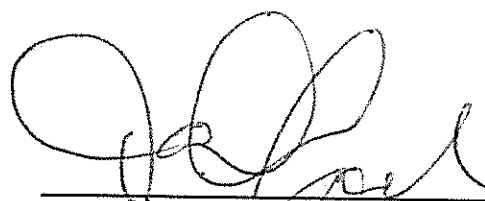
*Attorneys for Defendants/Third-Party
Plaintiffs Robert Chur, Steve Fogg,
Mark Garber, Carol Harter,
Robert Hurlbut, Barbara Lumpkin,
Jeff Marshall, and Eric Stickels*

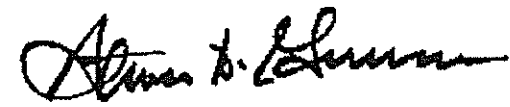
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and Administrative Order 14-2, I certify that on the 26th day of February, 2016, I electronically transmitted the foregoing **NOTICE OF ENTRY OF ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, AND ERIC STICKELS' MOTION TO DISMISS** to the Clerk's Office using the Odyssey E-File & Serve System for filing and transmittal to the following Odyssey E-File & Serve registrants:

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

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


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



CLERK OF THE COURT

1 **ORDG**

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

3 JOSEPH P. GARIN, ESQ.

4 Nevada Bar No. 6653

5 ANGELA T. NAKAMURA OCHOA, ESQ.

6 Nevada Bar No. 10164

7 9900 Covington Cross Drive, Suite 120

8 Las Vegas, Nevada 89144

9 (702) 382-1500 - Telephone

10 (702) 382-1512 - Facsimile

11 jgarin@lipsonneilson.com

12 aocchoa@lipsonneilson.com

13 Attorneys for Defendants/Third-Party

14 Plaintiffs Robert Chur, Steve Fogg,

15 Mark Garber, Carol Harter,

16 Robert Hurlbut, Barbara Lumpkin,

17 Jeff Marshall, and Eric Stickels

18 **DISTRICT COURT**

19 **CLARK COUNTY, NEVADA**

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

24 Plaintiff,

25 vs.

26 ROBERT CHUR, STEVE FOGG, MARK
27 GARBER, CAROL HARTER, ROBERT
28 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 GRANTING IN PART AND
DENYING IN PART DEFENDANTS
ROBERT CHUR, STEVE FOGG, MARK
GARBER, CAROL HARTER, ROBERT
HURLBUT, BARBARA LUMPKIN, JEFF
MARSHALL, AND ERIC STICKELS'
MOTION TO DISMISS**

Date of Hearing: January 27, 2016

Time of Hearing: 10:00 a.m.

Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall and Eric Stickels' Motion to Dismiss was heard on January 27, 2016. In attendance were Angela Ochoa, Esq. on behalf of Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall and Eric Stickels; Karl Nielson, Esq. and Brenoch Wirthlin, Esq. on behalf

1 of Plaintiff, Commissioner of Insurance for the State of Nevada as Receiver for the
2 Lewis & Clark Risk Retention Group, Inc.; and George Ogilvie, III, Esq. on behalf of U.S.
3 RE Corporation, Uni-Ter Underwriting Management Corp., and Uni-Ter Claims
4 Servicing Corp.

5 The Honorable Nancy Alf presiding, and the Court having heard oral argument,
6 reviewed the pleadings and papers on file herein and being fully advised in the
7 premises and for good cause appearing,

8 THE COURT HEREBY ORDERS that Defendants Robert Chur, Steve Fogg,
9 Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshal and Eric
10 Stickels' Motion to Dismiss is GRANTED in PART and DENIED in PART.

11 Specifically, the Court grants the Motion to Dismiss without prejudice based on
12 NRCP 12(b)(5), that Plaintiff failed to state a claim for which relief can be granted, as to
13 the claim for gross negligence. The Court finds that Plaintiff's Complaint states a claim
14 for mere negligence rather than gross negligence. Plaintiff shall be granted leave to
15 amend its complaint to support a claim for gross negligence (Plaintiff's First Claim for
16 Relief) within 30 days of the entry of this order.

17 The Motion to Dismiss is denied as to the second claim for relief for deepening
18 the insolvency. The Court finds the decision in *In re AgriBioTech, Inc.*, 319 B.R. 216,
19 224 (D. Nev. 2004) to be persuasive law, and finds that the Complaint states a claim for
20 deepening the insolvency which is a recognized claim in Nevada. However, the Court
21 finds that this claim is a collateral cause of action to the gross negligence claim. Should
22 the Plaintiff choose to amend the Complaint to state a claim for gross negligence, the

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


claim for deepening the insolvency will proceed as well.

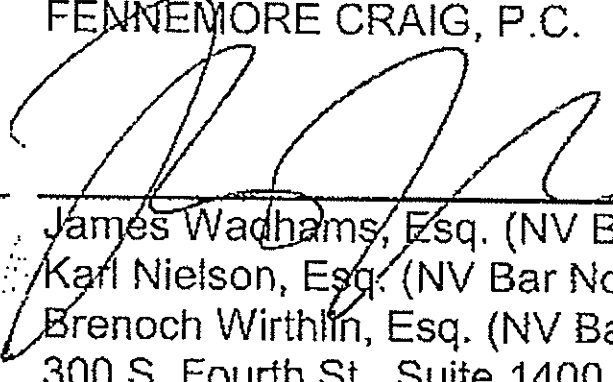
DATED this 23 day of February, 2016.

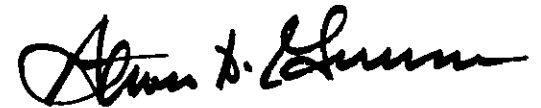
Nancy Allf
JUDGE NANCY ALLF

Submitted by:
LIPSON, NEILSON, COLE, SELTZER &
GARIN, P.C.

Approved as to Form and Content:
FENNEMORE CRAIG, P.C.


Joseph P. Garin, Esq. (NV Bar No. 6653)
Angela Ochoa, Esq. (NV Bar No. 10164)
9900 Covington Cross Dr., Suite 120
Las Vegas, NV 89144
*Attorneys for Defendants Robert Chur,
Steve Fogg, Mark Garber, Carol Harter,
Robert Hurlbut, Barbara Lumpkin, Jeff
Marshall & Eric Stickels*


James Wadhams, Esq. (NV Bar No. 1115)
Karl Nielson, Esq. (NV Bar No. 5082)
Brenoch Wirthlin, Esq. (NV Bar No. 10282)
300 S. Fourth St., Suite 1400
Las Vegas, NV 89101
Attorneys for Plaintiff



CLERK OF THE COURT

1 **ACOM**
2 JAMES L. WADHAMS, ESQ.
3 Nevada Bar No. 1115
4 KARL L. NIELSON, ESQ.
5 Nevada Bar No. 5082
6 BRENOCH WIRTHLIN, ESQ.
7 Nevada Bar No. 10282
8 **FENNEMORE CRAIG, P.C.**
9 300 South Fourth Street, Suite 1400
10 Las Vegas, Nevada 89101
11 Telephone: (702) 692-8000
12 Facsimile: (702) 692-8099
13 knielson@fclaw.com; bwirthlin@fclaw.com
14 *Attorneys for Plaintiff Commissioner of Insurance*
15 *For the State of Nevada*

16 **DISTRICT COURT OF NEVADA**

17 **CLARK COUNTY, NEVADA**

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

22 Plaintiff,

23 vs.

24 ROBERT CHUR, STEVE FOGG, MARK
25 GARBER, CAROL HARTER, ROBERT
26 HURLBUT, BARBARA LUMPKIN, JEFF
27 MARSHALL, ERIC STICKELS, UNI-TER
28 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.: XXVII

FIRST AMENDED COMPLAINT

**[Request for Exemption to be Filed]
[Damages in Excess of \$50,000]**

Plaintiff, the Court-appointed receiver ("Plaintiff") of Lewis & Clark LTC Risk Retention Group, Inc. ("L&C" or the "Company"), brings this action against former officers and directors of L&C as well as against L&C's underwriting manager and reinsurance broker and hereby complains and alleges as follows:

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2. The Nevada Division of Insurance (“DOI”) filed a Receivership Action related to L&C in November, 2012, commencing case number A-12-672047-B in the Eighth Judicial District Court of Nevada, in and for the County of Clark (“Receivership Action”). In the Receivership Action, the court entered an Order of Liquidation (“Liquidation Order”) on February 28, 2013. A copy of the Liquidation Order is attached hereto as **Exhibit 1**. In the Liquidation Order, Plaintiff was appointed as the Receiver (“Receiver”) of L&C. *Id.* The express powers granted to Receiver in the Order include the power to “[p]rosecute any action which may exist on behalf of the policyholders, members or shareholders of L&C against any officer of L&C or any other person[.]” *See* Liquidation Order, Exhibit 1, at ¶6(g).

4. On information and belief, Chur resides in Williamsville, New York.

6. On information and belief, defendant Steve Fogg (“Fogg”) was a director of L&C at all relevant times including as of the time the Receivership Action was filed.

7. On information and belief, Fogg resides in Oregon.

8. On information and belief, Fogg was also Chief Financial Officer of Marquis Companies at relevant times.

9. On information and belief, defendant Mark Garber (“Garber”) was a director of L&C at all relevant times including as of the time the Receivership Action was filed.

10. On information and belief, Garber resides in Oregon.

11. Garber was also Chief Financial Officer of Pinnacle Healthcare, Inc. (“Pinnacle”) at relevant times.

1 12. On information and belief, defendant Carol Harter (“Harter”) was a director of
2 L&C at all relevant times including as of the time the Receivership Action was filed.

3 13. On information and belief, Harter resides in Las Vegas, Nevada.

4 14. On information and belief, Harter was also a professor at University of Nevada,
5 Las Vegas at relevant times.

6 15. On information and belief, defendant Robert Hurlbut (“Hurlbut”) was a director of
7 L&C at all relevant times including as of the time the Receivership Action was filed.

8 16. On information and belief, Hurlbut resides in New York.

9 17. On information and belief, defendant Barbara Lumpkin (“Lumpkin”) was a
10 director of L&C at all relevant times including as of the time the Receivership Action was filed.

11 18. On information and belief, Lumpkin resides in Florida.

12 19. On information and belief, Lumpkin was also the Associate Executive Director of
13 the Florida Nurses Association at relevant times.

14 20. On information and belief, defendant Jeff Marshall (“Marshall”) was the President
15 and CEO of L&C at all relevant times including as of the time the Receivership Action was filed.

16 21. On information and belief, Marshall resides in Washington.

17 22. On information and belief, Marshall was also President and CEO of Eagle
18 Healthcare, Inc. (“Eagle Healthcare”) at relevant times.

19 23. On information and belief, defendant Eric Stickels (“Stickels”) was the Secretary
20 and Treasurer of L&C at all relevant times including as of the time the Receivership Action was
21 filed.

22 24. On information and belief, Stickels resides in New York.

23 25. On information and belief, Stickels was also Chief Financial Officer of Oneida
24 Savings Bank (“Oneida”) at relevant times.

25 26. On information and belief, U.S. RE Corporation (“U.S. RE”) is a New York
26 corporation and is an international financial services firm with interests in reinsurance brokerage,
27 investment banking, and program business, as well as holdings in the insurance industry.

28 27. On information and belief, defendant Uni-Ter Underwriting Management

1 Corporation (“Uni-Ter UMC” or “Uni-Ter”) is a Georgia corporation and is a wholly owned
2 subsidiary of U.S. RE Corporation.

3 28. On information and belief, Uni-Ter Claims Services Corp. (“Uni-Ter CS”) is a
4 Georgia corporation and is a wholly owned subsidiary of Uni-Ter UMC.

5 29. On information and belief, Defendants DOE INDIVIDUALS 1 through 50 and
6 ROE COMPANIES 51 through 100 are individuals or business entities currently unknown to
7 Plaintiff who claim some right, title, interest or lien in the subject matter of this action. When the
8 names of said DOE INDIVIDUALS and ROE COMPANIES have been ascertained, Plaintiff will
9 request leave to substitute their true names and capacities and join them in this action.

10 **GENERAL ALLEGATIONS**

11 **A. Introduction**

12 30. L&C was a Nevada corporation formed in or around 2003. L& C was organized
13 as a risk retention group to write Professional and General Liability coverage for long-term care
14 facilities in the Pacific Northwest.

15 31. L&C expanded its area of operation over the years and, at the time of Receivership
16 Action in 2012, wrote coverage for long term care facilities in 46 states, although New York,
17 California, Oregon, and Washington accounted for a majority of the premiums.

18 32. The individual defendants include the directors and officers of L&C at the relevant
19 times who, among other things, were grossly negligent in performing their duties as directors and
20 officers of L&C which resulted the Receivership Action being filed.

21 33. Defendants Uni-Ter UMC and Uni-Ter CS were retained as a manager of L&C.
22 Defendant U.S. RE was retained to provide reinsurance to L&C.

23 34. On information and belief, the Defendants who were directors and officers of L&C
24 (“Board”) were aware at the time it retained Uni-Ter and its affiliates that they had only recently
25 been formed and had limited operating history. Further, the Board understood that the Board
26 members had not previously organized an insurance company. Thus, on information and belief,
27 the Board placed undue reliance on Uni-Ter as its manager without properly informing itself of
28 the information provided by Uni-Ter and its affiliates. Further, on information and belief, the

1 Board continued to rely on information and recommendations from Uni-Ter despite clear
2 indications that the information was incomplete and inaccurate and the recommendations were ill
3 advised, but the Board failed to exercise even slight diligence or care in verifying or correcting
4 the misinformation provided by Uni-Ter, U.S. RE and others, and to take proper corrective action.

5 **B. Acquisitions and Growth of L&C**

6 35. During calendar year 2005, L&C acquired Henry Hudson LTC Risk Retention
7 Group, Inc. ("Henry Hudson") which wrote exclusively in New York. L&C assumed all
8 outstanding liabilities of Henry Hudson.

9 36. L&C acquired Sophia Palmer Nurses Risk Retention Group ("Sophia Palmer") in
10 2009. Sophia Palmer wrote general and professional liability policies to nurses mostly in Florida.
11 L&C assumed all outstanding liabilities of Sophia Palmer.

12 37. By the time it was placed in receivership, L&C had issued approximately 25,254
13 shares of common stock. Its directors and officers held approximately 11,720 shares. The largest
14 shareholders were Pinnacle with approximately 3663 shares and Eagle Healthcare with
15 approximately 4041 shares.

16 38. L&C was managed by Uni-Ter UMC at all times. Uni-Ter UMC also did other
17 work including private offering work on behalf of L&C such as sending out the offering
18 memoranda and offering documents on behalf of the company.

19 **C. Agreements with the Uni-Ter Entities and Brokers**

20 39. The Uni-Ter entities hold themselves out as a leading provider of liability
21 insurance to the healthcare industry.

22 40. Uni-Ter UMC has created at least five Risk Retention Groups which include L&C,
23 Ponce de Leon LTC RRG, Inc., and J.M. Woodworth RRG, Inc.

24 41. As a Managing General Underwriter, Uni-Ter's services to L&C included
25 administration, underwriting, risk management, claims, and regulatory compliance.

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1 **(1) Management Agreements**

2 42. Immediately upon formation of L&C by Uni-Ter UMC, L&C entered into
3 management agreements with Uni-Ter UMC. In 2011, Uni-Ter entered into a new management
4 agreement with Uni-Ter UMC and Uni-Ter CS.

5 a. 2004 Management Agreement

6 43. L&C and Uni-Ter UMC entered into a Management Agreement dated January 1,
7 2004 (“2004 Management Agreement”) for a period of seven years. A copy of the 2004
8 Management Agreement is attached hereto as **Exhibit 2**.

9 44. In the agreement, L&C appointed Uni-Ter UMC as its exclusive underwriting,
10 administrative, accounting, risk management, and claims manager for the lines of business and
11 territories set forth in Exhibit A to that agreement.

12 45. The 2004 Management Agreement states that Uni-Ter UMC would “serve L&C in
13 a fiduciary capacity for all legal duties.” *See* Exhibit 2 hereto.

14 46. Uni-Ter UMC’s duties under the 2004 Management Agreement expressly included
15 the following: (i) Soliciting of risks and class of risks that meet L&C’s underwriting and pricing
16 standards, appointing qualified brokers and agents to sell the insurance, (ii) binding of risks, (iii)
17 issuance, renewal, and cancellation of policies, (iv) collection of premiums, (v) handling of
18 claims, (vi) keeping accurate records and having audits done, (vii) maintaining electronic files,
19 (viii) providing the usual and customary services to insureds, (ix) ensuring compliance with state
20 and federal regulations, (x) determining and setting appropriate premium rates, (xi) compiling and
21 providing the needed statistical reports to L&C, (xii) holding all of L&C’s assets in investment
22 custodian accounts as a fiduciary, (xiii) determining and obtaining appropriate reinsurance
23 authorized by L&C, (xiv) safeguarding and maintaining L&C property, and (xv) accounting to
24 L&C for certain financial and insurance information on a monthly basis (including operating
25 statement, balance sheet, policies written for the month, claims incurred for the month, AR
26 summary, and summary of all claims, reserves, and losses. *See* 2004 Management Agreement,
27 Exhibit 2, at Article III.

28

1 47. Uni-Ter's duties also specifically included "[t]o arrange for or perform risk
2 management services for the benefit of the insureds of L&C. Such risk management shall have
3 the primary goal of reducing the frequency of medical incidents that give rise to policy claims.
4 Specific risk management duties are set forth in Exhibit C." *Id.* Art. III(R).

5 48. Uni-Ter's duties also included filing quarterly and annual financial statements with
6 the Nevada DOI and other states requiring the same. *Id.* Art. III(H)(2).

7 49. The 2004 Management Agreement also included Exhibit B entitled Claims
8 Management Authority which stated that Uni-Ter UMC "shall handle all aspects of claim
9 processing . . . for all claims and allocated loss adjustment expenses subject to this Agreement."
10 The Exhibit then lists specific claims handling duties of Uni-Ter including monthly reporting of
11 new claims, open reserves, paid claims, and ending reserve balance for both indemnity and
12 expense activity. *See* Exhibit 2 hereto.

13 50. Regarding compensation, Uni-Ter was paid in three components.

- 14 (i) A management fee of 22% of gross written premiums net of cancellations
15 and non renewals up to \$5 million, 20% between \$5 million and \$15
16 million, and 17.5% above \$15 million. Management fees were to be paid
17 monthly.
- 18 (ii) Claims handling fees of \$250 per file setup for each claim or investigation,
19 \$95 per hour for claim adjuster/nurse professional time, and actual travel
20 expenses.
- 21 (iii) A profit sharing bonus on a sliding scale as a percent of earned premiums
22 based on loss ratio for each calendar year. The profit sharing bonus was to
23 be paid no later than March 1 of the year following the fifth year after the
24 year at issue.

25 *See id.*

26 51. The 2004 Management Agreement included amendments that modified these
27 payment terms. *Id.*

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1 52. The Second Amendment to the 2004 Management Agreement states that for all
2 services under the 2004 Management Agreement other than claims handling, the management fee
3 will be 12% of annual gross written premiums net of cancellations and non-renewals plus the
4 amount of agency commissions (at rates approved by L&C) payable to retail and wholesale
5 agents appointed by Uni-Ter. *Id.*

6 53. Various amendments raised the hourly rate for claim adjuster/professional time.
7 *Id.*

8 54. The Fifth Amendment to the 2004 Management Agreement modified the profit
9 sharing bonus provision to be paid on March 1 of the year following the fourth year after the year
10 at issue. *Id.*

11 55. On information and belief, in or around 2009 L&C, at Uni-Ter's direction,
12 accepted multiple multi-site LTC operators ("Multi-site Operators") as policyholders. As noted
13 above, one of these operators was Sophia Palmer.

14 56. On information and belief, at the time L&C accepted Sophia Palmer, Lumpkin – a
15 director of L&C – also chaired the board of Sophia Palmer.

16 57. On information and belief, the DOI reprimanded the Board for failing to submit a
17 Conflict of Interest Statement as the officers and directors of L&C were required to do pursuant
18 to NAC 694C.

19 58. On information and belief, the Board accepted Uni-Ter's direction to obtain the
20 Multi-site Operators, including Sophia Palmer, without adequate information. In fact, the Board
21 failed to even exercise a slight degree of diligence in determining whether the acceptance of the
22 Multi-site Operators, including Sophia Palmer, was an appropriate decision.

23 59. On information and belief, had the Board exercised even scant care in informing
24 itself based upon the information available to it regarding the Multi-site Operators, it would have
25 discovered that in fact the recommendation by Uni-Ter was ill advised.

26 60. On information and belief, L&C's acceptance of the Multi-site Operators
27 constituted a significant divergence from the established business model of L&C as the Multi-site
28 Operators were large, multi-facility operators and had historical loss records outside L&C's

1 typical underwriting range. Further, on information and belief, one of the contracts at issue
2 contained an unprecedented provision that limited the claims exposure of L&C on an aggregate
3 level rather than on a claim-specific level.

4 61. Following L&C's acquisition in 2009 of the Sophia Palmer nurse/nurse
5 practitioner book of business in Florida, the Seventh Amendment stated that the existing profit
6 sharing terms were applicable to L&C's long term care facility/home health care book of
7 business, but that regarding L&C's nurse/nurse practitioner book of business produced by agents,
8 the profit sharing bonus (called "commissions") were to be paid at a rate of 37.5% of the annual
9 gross written premiums net of cancellations and non-renewals. For nurse/nurse practitioner
10 business produced by Uni-Ter UMC, the commission rate was to be 30.0%.

11 62. The Eighth Amendment to the 2004 Management Agreement stated that
12 management fees were to be paid to Uni-Ter UMC on a continuing basis as premiums are
13 collected or adjusted (as opposed to monthly previously). *Id.*

14 63. On information and belief, Uni-Ter received at least \$1,500,000 in management
15 fees in 2010.

16 b. 2011 Management Agreement

17 64. At the expiration of the 2004 Management Agreement, L&C and Uni-Ter UMC
18 (and Uni-Ter's subsidiary Uni-Ter CS) entered into a similar Management Agreement on January
19 1, 2011 ("2011 Management Agreement") for a period of five years. A copy of the 2011
20 Management Agreement is attached hereto as **Exhibit 3**.

21 65. The 2011 Management Agreement was in place when the Order of Liquidation
22 was entered.

23 66. The 2011 Management Agreement states that Uni-Ter UMC and Uni-Ter CS as
24 Manager would "serve L&C in a fiduciary capacity for all legal duties." It sets forth similar
25 duties for Uni-Ter as under the 2004 agreement. The management fee and claims handling fees
26 portion of the compensation are the same as the amended compensation under the 2004
27 agreement.

28

1 67. The 2011 Management Agreements included the following revisions to the 2004
2 Management Agreement:

- 3 (i) The accounting reporting to L&C is to be done on a quarterly basis instead
4 of monthly. Art. III(H).
- 5 (ii) Exhibit A was revised regarding the territory to include all of the U.S.
6 except for Hawaii and Alaska and excluding long term care and home
7 healthcare in Florida.
- 8 (iii) The limitations of Uni-Ter's authority in Article III(Y) are revised to delete
9 the limitations set forth in items 2, 6, and 9 of the 2004 agreement. Uni-
10 Ter's new allowed duties (i.e., no longer a limitation) included that it had
11 full authority to settle claims on L&C's behalf or commit L&C to pay
12 claims.
- 13 (iv) The profit sharing bonus provision was revised to apply from 2007 forward
14 with 2006 being the last year under the 2004 Management Agreement. For
15 2007 onward, the profit sharing bonus was to be 20% of L&C's Profit as
16 defined to be pre-tax net income as adjusted for the applicable year's loss
17 ratio, ALAE ratio, and reinsurance payables and receivables through
18 December 31 of the fourth year following the applicable year.

19 68. The First Amendment to the 2011 Management Agreement revised the
20 management fee for calendar year 2011 to be at a rate of 10% instead of 12% and stated that
21 continuation of the 2% differential for subsequent periods is subject to mutual agreement of the
22 parties. A handwritten notation on the amendment states that "This was revised on February 7th,
23 2011."

24 69. The Second Amendment is dated November 15, 2011 in conjunction with
25 additional capital contributions at that time. It states that for so long as any amounts are unpaid
26 on the surplus debentures of L&C issued in 2011 and 2012, the profit sharing bonus payable to
27 Uni-Ter UMC shall accrue but not be paid.

1 70. The Third Amendment done on December 31, 2011 states that no profit sharing
2 bonus would accrue or be paid regarding the 2008 calendar year.

3 71. Despite the changes to Uni-Ter's management responsibilities, and despite the dire
4 financial circumstances of L&C during 2011, on information and belief Uni-Ter received not less
5 than \$1,000,000.00 in management fees in 2011.

6 72. Milliman, Inc. ("Milliman"), an actuarial firm, provided Rate and Loss Reserve
7 analysis to Uni-Ter ("Milliman Reports"). Milliman was engaged by Uni-Ter, and not L&C, in
8 the work that it did. Milliman did premium rate and professional liability and general liability
9 rate analysis for Uni-Ter. Milliman also did loss reserve analysis for Uni-Ter.

10 (2) U.S. RE Agreement

11 73. In a Broker of Record Letter Agreement between L&C and U.S. RE, L&C
12 appointed U.S. RE as its exclusive reinsurance intermediary/broker for a period of seven years
13 and granted U.S. RE full and complete authority to negotiate the placement of reinsurance on all
14 classes of insurance with unspecified limits of coverage as requested by any underwriter of L&C,
15 *i.e.*, Uni-Ter ("U.S. RE Agreement"). A copy of the U.S. RE Agreement is attached hereto as
16 **Exhibit 4.**

17 74. The U.S. RE Agreement states that U.S. RE will handle all funds collected for
18 L&C in a fiduciary capacity. *See* Exhibit 4.

19 75. In each of the eleven (11) ceded reinsurance agreements between L&C and its
20 reinsurers, U.S. RE is listed as the reinsurance intermediary in each agreement via an
21 intermediary clause in the reinsurance agreements.

22 (3) Reinsurance Contracts

23 76. U.S. RE, acting as L&C's intermediary broker, procured the following general
24 reinsurance treaties. Certain terms of such treaties are noted below the treaty name.

25 (i) April 1, 2004 to December 31, 2004 Treaty (Commuted).

26 (ii) January 1, 2005-December 31, 2006 Treaty.

27 - Applicable to \$750,000 excess of \$250,000 per claim

- Applicable to \$650,000 excess of \$350,000 per claim
- Deductible is greater of 18.5% of GNWPI or \$1,300,000.
- Aggregate limit is 300% of ceded premium.
- Ceded premium is 17.00% of GNWPI for all policies subject to a minimum of \$1,190,000.

(x) June 1, 2011-May 31, 2012 Treaty.

- L&C cedes 75% of losses in reinsured layer and retains 25%
- Applicable to \$1,000,000 excess of \$1,000,000 per claim
- Aggregate limit is \$1,500,000
- Ceded premium is 100% of net excess premiums (gross premiums less 20%) for policies with limits greater than \$1,000,000 per claim

(xi) June 1, 2012-May 31, 2013 Treaty.

- Applicable to \$650,000 excess of \$350,00 per claim
- Aggregate limit is 300% of ceded premium.

C. Financial Disaster in 2010 and 2011 at Uni-Ter's and US RE's Direction and the Board's Gross Negligence Despite the Board's Knowledge that Reliance on the Information and Representations from Uni-Ter and US RE was Unwarranted and Dangerous.

77. On or around September 8, 2010, the DOI sent a letter to Marshall, President of L&C and a member of the Board ("September 2010 Letter") advising the Board of the dangerous financial position of L&C. A copy of the "September 2010 Letter is attached hereto as **Exhibit 5**.

78. In the September 2010 Letter, captioned "Lewis & Clark Deteriorating Financial Condition", the DOI states in part the following:

Dear President Marshall:

The [DOI]'s review of the June 30, 2010 financial statement of [L&C] revealed a deteriorating financial condition which the company's management must address. The following are items that must be considered:

- Increase in reserves has increased liabilities \$3.1 million above the 12/31/10 pro-forma accounts and has resulted in a liquidity ration ... of 116.0%.
- Due to underwriting and operating losses, \$1.1 million and \$792.7 thousand, respectively, policyholder surplus has declined by 11.6% from December 31, 2009.
- Underwriting losses are the result of increasing loss and loss administration expense coupled with high other underwriting/administrative expenses (which exceed 12/31/10 pro-forma amounts by \$744 thousand), all of which result in a combined ratio of 131.1%.
- Risk Based Capital (RBC) ratio of 210.5% is hardly adequate....

1 See Exhibit 5.

2 79. The September 2010 Letter ended with an admonition from the DOI that
3 “[b]ecause of the company’s capital decline revealed by the June 30, 2010 financial statement,
4 management should commence preparing a corrective action plan and an implementation
5 schedule addressing a means to enhance earnings and surplus, reduce expenses, and improve
6 liquidity.” *Id.*

7 80. On information and belief, despite the DOI’s recommendations regarding L&C’s
8 deteriorating financial condition and need for an effective corrective action plan, the Board failed
9 to exercise even slight diligence in correcting the substantial problems L&C was facing, and the
10 alarming financial problems of L&C outlined by the DOI in its September 2010 Letter were not
11 corrected, and in fact were dramatically worsened, by the Board’s actions.

12 81. On information and belief, in the first three (3) quarters of 2011, L&C experienced
13 a net loss of not less than \$3,100,000.

14 82. On information and belief, the principal reason for these losses was that the Multi-
15 Site Operators had passed on significant losses to L&C in the two policy years from 2009-2011,
16 as well as increases in claims for other insureds.

17 83. On information and belief, on or about September 1, 2011, Sanford Elsass and
18 Donna Dalton sent a memorandum to the Board purporting to outline the events causing financial
19 difficulties. Included in that memorandum was a representation that Uni-Ter would hire a
20 consultant to perform a “complete analysis” of the claims process of Uni-Ter Claims Services
21 Corporation.

22 84. On information and belief, the consultant hired by Uni-Ter was Praxis Claims
23 Consulting (“Praxis”).

24 85. On information and belief, at this time the Board knew that reliance on
25 information presented to it by, or at the direction of, Uni-Ter and U.S. RE could not be relied on,
26 in part because the decision to accept the Multi-Site Operators was financially devastating to
27 L&C.

28

1 86. On information and belief, despite this knowledge of the Board regarding the
2 wholly inadequate and inaccurate information provided by Uni-Ter, the Board's gross negligence
3 is manifest in the fact that, the Board failed to exercise even a slight degree of care in verifying
4 whether Praxis was provided accurate information in preparing its reviewing the claims process.

5 87. On information and belief, in fact Uni-Ter did not provide Praxis with accurate
6 information and, in fact, limited the scope of Praxis's initial engagement to a review of claims-
7 related processes and of a small sample size of only nine (9) specific claims reserves. Praxis's
8 review, which was grossly inadequate due to Uni-Ter's failure to provide adequate and accurate
9 information to Praxis, resulted in a report dated September 15, 2011 ("September 2011 Praxis
10 Report"). A copy of the September 2011 Praxis Report is attached hereto as **Exhibit 6**.

11 88. On information and belief, because Uni-Ter failed to provide accurate and
12 complete information to Praxis, the September 2011 Praxis Report was substantially inaccurate
13 and incomplete.

14 89. On information and belief, the Board later learned that, in fact, Uni-Ter had not
15 provided Praxis with accurate information and that Uni-Ter had limited the scope of Praxis's
16 engagement to a review of claims-related processes and of a small sample size of only nine (9)
17 specific claims reserves. This is information which the Board, through exercise of even slight
18 diligence or scant care, could have known before the 2011 Praxis Report was issued.

19 90. Further, on information and belief, on or around September 23, 2011, the DOI sent
20 another letter to Marshall regarding the now disastrous financial condition of L&C ("September
21 2011 Letter"). A copy of the September 2011 Letter is attached hereto as **Exhibit 7**.

22 91. In the September 2011 Letter, the DOI noted several massive financial problems
23 with L&C which the Board had, on information and belief, taken improper or no action to correct,

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1 including the following:

- 2 • Of particular concern is the Combined ratio which has increased
- 3 since prior year-end from 99.4% to 153.9% - a 54.8% increase post-
- 4 merger.
- 5 • A major concern is Risk Based Capital ("RBC") – 208.8%. This
- 6 RBC calculation results from year-end 2010 financial statement.
- 7 The RBC is now well below that level considering the reserve
- 8 (Liability) increases and net loss reducing policyholder surplus by
- 9 40.3% for only one-half (Six Months) of a year of operating
- 10 activity.
- 11 ...
- 12 • Net underwriting loss has deteriorated to \$3.1 million
- 13
- 14 • Net loss = \$1.8 million

15 *Id.*

16 92. The September 2011 Letter further noted the following regarding the second

17 quarter of 2011:

18 Since prior year-end, **policyholder surplus has declined by 40.3%**. Company is

19 experiencing adverse claims Development and is becoming extremely leveraged.

20 **Total Liabilities have increased by 26.5%** ... Net Loss is \$1.8 million, **a result**

21 **of \$3.1 million net underwriting loss for six months and \$1.7 million**

22 **underwriting loss for just the second quarter.** Unassigned Funds have

23 deteriorated further to a negative (\$1.4 million). Since prior year-to-date, net

24 premiums earned have improved nominally by 5.8% while net losses incurred has

25 increased by 117.6% **causing a net loss ratio of 114.4% and resulting in a**

26 **153.9% combined ratio.** Company is highly leveraged. Cash and invested assets

27 **only represent 59.2% of total assets** resulting in a **148.7% liquidity ratio**

28 coupled with gross premiums written representing 571.6% of policyholder surplus

and net premiums written representing 499.9% of policyholder surplus ...

Id. (emphasis added).

93. The September 2011 Letter noted that the DOI had sent "a prior letter advis[ing]

the Board of Directors of deteriorating financial condition and admonish[ing] the Board and

management to consider a correction plan." The letter required that "[t] Board and management

must now prepare a short-term (3 month) action plan and based on this action plan how they

forecast their 12/31/2011 statement to appear." *Id.*

1 94. On information and belief, the Board failed to exercise even scant care in
2 addressing the September 2011 Letter, and failed to correct the staggering financial problems
3 L&C was facing.

4 95. Subsequently, in late November 2011, on information and belief, Uni-Ter
5 conducted what purported to be a full-scale internal review of all claims reserves, and later
6 engaged Uni-Ter to conduct a full review as well.

7 96. On information and belief, the outcome of the internal review by Uni-Ter, as well
8 as the negative review by Praxis, showed that Uni-Ter had incorrectly understated the sampled
9 claims in the September 2011 Praxis Report by a net of not less than \$1,200,000.

10 97. On information and belief, Uni-Ter and/or U.S. RE informed the Board on a
11 conference call that, in fact, an increase of \$5,000,000.00 to L&C's claims reserves was
12 necessary. This significantly increased the net loss of Lewis & Clark on a full 2011 year basis
13 and further decreased L&C's capital to an unacceptable level for operational, regulatory, and
14 rating purposes.

15 98. On information and belief the Board, through its gross negligence, ignored or
16 improperly responded to the multiple red flags – including communications from the DOI –
17 regarding L&C's financial position, Uni-Ter's management and the representations of Uni-Ter
18 and US RE's, and failed to exercise even a slight degree of diligence or care in fulfilling its
19 obligations, which proximately caused and contributed to the damages suffered by Plaintiff.

20 **D. L&C Board Meeting Minutes**

21 99. On information and belief, the Board met generally once per quarter starting in late
22 2004 and continuing to September 2012 related to L&C. Minutes of said meetings were kept by
23 L&C ("Minutes").

24 100. On information and belief, because Uni-Ter UMC was managing all of the
25 business aspects of L&C's business, Mr. Sanford Elsass ("Elsass"), President of Uni-Ter UMC
26 and an officer of U.S. RE at all relevant times, attended all of the L&C Board meetings in person
27 except for the last two. On information and belief, Elsass and other Uni-Ter employees gave
28

1 most of the reports about the company to the Board members.

2 101. On information and belief, many of the approvals and actions of the Board were
3 done at the recommendation of Mr. Elsass.

4 102. On information and belief, the Board had knowledge concerning Mr. Elsass and
5 his recommendations that caused reliance on the reports and recommendations of Mr. Elsass and
6 Uni-Ter UMC to be unwarranted.

7 103. Despite this knowledge, the Board failed to exercise even a slight degree of
8 diligence or care with respect to accepting the information and recommendations provided by Mr.
9 Elsass and Uni-Ter UMC and failed to verify whether this information was accurate and whether
10 the recommendations should be adopted.

11 104. On information and belief, the Minutes also do not mention the monthly reports
12 that Uni-Ter UMC was supposed to provide to L&C in the 2004 Management Agreement or the
13 quarterly reports that Uni-Ter UMC was supposed to provide to L&C in the 2011 Management
14 Agreement. The Minutes do reference annual and quarterly financial results and there are
15 discussions of the claims and underwriting activities for each quarter, but no mention of the
16 reports required by the 2004 and 2011 Management Agreements.

17 105. Item 13 in the March 9, 2005 Minutes states that the Board requested that Uni-Ter
18 provide financial information to the Board monthly. On information and belief, Uni-Ter already
19 had the obligation to provide the information listed in the 2004 Management Agreement to the
20 Board monthly.

21 106. Item 10 from the August 12, 2005 Minutes, attached hereto as **Exhibit 8**, which
22 state that the Board is unhappy with the work of Uni-Ter. The Minutes state that the Board was
23 concerned regarding the lack of completion by Uni-Ter regarding marketing plans presented at
24 the March 2005 meeting, including non-receipt of periodic marketing reports, lack of contract
25 with state associations and potential new agents, and generally, a lack of production of new
26 business during 2005.

27 107. On information and belief, despite these clear indications that Uni-Ter was failing
28 to provide complete and accurate information, the Board remained indifferent to its legal duty to

1 act on an informed basis by ensuring the information and recommendations provided by Uni-Ter
2 and Mr. Elsass were complete and accurate.

3 108. One of the resolutions in L&C's first set of Minutes of December 22, 2003,
4 approves the engagement between L&C and U.S. RE to engage U.S. RE as the exclusive
5 reinsurance broker and consultant for L&C. The resolution states that confirmation was received
6 from Elsass as an officer of U.S. RE that U.S. RE would use its best efforts to obtain competitive
7 rates and terms.

8 109. On information and belief, Uni-Ter undertook the fiduciary duty of determining
9 and establishing the appropriate loss reserves for the company. Item 3 in the September 14, 2005
10 Minutes, attached hereto as **Exhibit 9**, states that Elsass reported on establishing the appropriate
11 loss reserves for the company.

12 110. On information and belief, the Board's Audit Committee ("Audit Committee")
13 was established at the February 10, 2006 meeting of the Board. On information and belief, the
14 relevant Minutes contain no discussion of why this was not done previously or why it was needed
15 at that juncture.

16 111. On information and belief, the Audit Committee generally reviewed and approved
17 L&C's financial audits. On information and belief, there are no entries stating that the Audit
18 Committee performed any auditing functions other than review of financial audits.

19 112. The May 30, 2006 Minutes, attached hereto as **Exhibit 10**, state that L&C's D&O
20 insurance was renewed, but that L&C's E&O insurance was not renewed.

21 113. On information and belief, L&C subsequently obtained E&O insurance.

22 114. Item 3 of the October 20, 2006 Minutes, attached hereto as **Exhibit 11**, states that
23 the Board directed Donna Dalton of Uni-Ter and L&C's counsel to comment to the Nevada DOI
24 regarding issues including loss reserves and Risk Retention Act requirements.

25 115. Item 9 of the March 23, 2007 Minutes, attached hereto as **Exhibit 12**, references
26 the Nevada DOI triennial examination report for 2003 to 2005, but does not state any findings
27 related to the report or what corrective actions, if any, the Board would take.

28

1 116. The October 12, 2007 Minutes, attached hereto as **Exhibit 13**, reference an
2 incurred but not reported (“IBNR”) reduction of \$934,000 but do not explain it or why the
3 reduction occurred. The October 12, 2007 Minutes also state that L&C was beginning to offer
4 occurrence policies subject to required regulatory filings, but do not discuss the required
5 regulatory filings.

6 117. The January 10, 2008 Minutes, attached hereto as **Exhibit 14**, state that there will
7 be commutation of the 2007 reinsurance with Imagine RE, and note the change that Uni-Ter will
8 begin a retail policy sales agency to improve on the disappointing efforts by the “current agency
9 network.” The entry notes that Uni-Ter will be paid commissions on L&C’s retail policy
10 business at 10% of gross written premiums rather than 15% of gross written premiums. The
11 Minutes do not say which contract Uni-Ter would provide such services under. The 2004
12 Management Agreement required solicitation services by Uni-Ter. This same item mentions that
13 Uni-Ter requested an advancement of half of L&C’s 2008 annual budget for Uni-Ter for “this
14 effort” with such advancement repayable from commissions earned by Uni-Ter.

15 118. Item 13 in the April 24, 2008 Minutes, attached hereto as **Exhibit 15**, references
16 insolvency gap coverage of \$1 million. Then, item 11 of the December 2, 2009 Minutes notes a
17 renewal of insolvency gap coverage in the amount of \$2 million.

18 119. Item 4 in the December 10, 2008 Minutes, attached hereto as **Exhibit 16**, notes
19 that, based on a request from the Nevada DOI, the Board ratified clarification amendments to the
20 Oneida surplus notes.

21 120. Item 6 of the December 2, 2009 Minutes, attached hereto as **Exhibit 17**, notes a
22 report on the current triennial examination by the Nevada DOI but does not state any more
23 regarding said examination.

24 121. Item 5 of the May 21, 2010 Minutes, attached hereto as **Exhibit 18**, references the
25 Board’s review of results of the Nevada DOI triennial examination and approval of responses to
26 the DOI. The Minutes do not explain or discuss the responses or any corrective actions that the
27 Board may take. Those Minutes also approved the 2009 annual audited statements and report
28

1 prepared by Johnson Lambert & Co. as well as the 2009 Milliman Report and calculation of
2 "Profit Sharing bonuses."

3 122. The November 2010 Minutes, attached hereto as **Exhibit 19**, contain discussion of
4 renewal of L&C's Management Agreement with Uni-Ter subject to noted revisions including a
5 requirement of clarification of significant claims notice to the Board with settlement authority
6 remaining with Uni-Ter.

7 123. The May 4-5, 2011 Minutes, attached hereto as **Exhibit 20**, approved the 2010
8 annual audited statements and report prepared by L&C's auditors, Johnson Lambert & Co.

9 124. The September 21, 2011 Minutes, attached hereto as **Exhibit 21**, contain in Item 7
10 a statement that the Board reviewed and approved a new underwriting philosophy. The Minutes
11 do not say what the new underwriting philosophy was. However, a document dated 8/31/11 and
12 entitled "Long Term Care Underwriting Philosophy & Strategic Direction" was part of the
13 directors' package for that meeting. The document lists specific requirements related to
14 consideration of long term care facilities for coverage.

15 125. On October 5, 2011 the Board held a special meeting and approved capital
16 contributions by shareholders Oneida, Eagle Healthcare, Pinnacle, Marquis, Elderwood, Rohm,
17 and Uni-Ter in exchange for surplus notes. The action of the Board in lieu of a special meeting,
18 attached hereto as **Exhibit 22** ("Action"), also noted that depending on the fourth quarter, the
19 same parties other than Oneida would commit to an additional amount of \$550,000 in the fourth
20 quarter of 2011 and first quarter of 2012 as the stated proportions (with Uni-Ter having 20/55 or
21 4/11 responsibility). The Minutes also noted approval of the new underwriting philosophy.

22 126. On information and belief, the minutes of the October 5, 2011 action by the Board
23 demonstrate that the Board was well aware it was not receiving accurate and complete
24 information from Uni-Ter as the Board requested "more frequent financial reporting to the Board
25 **as discussed at the last meeting**, preferably monthly." (Emphasis added). On information and
26 belief the Board failed to exercise even slight diligence or scant care and failed to ensure that Uni-
27 Ter did, in fact, provide more complete and accurate reporting of L&C's financial status.

28

1 127. Even with the bad financial news in early October, 2011, the Board was indifferent
2 to its legal obligations and did not meet again until December 20, 2011, over two and a half
3 months later. At that meeting, as reflected in the Minutes attached hereto as **Exhibit 23**, Uni-Ter
4 reported that claims reserves may have increased by \$5 million from the November 2011 figures,
5 *i.e., in one month.*

6 128. On information or belief, in or around the latter part of 2011, William Fishlinger
7 (“Fishlinger”) was retained to provide claims review for L&C. Item 3 in the December 28, 2011
8 Minutes, attached hereto as **Exhibit 24**, states that the Board was advised regarding the schedule
9 for Fishlinger’s claims review commencing in the first full week of January 2012. Item 4 of those
10 Minutes states that Uni-Ter’s pro forma December 31, 2011 financials indicate that L&C is
11 neither impaired nor insolvent and pending receipt of the Fishlinger review, Uni-Ter should
12 process the current renewals. The Minutes also note that the Board’s claims committee should
13 have a conference call with Fishlinger about his work and conclusions before the work is done to
14 finalize his written report.

15 129. On information and belief the Board failed to exercise the slightest degree of
16 diligence and care regarding this information and took no action whatsoever to verify whether the
17 information provided by Uni-Ter suggesting that L&C was “neither impaired nor insolvent” was
18 accurate, despite numerous indications that information provided by Uni-Ter was inaccurate and
19 incomplete.

20 130. At the January 16, 2012 meeting, the Minutes for which are attached hereto as
21 **Exhibit 25**, the Board was told that capital and surplus was \$1,979,730 as of December 31, 2011.
22 Thus, L&C’s surplus dropped over \$2.5 million in one year.

23 131. On information and belief, the Minutes do not reflect any discussion of how that
24 relates to the approximate \$5 million additional loss reserves noted at the December 20, 2011
25 meeting.

26 132. On information and belief, L&C’s Nevada counsel was instructed to contact
27 Nevada DOI regarding the “current inquiry.” The Minutes do not say what the current inquiry
28 was.

1 133. The January 26, 2012 Minutes state in Item 2 that L&C's Nevada counsel reported
2 on her conversations with the Nevada DOI. *See* Exhibit 26. The Minutes do not include the
3 substance of those discussions. Item 3 states that the Board deferred approval of commutation of
4 reinsurance for years 2005, 2006, 2008, and 2009 pending receipt from Uni-Ter of a report
5 regarding outstanding claims for such periods. Item 5 states that the Board met in executive
6 session to discuss issues involving potential additional capital.

7 134. Further, the minutes for the January 26, 2012 meeting stated that "Mr. Elsass
8 presented a report on current claims activity in California and New York and discussions with the
9 Corporation's actuaries and auditors." *Id.* On information and belief the Board failed to exercise
10 the slightest degree of diligence and care regarding this information took no action to verify that
11 Mr. Elsass's report was accurate, despite clear indications that information provided by Mr.
12 Elsass was incomplete and inaccurate.

13 135. At the February 2, 2012 meeting, the Minutes for which are attached hereto as
14 **Exhibit 26**, the Board approved \$480,000 additional capital contributions in exchange for
15 subordinated surplus notes on the same terms used in the fall of 2011. On information and belief,
16 Elsass reported to the Board "regarding recent favorable claims activity." The Minutes do not say
17 what the alleged favorable claims activity was. On information and belief, the Board failed to
18 exercise the slightest degree of diligence and care regarding this information and did not verify
19 whether the report by Elsass regarding alleged "favorable claims activity" was accurate or
20 complete.

21 136. Notwithstanding the dire financial issues, the Board remained indifferent to its
22 legal obligations and did not meet again until April 30, 2012, almost three (3) months later. At
23 the April 30, 2012 meeting, the Minutes for which are attached hereto as **Exhibit 27**, Item 1
24 provides that L&C's submissions to the Nevada DOI were approved, but do not explain what the
25 submissions were.

26 137. There is no mention in the April 30, 2012 Minutes of the Milliman Report from
27 April 12, 2012 stating that, as of the end of 2011, the company's loss reserves were \$1.4 million
28 under what they need to be when using the mid-range number.

1 138. Item 5 of the May 14, 2012 Minutes, attached hereto as **Exhibit 28**, state that a
2 Nevada DOI examination was scheduled, but do not explain this matter further.

3 139. On information and belief, the Board did not meet for another two and a half (2
4 ½) months regarding the financial conditions of L&C. The Board met telephonically on June 6,
5 2012, the Minutes for which are attached hereto as **Exhibit 29**, but the only business noted was
6 the approval of reinsurance. There is no entry regarding a discussion of the financial status of
7 L&C.

8 140. In fact, despite the clear indications that Uni-Ter and U.S. RE were providing
9 inaccurate and/or incomplete information to L&C, the minutes of the June 6, 2012 Board meeting
10 state that the Board approved the renewal of L&C's reinsurance "[f]ollowing a presentation by
11 USRE [sic]". *Id.* There is no indication whatsoever regarding any measures taken by the Board
12 to verify the information provided by Uni-Ter and/or U.S. RE.

13 141. At the July 25, 2012 meeting, the Minutes for which are attached hereto as **Exhibit**
14 **30**, Uni-Ter and U.S. RE presented a report of second quarter financial results in which a
15 significant increase in loss reserves was reported. The Board then discussed possible courses of
16 action. The Board requested that Uni-Ter contact Fishlinger to conduct an independent roll
17 forward of its last claims reserve review preferably by August 7, 2012. The Board also resolved
18 that the preliminary second quarter results not be filed until the Fishlinger review is done and that
19 the results should be approved by the Board before filing. Finally, the Minutes noted that no new
20 business should be written by L&C and no capital raised until further notice, but that renewals
21 may be processed until notice otherwise.

22 142. The August 15, 2012 was the last meeting Elsass and Uni-Ter or U.S. RE attended.
23 At that meeting, the Board discussed the filing with the Nevada DOI of financial information with
24 notice of further deterioration of L&C's finances.

25 143. At the August 22, 2012 meeting, Minutes for which are attached hereto as **Exhibit**
26 **31**, L&C's counsel reported on recent discussions with Uni-Ter and U.S. RE. Uni-Ter personnel
27 were not present at the meeting.

28

1 144. On information and belief the Board held a telephonic meeting on September 24,
2 2012, the Minutes for which are attached hereto as **Exhibit 32**. The Board's grossly negligent
3 failure to inform itself of the basic financial condition of the Company was made clear as the
4 Board tacitly acknowledged it was not aware whether the Company was financially solvent at that
5 time, resolving that "a request be made to the Nevada Division [sic] of Insurance that the
6 Corporation be placed in rehabilitation, in view of the fact that the Corporation **is or may be**
7 insolvent." *Id.* (emphasis added).

8 **E. Information Available to the Officers and Directors**

9 145. On information and belief, substantial financial information regarding L&C was
10 available to the Board of which the Board failed entirely to exercise even a slight degree of care
11 to properly inform itself and understand.

12 146. On information and belief, among this available information was the Annual
13 Statement of L&C for the year ending December 31, 2006, attached hereto as **Exhibit 33**, which
14 was submitted to the Nevada DOI contains L&C's financial statement for 2006. The Notes to
15 Financial Statements (pages 14-14.3) include the reinsurance in place (note 23) as well as the
16 change of incurred losses and LAE (note 25). The Quarterly Statement for L&C for the first
17 quarter of 2007, attached hereto as **Exhibit 34**, has similar notes.

18 147. Sophia Palmer 2007 board Minutes were very similar to L&C board Minutes. On
19 information and belief, Uni-Ter was the underwriter for Sophia Palmer as well.

20 148. L&C's Internal Unaudited Financial Statements as of December 31, 2007, attached
21 hereto as **Exhibit 35**, states that unpaid losses and loss expenses were \$578,000 in 2004,
22 \$1,142,000 in 2005, \$2,636,000 in 2006, and \$3,013,000 in 2007. This is a growth of over 500%
23 in only four (4) years.

24 149. On information and belief, Uni-Ter's management fees grew from nothing in
25 2004, to \$120,000 in 2005, to \$126,000 in 2006, to \$760,000 in 2007. Between 2005 and 2007,
26 this is a growth of 633% in three years.

27 150. On information and belief, the information provided to the directors of L&C for
28 the April 2008 and May 2010 Board meetings included the following financial information for

L&C across the years of 2004 to 2009:

Policy Year	Written Premium	Earned Premium	Paid Losses	Reserves	Totals Incurred	Loss Ratio
2004	\$1,344,358	\$1,344,358	\$223,232	\$---	\$208,232	15.49%
2005	\$3,124,474	\$3,124,474	\$745,466	\$80,720	\$782,438	24.23%
2006	\$5,821,739	\$5,821,739	\$1,311,965	\$477,775	\$1,751,740	30.64%
2007	\$5,958,904	\$4,184,641	\$1,555,249	\$1,621,520	\$3,111,769	52.38%
2008	\$8,340,000	\$5,203,834	\$1,211,943	\$3,941,000	\$1,687,006	34.77%
2009	\$10,705,229	\$7,792,504	\$1,545,000	\$6,255,488	\$3,947,463	50.66% with Sophia Palmer being 80.96%

151. On information and belief, the Board wholly failed to exercise even slight diligence in informing itself of the reasons behind the dangerous financial status of the company or in taking timely, corrective action.

152. Further, L&C's Summary Balance Sheet as of December 31, 2008, attached hereto as **Exhibit 36**, states that while unpaid losses and loss expenses grew from \$3,013,000 to \$3,941,000 between 2007 and 2008, Uni-Ter's management fees went from \$760,312 in 2007 to \$1,372,915 in 2008.

153. L&C's Internal Unaudited Financial Statements as of December 31, 2009, attached hereto as **Exhibit 37**, state that unpaid losses and loss expenses jumped to \$6,255,488 in 2009 from \$3,941,000 in 2008. Uni-Ter's management fees jumped to \$1,717,482 for 2009 from \$1,372,915 in 2008.

154. The 2009 Milliman Report, which supports the corresponding Statement of Actuarial Opinion attached hereto as **Exhibit 38**, states that the existing risk factors, "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." The Milliman Report concludes that L&C's actual net outstanding losses and loss adjustment expense ("LAE") exceed L&C's reserves for unpaid losses (\$5,021,810) and unpaid LAE (\$1,233,678) by an amount of more than 5% of L&C's statutory surplus shown on the annual statement, which was \$4,031,349. The Milliman Report also states that this materiality standard was selected

1 based on the fact that his opinion was prepared for regulatory review. Further, the corresponding
2 Statement of Actuarial Opinion provides that it is reliant on “data and related information
3 prepared by [L&C]” and that “[t]here are a variety of risk factors that expose [L&C’s] reserves to
4 significant variability.” See Exhibit 38.

5 155. On information and belief, the information provided to the directors of L&C for
6 the May 2010 Board meeting state that Sophia Palmer merged with L&C as of December 3, 2009,
7 and that the written premiums were \$8,340,000 for 2008 and \$10,705,000 for 2009.

8 156. On information and belief, in or around October 2010, Elsass, Larry Shatoff at
9 U.S. RE, Donna Dalton, John Klaus at Uni-Ter, Curtis Sitterson at Stearns Weaver, and Jim
10 Murphy at the accounting firm Johnson Lambert & Co., through email correspondence, made the
11 decision to record the twenty-five percent (25%) refund payment, in the amount of \$569,600,
12 from the commutation of the January 1, 2008 to April 1, 2009 reinsurance treaty.

13 157. On information and belief, Mr. Shatoff stated in said email correspondence that the
14 April 1, 2004 to December 31, 2004 treaty was commuted, the January 1, 2007 to December 31,
15 2007 treaty was commuted, and the January 1, 2005 to December 31, 2006 treaty was “swing
16 rated” and had been adjusted to the minimum premium. Regarding the January 1, 2008 to April
17 1, 2009 reinsurance treaty, Mr. Shatoff said that it covers all claims reported on occurrence
18 policies up to April 1, 2012. Mr. Shatoff further stated that L&C was subject to a 13% aggregate
19 deductible for an amount of \$1,690,673, and that L&C had paid reinsurance premiums of
20 \$2,278,400, which at a 25% refund rate would result in a refund of \$569,600 if no claims were
21 paid by the reinsurers. Further, Mr. Shatoff’s communications state that there had been no losses
22 reported under that treaty. Mr. Shatoff noted that L&C could commute at any time before
23 January 1, 2013 to obtain the “profit commission” - how he referred to the 25% refund.

24 158. On information and belief, Mr. Shatoff encouraged L&C to commute that treaty to
25 ensure that seventy-five percent (75%) of premiums paid could be confirmed as received by the
26 reinsurers with confirmation that no claims or losses would be paid by them.

27

28

1 159. On information and belief Elsass directed that the refund for the commutation of
2 the January 1, 2008 to April 1, 2009 reinsurance treaty be recorded at that time in the third quarter
3 of 2010.

4 160. On information and belief, Mr. Shatoff noted that it would be too soon to record
5 any "profit commission" on the April 1, 2009 to April 1, 2010 treaty because the premium for
6 those policies would not be fully earned until April 1, 2011.

7 161. The Milliman Report stated that L&C reserves were \$600,000 - \$628,000 above
8 the Medium Estimate, but about \$650,000 below the High Estimate. That report also noted that
9 L&C started to write occurrence policies in the fourth quarter of 2008.

10 162. On information and belief, more than half of the policies written by Sophia Palmer
11 were occurrence policies.

12 163. The Milliman Report stated that the loss development for occurrence policies is
13 relatively immature at the current evaluation and that caused uncertainty in the loss estimates.

14 164. Further, the 2010 Milliman Report opined that the existing risk factors "coupled
15 with the variability that is inherent in any estimate of unpaid loss and loss adjustment expense
16 obligations, could result in material adverse deviation from the carried net reserve amounts." He
17 concluded that based on the calculation shown in Exhibit B that shows that L&C's actual net
18 outstanding losses and LAE exceed L&C's reserves for unpaid losses (\$7,353,289) and unpaid
19 LAE (\$1,798,188) by an amount of more than five percent (5%) of L&C's statutory surplus
20 shown on the annual statement, which was \$4,579,710. The 2010 Milliman Report states that this
21 materiality standard was selected based on the fact that his opinion was prepared for regulatory
22 review.

23 165. On information and belief, the financial information provided to the Board for the
24 September 2011 Board Meeting included a report from Brian Stiefel, President of Praxis, which
25 was the September 2011 Praxis Report. The Praxis Report provides that Uni-Ter has adopted a
26 new reserve philosophy, is revising its litigation management guidelines to reflect a more
27 aggressive approach to the litigation process, and that standardizing the claims documentation,
28

1 evaluation, and reporting process is recommended. The Praxis Report does not evaluate the level
2 of L&C's loss reserves. See Exhibit 6 hereto.

3 166. On information and belief, the information provided to the directors for the
4 September 2011 Board meeting also contains a power point presentation from Milliman which
5 shows that L&C steadily decreased its reinsurance deductible across the years 2008 to 2011,
6 demonstrating that L&C's reinsurance deductible was set too high, especially in years 2009 and
7 2010.

8 167. On information and belief, in or around December 19, 2011, Milliman provided a
9 preliminary draft of certain schedules to its actuarial reports ("2011 Milliman Schedules"). The
10 Schedules provide that as of November 30, 2011, L&C's Incurred Loss & ALAE for years 2004
11 through November 2011 was \$17,858,866. That same exhibit states that Paid Loss & ALAE for
12 those same dates was a total of \$11,208,076. The exhibit states that L&C's Paid Loss & ALAE
13 was \$2,230,000.00 for 2009 and \$2,440,000.00 for 2010 but only \$198,711.00 for 2011 through
14 November.

15 168. L&C's Annual Statement for the year ending December 31, 2011 ("2011 Annual
16 Statement"), attached as **Exhibit 39**, stated a drastic increase in incurred losses and LAE and a
17 significant drop in shareholder's surplus. Pursuant to that statement, reserves for losses and LAE
18 increased from a total of \$9,181,477 at the end of 2010 to \$14,026,020 at the end of 2011, almost
19 a \$5 million increase. Note 24 to L&C's 2011 Financial Statements (which is presented below)
20 stated that unpaid losses and LAE increased from \$9,153,000 at the beginning of 2011 to
21 \$14,843,000 at the end of 2011, a \$5,700,000 increase. Meanwhile, the company's
22 policyholder's surplus amount decreased from \$4,579,710 at the end of 2010 to \$3,625,317 at the

23 ///

24 ///

25 ///

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28 ///

1 end of 2011.

2 169. Note 24 to L&C's 2011 Financial Statements stated as follows:

3 Balance-January 1, 2011 **\$9,153,000**

4 Incurred related to:

5 Current year	7,418,000
2010	3,039,000
6 2009	2,284,000
2008	747,000
7 2007	162,000
2006	375,000
8 2005	(359,000)
2004	(1,000)
9 Total Incurred:	13,665,000

10 Paid related to:

11 Current year	1,878,000
2010	3,571,000
12 2009	1,545,000
2008	222,000
13 2007	630,000
2006	131,000
14 2005	(1,000)
2004	(1,000)
15 Total Paid:	7,975,000

16 Balance-December 31, 2011 **\$ 14,843,000**
17 (emphasis added)

18 See, Exhibit 5.

19 170. On information and belief, notwithstanding this information, the Board represented
20 in Note 14 at page 14.2 that "[T]he Company's management is not aware of any ongoing
21 litigation which would, individually or collectively, result in judgments for amounts, after
22 considering the established loss reserves, that would be material to the Company's financial
23 condition or results of operations." *Id.*

24 171. On February 2, 2012, Milliman provided a preliminary draft of certain schedules
25 to its actuarial reports ("2012 Milliman Schedules"). Exhibit 1 Page 2 states that, as of December
26 30, 2011, L&C's Discounted Net Loss & LAE Reserve (after Ceded Loss and LAE Reserve) was
27 Low Estimate of \$13,019,000, Central Estimate of \$14,973,000, and High Estimate of
28 \$18,635,000. Exhibit 3 of that document shows that Incurred Loss and ALAE had grown

1 substantially from 2005 (\$373,816) to 2010 (\$9,068,552) while showing estimated reserves only
2 growing to \$4,048,241. It also shows that for 2011, Ultimate Loss & ALAE was \$7,620,000 and
3 Incurred Loss & ALAE was \$5,744,385, but estimate reserves was only \$5,938,479, which is
4 over \$1.6 million less than the Ultimate Loss & ALAE.

5 172. The 2011 Milliman Report, attached hereto as **Exhibit 40**, in the section entitled
6 “Risk of Material Adverse Deviation”, provides that “[t]he Company’s carried reserves are within
7 a reasonable range, however other points within the reasonable range would cause surplus to be
8 below zero. Therefore I believe that there are significant risks and uncertainties that could result
9 in material adverse deviation in the loss and loss adjustment expense reserves, possibly by
10 amounts exceeding surplus.” The report again provides that the current risk factors, “coupled
11 with the variability that is inherent in any estimate of unpaid loss and loss adjustment expense
12 obligations, could result in material adverse deviation from the carried net reserve amounts.” The
13 report concluded that based on the calculation shown in Exhibit B that shows that L&C’s actual
14 net outstanding losses and LAE exceed L&C’s reserves for unpaid losses (\$11,766,924) and
15 unpaid LAE (\$2,259,096) by an amount of more than five percent (5%) of L&C’s statutory
16 surplus shown on the annual statement, which was \$3,625,316. The report states that this
17 materiality standard was selected based on the fact that his opinion was prepared for regulatory
18 review.

19 173. Further, in the Notes to Financial Statements for Years Ended December 31, 2011
20 and 2010 (“2011 Notes”), the management of L&C stated Uni-Ter “believes that its aggregate
21 provision for losses and loss adjustment expenses is reasonable and adequate to meet the ultimate
22 net cost of covered losses...”. On information and belief, the Board failed to exercise even the
23 slightest degree of care with respect to this information it was receiving concerning Uni-Ter’s
24 opinions and failed to take any action to verify that this information was complete or accurate.

25 174. The 2011 Notes also provide that “[a]t December 31, 2011 and 2010, management
26 determined that no premium deficiency reserve was required.” On information and belief, the
27 Board failed to exercise even the slightest degree of care with respect to this information it was
28 receiving concerning Uni-Ter’s opinions and failed to take any action to verify that this

1 information was complete or accurate.

2 175. Further, the 2011 Notes state that was a party to various lawsuits “in the normal
3 course of business” but that “[t]he Company’s management does not believe that any ongoing
4 litigation would, individually or collectively, result in judgments for amounts, after considering
5 the established loss reserves and reinsurance, that would be material to the Company’s financial
6 condition or results of operations.” On information and belief, the Board failed to exercise even
7 the slightest degree of care with respect to this information it was receiving concerning Uni-Ter’s
8 opinions and failed to take any action to verify that this information was complete or accurate.

9 176. L&C’s “NAIC Property and Casualty Financial Ratio Results for 2011”, attached
10 hereto as **Exhibit 41**, painted a very bleak picture of the L&C. It has a date stamp of 2/23/2012.
11 It states that Direct Premiums Written in 2011 totaled \$10,224,774. It states that Net Premiums
12 Written for 2011 were \$8,997,524 which was a 25% drop from Net Premiums Written in 2010 of
13 \$11,946,738. It states that Losses and LAE incurred for 2011 totaled \$12,759,779 when Losses
14 and LAE incurred for 2010 totaled \$8,183,816, about \$4.6 million less. It states that surplus for
15 2011 was \$3,625,316 when the surplus for 2010 was \$4,579,709, almost a million drop. Finally,
16 it states that L&C’s estimated current reserve deficiency was -\$752,997.5.

17 177. A spreadsheet entitled “Inforce (sic) Policies as of 2.23.2012” lists such policies.
18 It states at the bottom that the total premium amount for such in force policies was \$6,825,864.

19 178. A spreadsheet document dated February 2012 and entitled “L&C Loss Ratio
20 Report” shows a substantial reduction of loss payments for 2011. The document states that the
21 information is through 02/29/2012, but says that earned premium for 2011 dropped to \$5,209,362
22 from \$12,798,406 in 2010 and \$11,776,406 in 2009. It also shows that earned premium was only
23 \$240,573 through February which, extrapolated through December, would be only \$1,443,438.
24 Meanwhile, total incurred losses for 2011 were only \$1,573,965 even though total incurred losses
25 were almost \$9.5 million in 2010 and almost \$8 million in 2009.

26 179. On information and belief, the loss ratios shown for 2006 through 2010 were
27 78.92%, 65.33%, 67.83%, and 73.59%, respectively. The loss ratio chart in the April 2008 Board
28 meeting directors’ package states that the 2006 loss ratio was only 25.25% and the 2007 loss ratio

1 was stated to be only 22.41%. The loss ratio for 2011 was only 30.21%. Paid losses in all of
2 2011 were only \$264,000 even though those were almost \$5 million in 2010, \$5.4 million in
3 2009, and over \$3.5 million in 2008.

4 180. L&C's Summary Balance Sheet as of February 29, 2012, attached hereto as
5 **Exhibit 42**, states that unpaid losses and loss expenses were \$14,026,019 at the end of 2011 and
6 grew to \$14,607,812 as of the end of February 2012. Uni-Ter's management fees for 2011 were
7 only \$87,617.

8 181. L&C's Comparative Summary Balance Sheet dated through March 2012, attached
9 as **Exhibit 43**, shows the growth of L&C's losses and Uni-Ter's fees. Unpaid losses and LAE
10 was \$3,624,000 as of March 2008, \$4,325,000 as of March 2009, \$7,313,000 as of March 2010,
11 \$9,953,000 as of March 2011, and \$12,381,985 as of March 2012. Uni-Ter's management fees
12 were \$728,000 as of March 2008, \$1,329,000 as of March 2009, \$1,607,000 as of March 2010,
13 \$830,000 as of March 2011, and \$104,000 as of March 2012.

14 182. The 2012 Milliman Report states that L&C reserves of \$16,333,000 were
15 \$1,367,000 below the Central Estimate of what L&C's loss reserves should be. The report states
16 that L&C's reserves were over \$7 million below the High Estimate of what L&C's reserves
17 should be. There is no mention of the report in the Board Minutes. The report states as follows:

18 The ultimate loss and ALAE estimates have increased significantly since
19 the prior report as of December 31, 2010. *Through report/accident/tail effective*
20 *year 2010, the selected ultimate loss and ALAE estimates have increased by \$9.2*
21 *million. Claims-made nursing home paid and incurred losses have been higher*
than expected during the past year due to significantly inadequate case reserves
at December 31, 2010 and exceptionally high loss ratios that were generated by
three insureds that were non-renewed during 2011. . . . (emphasis added)

22 Finally, the report states in Table 3 on page 12 that the continuing Ultimate Loss & ALAE as of
23 the report at end of 2010 was \$13,863,000 but the Ultimate Loss & ALAE as of the report at the
24 end of 2011 was \$19,229,000 for a \$5.5 million increase.

25 183. In the D&O policy application submitted by Uni-Ter on behalf of L&C on or
26 about May 23, 2012, attached as **Exhibit 44**, Uni-Ter stated in the supplement that "[t]o improve
27 the financial stability of [L&C], UUMC has reviewed the entire book of business and intends to
28 only renew accounts that have maintained a favorable historical loss ratio. This may result in a

35-40% reduction in its premium volume.” The underwriting philosophy change completed in late 2011, while stating limitations for loss ratios in soft and hard market facilities, does not state that the policy would apply to renewals and also does not discuss the loss of such a large premium amount. This reduction would apply to the \$6,825,864 total premiums of inforce policies as of February 2012. With no new policies, that would result in total premiums for 2012 in the range of \$4,095,518 to \$4,436,800.

184. The following chart shows relevant information from L&C’s Audited Financial Statements for the periods indicated.

	2009	2010	2011	March 2012	June 2012
Losses and LAE	\$6,255,488 (this was \$3,941,000 for 2008)	\$9,161,477	\$14,026,020	\$12,381,985	\$11,594,038
Premiums earned	\$10,864,100 with \$4,149,333 being new for that year.	\$12,514,066	\$11,498,294	\$1,957,716 (compared to \$2,776,612 for March 2011)	\$3,753,489 (compared to \$6,720,334 for June 2011)
Ceded reinsurance premiums payable	\$1,969,682	\$2,050,400	\$750,084	\$26,523	\$624,029
Amount recoverable from reinsurance		\$2,819,800	\$3,039,002	\$3,039,002 with \$1.553M from AR and \$1.087 from other amounts receivable	\$1,530,415
Management fees payable	\$1,717,482	\$1,084,400	\$87,617	\$104,690	\$63,164
Total liabilities	\$13,887,255	\$15,625,439	\$21,840,572	\$19,777,205	\$16,397.861
Cash and invested assets		\$13,942,322	\$13,514,557	\$13,064,932	\$9,525,379
Shareholders’ equity, i.e., surplus	\$4,031,351	\$4,579,710	\$3,625,317	\$3,713,503 (versus \$3,760,925 for March 2011)	\$1,675,694 (versus \$2,732,826 for June 2011)

185. On information and belief, as of July 31, 2012, L&C's Gross Losses and LAE was \$14,786,000. As of the end of September 2012, losses and LAE totaled \$13,609,401 and surplus was negative \$1,490,085. Cash and invested assets had dropped to \$6.6 million.

F. Gross Negligence by the Board

186. On information and belief, beginning in the 3rd quarter of 2011, adverse development on claims incurred during 2009 began to appear in the financial operations of L&C. As a result, Uni-ter (captive manager) began to get more involved in claims and reserves. In a unilateral decision, Uni-ter brought in Praxis Claims Consulting to assist with improving the reserve setting process. On information and belief, the engagement involved reviewing various open claims files. The owner of Praxis, Brian Stiefel took a lead role in setting reserves for L&C with Uni-ter. As a result of this engagement, a strengthening of reserves was recommended and booked in the amount of approximately \$2.2 million.

187. On information and belief, due to the strengthening entry, and the resulting downturn in the financial condition of L&C, additional capital of \$2,220,000 was raised in the form of surplus notes.

188. On information and belief, in the October 5, 2011 Action by Unanimous Consent of the Board of Directors ("Action") surplus note contributions were agreed to be paid by November 15, 2011:

○ Oneida Bank	\$750,000
○ Eagle Healthcare	\$220,000
○ Pinnacle Healthcare	\$220,000
○ Marquis Companies	\$220,000
○ Elderwood Senior Care	\$220,000
○ Rohm Services	\$220,000
○ Uni-ter	\$300,000

189. On information and belief, the Action indicated that an additional \$550,000 in capital could be raised in additional surplus notes, "depending upon the requirements of the business in the fourth quarter, 2011, as approved by the Board". The following commitments

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1 were funded in the form of Surplus Notes on February 7, 2012:

2	○ Eagle Healthcare	\$70,000
3	○ Pinnacle Healthcare	\$70,000
4	○ Marquis Companies	\$70,000
5	○ Elderwood Senior Care	\$70,000
6	○ Rohm Services	\$70,000
7	○ Uni-ter	\$200,000

8 190. On information and belief, with the exception of Oneida Bank, where L&C's
9 investments are held in custody, and Uni-ter, the captive manager, all other Surplus Note holders
10 were facilities insured by L&C and whose management is a representative on the Board of
11 Directors of L&C.

12 191. On information and belief, Stickels is the President of Oneida Bank.

13 192. On information and belief, prior to the second commitment coming due in the first
14 quarter of 2012, the Board determined that they wanted a second review to confirm the
15 conclusion of the reserve strengthening in late 2011. Fishlinger was hired to conduct an
16 independent analysis of the same claims reviewed by Praxis.

17 193. On information and belief, using the low end of the ranges of reserves established
18 by Praxis, Fishlinger concluded a low end of strengthening could be approximately a million
19 dollars less than determined by Praxis. Although the Board had requested that Fishlinger conduct
20 its review independently, ultimately it used the work of Praxis in coming to a similar conclusion
21 on the reserve strengthening needed. Based on these two reviews, the additional capitalization of
22 \$480,000 was determined to be adequate by the Board.

23 194. On information and belief, at the end of the second quarter of 2012, the Board
24 assumed that the reserving methodology established under Praxis had continued to be deployed.
25 The Board determined that a follow up review was necessary. Praxis completed their review in
26 July of 2012, involving review of the same estimated 150 claims reviewed at year end 2011.
27 Praxis recommended stepping up of reserves in the cases previously reviewed and indicated that
28 trouble getting case reserve information from attorneys had been one cause of the continued

1 adverse development of these claims. Praxis concluded an additional \$2 million in strengthening
2 was required at July 2012.

3 195. On information and belief, Fishlinger was also brought in for a second review,
4 which ultimately concluded some differences on the low and high end of the ranges for these
5 cases, but ultimately recommended similar cumulative reserve strengthening. An additional party
6 also reviewed the case reserves, the London Based reinsurance broker ("London Broker") for
7 U.S. RE, the reinsurance broker for L&C. The Board and Uni-ter thought that they would have a
8 vested interest in picking accurate reserves because of the reinsurance that the London broker had
9 placed for L&C with various reinsurers. On information and belief, the London Broker
10 determined that it would be comfortable in the low end of the ranges for many of the cases.

11 196. On information and belief Milliman, L&C's opining actuary, booked its estimate
12 of reserves at 6/30 and 12/31 of each year, based on its own analysis. During its June 30, 2012
13 analysis, Milliman determined that L&C would most likely need to increase premium rates by 12-
14 20% on its current book of business to remain a viable entity. On information and belief this does
15 not include capital needed to raise the current level to minimum requirements. Milliman also
16 estimated that \$6,000,000 - \$6,500,000 million in capital would need to be raised in order to
17 result in \$3.6 million of unimpaired capital.

18 CLAIMS

19 197. The allegations set forth above are incorporated into the claims set forth herein as
20 is fully set forth for each claim.

21 **FIRST CLAIM FOR RELIEF**

22 **(Gross Negligence of the Former Officers and Directors of L&C)**

23 198. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through
24 197, as though fully set forth herein.

25 199. Under Nevada law, directors and officers must act on an informed basis and are
26 grossly negligent if they fail to do so.

27 200. Under Nevada law, "[g]ross negligence is equivalent to the failure to exercise even
28 a slight degree of care. It is materially more want of care than constitutes simple inadvertence. It

1 is an act or omission respecting legal duty of an aggravated character as distinguished from a
2 mere failure to exercise ordinary care. It is very great negligence, or the absence of slight
3 diligence, or the want of even scant care.” *Hart v. Kline*, 61 Nev. 96, 116 P.2d 672, 674 (1941).
4 Further, gross negligence “amounts to indifference to present legal duty, and to utter forgetfulness
5 of legal obligations so far as other persons may be affected.” *Id.*

6 201. Here the Board was grossly negligent in numerous ways, including but not limited
7 to its utter failure to properly inform itself of status of L&C and its complete failure to properly
8 take timely corrective action.

9 202. As set forth above, on numerous occasions, even after clear and unmistakable
10 indications that the information provided to the Board by Uni-Ter, U.S. RE, Mr. Elsass, Ms.
11 Dalton, and others was, at best, unreliable and incomplete, the Board failed to exercise even slight
12 diligence in informing itself of the truth of the financial status of L&C.

13 203. Further, as of the end of 2011, there was more than ample information that, in
14 combination, clearly showed that L&C’s financial condition was in dangerous peril.

15 204. This information available in late 2011 included rapid and drastic increase in loss
16 reserves, reports of inadequate reserves requiring repeated capital infusions in late 2011 and early
17 2012, high loss ratios, drastically decreasing realized premiums, absence of any adjustment of
18 premium rates, implementation of a new underwriting philosophy that would result in a 35-40%
19 drop in premiums, and a drastically decreasing company surplus.

20 205. These reports included the following summarized facts:

- 21 • In September 2005, Elsass reported on appropriate loss reserves.
- 22 • L&C had substantial growth of premiums and reserves between 2004 and 2009.
23 By 2009, written premium was \$10.7 million and reserves were \$6.2 million. Uni-
24 Ter’s management fees also increased rapidly to \$1.4 million in 2008 and \$1.7
25 million in 2009.
- 26 • Losses and LAE grew to \$9.1 million in 2010 and \$14 million in 2011.
- 27 • Loss ratios were generally in the 30% range and below until 2009 when the
28 addition of the Sophia Palmer work caused a loss ratio over 50% (because of
Sophia Palmer claims having a loss ratio over 80%).
- A new underwriting philosophy was discussed at the September 2011 meeting.
Although it does not appear that the Board questioned how this would affect
premiums earned, Uni-Ter expected this new philosophy would only renew

1 accounts that had a favorable historical loss ratio and that that could result in a 35-
2 40% reduction in premium volume.

- 3 • In the 3rd quarter 2011, adverse development on claims incurred in 2009 showed
4 up on L&C's financial results. Uni-Ter brought in Praxis to improve the reserve
5 setting process. Uni-Ter brought in Praxis to analyze and recommend reserves.
6 Praxis recommended reserve strengthening of \$2.2 million.
- 7 • Capital contributions totaling \$2.22 million were approved by the Board at the
8 October 5, 2011 meeting. That same meeting said that an additional \$550,000 in
9 capital could be raised in the 4th quarter 2011 and 1st quarter 2012.
- 10 • Financial information shows L&C was not paying losses in 2011. 12/19/11 draft
11 report from Milliman shows \$2.23 million paid losses and ALAE in 2009, \$2.44
12 million in 2010, but only \$199,000 in 2011.
- 13 • On 12/20/2011, Uni-Ter reported claims reserves increased \$5 million from the
14 November 2011 figures.
- 15 • Uni-Ter's pro forma 12/31/11 financials show that L&C was neither impaired nor
16 insolvent, but the 2011 Annual Statement shows losses and ALAE increased from
17 \$9.1 million at the beginning of 2011 to \$14.8 million at the end of the year.
- 18 • At January 16, 2012 meeting, surplus is only \$1,979,730, down from \$4,579,000
19 at end of 2010.
- 20 • At February 2, 2012 meeting, Board approved \$480,000 additional capital
21 contributions even though Elsass reported recent favorable claims activity. Prior
22 to this, the Board had determined that they wanted a second opinion from
23 Fishlinger to confirm the need for reserve strengthening made by Praxis.
- 24 • A 2/23/12 report showed that L&C's net written premiums for 2011 dropped 25%
25 (from \$12 to \$9 million). It confirmed that losses and LAE for 2011 were \$12.7
26 million when only \$8.1 million for 2010. It also said that L&C's current reserves
27 were deficient by just over \$750,000.
- 28 • A 2/23/12 report on in force policies states that total premiums for those policies
would be \$6.8 million for 2012.
- A 2/29/12 loss ratio report shows that earned premium for 2011 dropped to
\$5,209,362 from \$12,798,406 in 2010 and \$11,776,406 in 2009 and states that
earned premium for 2012 through February 2012 was only \$240,000 which,
annualized, would be only about \$1.4 million. It also shows that loss ratios for
2006 through 2010 were all above 65% and as high as 79%.
- April 12, 2012 Milliman report says that L&C's loss reserves are \$1.4 million
under the central estimate. That same reports says that ultimate loss and ALAE
have increased by \$9.2 million from the end of 2010. Table 3 of that report (page
12) states that Ultimate Loss & ALAE increased \$5.5 million from \$13.8 million
at the end of 2010 to \$19.2 million the end of 2011.

206. Under Nevada law, the business judgment rule does not protect the gross
negligence of uninformed directors and officers. *Shoen v. SAC Holding Corp.*, 122 Nev. 621,
640, 137 P.3d 1171, 1184 (2006).

1 207. The Board and officers did not adequately review all of the information to which
2 they had access, and was grossly negligent in failing to do so. Further, the Board failed to
3 exercise a slight degree of care regarding the incomplete and inaccurate information provided to it
4 by Uni-Ter and/or US RE, and remained uninformed despite their knowledge that they could not
5 rely on the representations and recommendations of Uni-Ter and US RE, as set forth above.

6 208. As set forth above, the Board was made well aware of the extremely dangerous
7 and deteriorating financial position of L&C at least as early as September 2010 by the DOI in its
8 September 2010 Letter.

9 209. Further, the Board was again made aware of the dire financial position it had
10 allowed L&C to reach due to its failure to exercise a slight degree of care in informing itself of
11 the position of L&C and take effective corrective action, as set forth in the DOI's September 2011
12 Letter.

13 210. To the extent the Board did review any information, the Board was grossly
14 negligent in taking ineffective actions or in not taking immediate effective corrective action by at
15 least late 2011 (e.g., raising premium rates).

16 211. The Board was in a position to see this information and knew that it had an
17 obligation to do so. Further, it knew that the information provided by Uni-Ter, U.S. RE and
18 others was incomplete and inaccurate. Indeed, the Board had the contractual right to receive the
19 information (including on a monthly basis between 2004 and 2010). It also knew at least on
20 several occasions that it was not receiving sufficient information from Uni-Ter, but failed to
21 exercise even slight diligence in properly informing itself. On several occasions between 2005
22 and 2011, the Board asked Uni-Ter to provide more and better financial and other information:

- 23 • March 2005 Minutes request for financial information monthly.
24 • April 2005 Minutes note nonreceipt of periodic marketing reports.
25 • At the October 2011 special meeting approving \$2.2 million of additional capital
26 the Board requested more frequent financial reports by Uni-Ter, preferably
 monthly.

27 212. The facts show an absence of the slightest degree of diligence of the Board and
28 company officers to ascertain and assess the available information so that decisions could be

1 made and based on such information, as set forth above.

2 213. The Board failed to exercise even the slightest degree of care or diligence to
3 become properly informed and was wholly indifferent to its legal obligations in relying on
4 information and recommendations of Uni-Ter, U.S. RE and others, as set forth herein, despite the
5 Board's knowledge and reason to know that the information and recommendations provided were
6 grossly inaccurate and incomplete.

7 214. As a proximate result, Plaintiff has been damaged in an amount in excess of
8 \$10,000, the exact amount to be proven at trial in this matter.

9 215. Plaintiff has retained the undersigned law firm to represent the Receiver in this
10 matter, and is obligated to pay it a reasonable attorney's fee and costs, which it is entitled to
11 recover herein.

12 WHEREFORE, Plaintiff prays for relief as set forth herein.

13 **SECOND CLAIM FOR RELIEF**

14 **(Deepening of the Insolvency of L&C Caused by the Former Directors and Officers)**

15 216. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through
16 215, as though fully set forth herein.

17 217. The Board's inaction severely prolonged the insurance actions of L&C that led to
18 its initial insolvency and that then also increased its insolvency.

19 218. Had the Board taken action by late 2011, the substantial losses experienced by
20 L&C starting in late 2011 would not have occurred or, alternatively, would have been greatly
21 limited.

22 219. Because L&C had a surplus as of the end of 2011, according to its financial
23 statements, then all of the insolvency of L&C was arguably attributable to the directors' and
24 officers' failure to promptly identify and address the financial problems.

25 220. As a proximate result, Plaintiff has been damaged in an amount in excess of
26 \$10,000, the exact amount to be proven at trial in this matter.

229. Plaintiff has retained the undersigned law firm to represent her in this matter, and is obligated to pay it a reasonable attorney's fee and costs, which it is entitled to recover herein.

WHEREFORE, Plaintiff prays for relief as set forth herein.

FOURTH CLAIM FOR RELIEF

(Breach of Fiduciary Duty by Uni-Ter UMC and Uni-Ter CS)

230. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 229, as though fully set forth herein.

231. Uni-Ter owed a fiduciary duty to L&C as set forth above.

232. Uni-Ter breached its fiduciary duty to L&C by recommending to the Board that the 2007 treaty be commuted too soon and by failing to gain Board approval to commute the 2008 and 2009 treaty such that that treaty was commuted without authorization to do so from the Board.

233. Approval of commutation of the 2007 treaty was done at the January 10, 2008 board meeting.

234. Commutation benefitted U.S. RE, the parent of Uni-Ter, because the syndicate insurers get to keep 75% of the premiums paid without any requirement to pay any claims. U.S. RE also appears to have done an unapproved commutation for the 2008-2009 treaty at the direction of Uni-Ter.

235. October 2010 emails between U.S. RE and Uni-Ter discuss booking the commutation amount, but the January 2012 Minutes state that the Board deferred approval of commutation of certain treaties including the 2008 and 2009 treaties.

236. As a proximate result, Plaintiff has been damaged in an amount in excess of \$10,000, the exact amount to be proven at trial herein.

237. Plaintiff has retained the undersigned law firm to represent her in this matter, and is obligated to pay it a reasonable attorney's fee and costs, which it is entitled to recover herein.

WHEREFORE, Plaintiff prays for relief as set forth herein.

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1 **FIFTH CLAIM FOR RELIEF**

2 **(Breach of Fiduciary Duty Against U.S. RE)**

3 238. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through
4 237, as though fully set forth herein.

5 239. L&C engaged U.S. RE as its exclusive broker to find and secure appropriate
6 reinsurance. The Broker of Record Letter Agreement appointed U.S. RE as L&C's exclusive
7 reinsurance intermediary/broker and granted U.S. RE full and complete authority to negotiate the
8 placement of reinsurance on all classes of insurance with unspecified limits of coverage as
9 requested by the underwriter of L&C (i.e., Uni-Ter).

10 240. U.S. RE owed L&C a fiduciary duty, as set forth herein.

11 241. U.S. RE breached this fiduciary duty by, among other things, not obtaining
12 reinsurance through syndicates as listed in the fact section above. No facts were found that
13 reinsurance failed to pay as required. To the contrary, the reinsurance policies seemed not to be
14 invoked because deductible amounts were not reached, especially in the early years of 2004 to
15 2008.

16 242. Nevertheless, U.S. RE represented to L&C that it would act in L&C's best
17 interests arguably created additional duties toward L&C other than merely finding and securing
18 reinsurance. In violation of such duties, U.S. RE did not find appropriate reinsurance because the
19 deductible rates were consistently too high. This is shown by the fact that reinsurance did not
20 come into play at all in the early years. Indeed, the Board approved commutation of the 2007
21 treaty only 10 days into 2008.

22 243. As a proximate result, Plaintiff has been damaged in an amount in excess of
23 \$10,000, the exact amount to be proven at trial in this matter.

24 244. Plaintiff has retained the undersigned law firm to represent her in this matter, and
25 is obligated to pay it a reasonable attorney's fee and costs, which it is entitled to recover herein.

26 WHEREFORE, Plaintiff prays for relief and judgment as follows:

27 A. For actual damages sustained by Plaintiff in an amount in excess of \$10,000 in an
28 amount to be more specifically established at trial in accordance with proof;

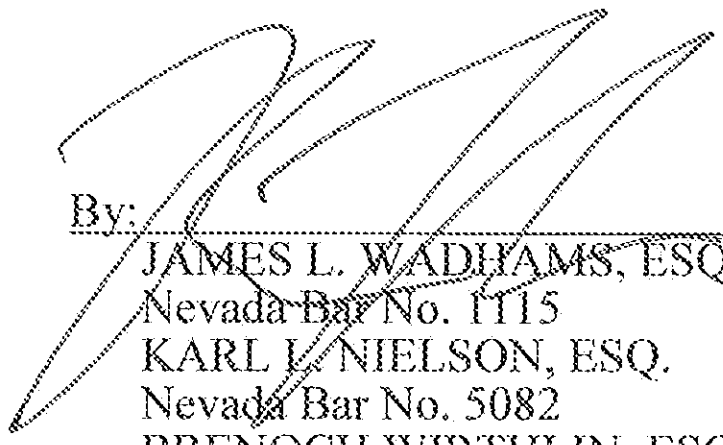
1 B. For reasonable attorney's fees pursuant to statute or as special damages, or as
2 provided in the agreement between the parties;

3 C. For pre-judgment and post-judgment interest; and

4 D. For such other and further relief at law or in equity as the Court may deem just and
5 proper.

6 DATED this 1st day of April, 2016.

7
8 FENNEMORE CRAIG, P.C.

9
10 By: 
11 JAMES L. WADHAMS, ESQ.
12 Nevada Bar No. 1115
13 KARL L. NIELSON, ESQ.
14 Nevada Bar No. 5082
15 BRENOCH WIRTHLIN, ESQ.
16 Nevada Bar No. 10282
17 300 South Fourth Street, Suite 1400
18 Las Vegas, Nevada 89101
19 Telephone: (702) 692-8000
20 Facsimile: (702) 692-8099
21 knielson@fclaw.com
22 bwirthlin@fclaw.com
23 Attorneys for Plaintiff Commissioner of
24 Insurance For the State of Nevada
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Joanna Grigoriev	jgrigoriev@ag.nv.gov	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Marilyn Millam	mmillam@ag.nv.gov	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Nevada Attorney General	wiznetfilings@ag.nv.gov	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Fennemore Craig, P.C.			
Name	Email		Select
Adrina Harris	aharris@fclaw.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Brenoch Wirthlin	bwirthli@fclaw.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Cheryl Landis	clandis@fclaw.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Karl L. Nielson, Esq.	knielson@fclaw.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Lipson Neilson Cole Seltzer & Garin			
Name	Email		Select
Angela T. Nakamura Ochoa	aocchoa@lipsonneilson.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Joseph P. Garin, Esq.	jgarin@lipsonneilson.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Lipson, Neilson, Cole, Seltzer & Garin, P.C.			
Name	Email		Select
Renee Rittenhouse	rrittenhouse@lipsonneilson.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Susana Nutt	snutt@lipsonneilson.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
McDonald Carano Wilson LLP			
Name	Email		Select
CaraMia Gerard	cgerard@mcdonaldcarano.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
George F. Ogilvie III	gogilvie@mcdonaldcarano.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
James W. Bradshaw	jbradshaw@mcdonaldcarano.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Jeff Riesenmy	jriesenmy@mcdonaldcarano.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Kathy Barrett	kbarrett@mcdonaldcarano.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Nancy Hoy	nhoy@mcdonaldcarano.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Nevada Division of Insurance			
Name	Email		Select
Terri Verbrugghen	verbrug@doi.nv.gov	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

/s/ T.McCracken
An Employee of Fennemore Craig, P.C.

**Exhibits to First Amended Complaint, [PA000225-PA000696], intentionally
omitted.**